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Division of Corporations

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**LIMITED LIABILITY COMPANY**

**NEW WINDMOOR PROJECT, LLC**

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To: FLORIDA DEPARTMENT OF STATE  
From: OSCAR R. RIVERA, ESQ.  
Fax #: 850-205-0383  
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Subject: NEW WINDMOOR PROJECT, LLC  
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Siegfried, Rivera, Lemer, De La Torre & Sobel, P.A.  
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(305) 442-3334, Fax: (305) 443-3292

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**ARTICLES OF ORGANIZATION  
FOR  
NEW WINDMOOR PROJECT, LLC  
(A Florida Limited Liability Company)**

**ARTICLE I - Name:**

The name of the limited liability company is "New Windmoor Project, LLC" (the "Limited Liability Company").

**ARTICLE II - Duration:**

The period of duration for the Limited Liability Company shall commence on the date on which these Articles of Organization are filed with the Department of State of the State of Florida, and shall be for fifty (50) years.

**ARTICLE III - Purpose:**

The Limited Liability Company is formed to own one hundred percent (100%) of the membership interests in Windmoor Project, LLC, a Florida limited liability company ("Project Owner"), and to obtain financing for the development, construction, ownership, operation, maintenance and sale of Terrazas RiverPark Village Condominium ("Property"), and to do any and all other things determined by its managers to be necessary, desirable or incidental to the foregoing purpose as permitted under the laws of the State of Florida in accordance with the terms hereof.

3.1 This Article III is being adopted to comply with certain provisions necessary to qualify the Company as a "special purpose" entity.

3.2 Notwithstanding anything to the contrary in these Articles of Organization or in any other document governing the formation, management or operation of the Company, for so long as any Obligation is outstanding, neither the Members nor the Company shall amend, alter, or change any of Article III of these Articles of Organization (the "Special Purpose Provisions"), or any other provision of this or any other document governing the formation, management or operation of the Company in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing and the Rating Agency Condition is satisfied. Subject to this Section 3.2, the Members reserve the right to amend, alter, change or repeal any provisions contained in these Articles of Organization in accordance with Section 608.411, Florida Statutes. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

3.3 Notwithstanding any other provision of these Articles of Organization or any other document governing the formation, management or operation of the Company, and notwithstanding any provision of law that otherwise so empowers the Company, the Members, the Managers, or any other Person, in addition to any other limitations set forth in these Articles of Organization, neither the Members nor the Managers nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Members, the Managers, and all Independent Managers, take any Material Action, provided, however, that the Members

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may not vote on, or authorize the taking of, any Material Action, unless there are at least two Independent Managers then serving in such capacity.

3.4 The Members and the Managers shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Company is and shall remain duly organized, validly existing and its status shall be active under the laws of the jurisdiction of its organization. Notwithstanding anything to the contrary in these Articles of Organization or in any other document governing the formation, management or operation of the Company, the Manager also shall cause the Company to and the Company as of the date of these Articles of Organization has and as of the date hereof shall:

3.4.1 maintain its books of account, business records and bank accounts separate and apart from those of any other Person or entity;

3.4.2. at all times hold itself out to the public and all other Persons or entities as a legal entity separate from the Members and from any other Person or entity;

3.4.3 not engage in any type of fraudulent activity;

3.4.4 file its own tax returns separate from those of any other Person or entity, except to the extent that the Company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, pay any taxes required to be paid under applicable law, and in any consolidated return, cause the filing entity to fully complete the affiliations schedule and attach a pro forma return for each entity;

3.4.5 except as contemplated by the Loan Documents, not commingle its assets with assets of any other Person or entity;

3.4.6 conduct its business only in its own name and comply with all organizational formalities necessary to maintain its separate existence;

3.4.7 prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, showing its assets and liabilities separate and apart from those of any other Person or entity and not have its assets listed on any financial statement of any other Person or entity; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliate provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person or entity; (ii) the Property will be noted as being owned by the Project Owner; and (iii) such assets shall also be listed on the Company's own separate balance sheet;

3.4.8 pay its own liabilities and expenses only out of its own funds;

3.4.9 except for capital contributions or capital distributions permitted under the terms and conditions of the Company's operating agreement and properly reflected on the books and records of the Company, not enter into any transaction with an Affiliate of the Company except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's-length transaction;

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3.4.10 maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;

3.4.11 not hold out its credit or assets as being available to satisfy the obligations of any other Person or entity;

3.4.12 allocate fairly and reasonably any overhead expenses that are shared with an Affiliate or any other Person or entity, including for shared office space and for services performed by an employee of an Affiliate;

3.4.13 use separate stationery, invoices and checks bearing its own name;

3.4.14 except as contemplated by the Loan Documents, not pledge its assets to secure the obligations of any other Person or entity;

3.4.15 correct any known misunderstanding regarding its separate identity and not identify itself as a department or division of any other Person or entity;

3.4.16 maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require the Members to make additional capital contributions to the Company;

3.4.17 not acquire any obligation or securities of the Members, of any Affiliate of the Company, or any other Person or entity;

3.4.18 cause the Managers, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company; and

3.4.19 be adequately capitalized and solvent as of the date hereof and intends to be adequately capitalized and solvent in the future.

Failure of the Company, or the Members or the Managers on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in these Articles of Organization shall not affect the status of the Company as a separate legal entity or the limited liability of the Members or the Managers. However, the Company, or the Members or the Managers on behalf of the Company, has not and will not take any actions material to the Company's separateness that are precluded by these Articles of Organization and has and will otherwise comply with the terms of these Articles of Organization in all respects material to the Company's separateness.

3.5 Notwithstanding anything to the contrary in these Articles of Organization or in any other document governing the formation, management or operation of the Company, the Manager shall not cause or permit the Company to and the Company shall not:

3.5.1 guarantee any obligation of any Person or entity, including any Affiliate or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;

3.5.2 engage, directly or indirectly, in any business other than as required or permitted to be performed under this Article III;

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3.5.3 incur, create or assume any indebtedness or liabilities, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than indebtedness and liabilities incurred in the ordinary course of its business that are related to the ownership and operation of the Property and are expressly permitted under the Loan Documents;

3.5.4 make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents;

3.5.5 to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of the Company's business other than such activities as are expressly permitted pursuant to the Loan Documents;

3.5.6 buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);

3.5.7 form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity; or

3.5.8 own any asset or property other than its interest in Project Owner and incidental personal property necessary for the ownership or operation thereof.

3.6 As long as any Obligation is outstanding, the Members shall cause the Company at all times to have at least one Independent Manager who will be appointed by the Members. To the fullest extent permitted by law, including Section 608.4225(c) of the Act, the Independent Manager shall consider only the interests of the Company and its creditors in acting or otherwise voting on the matters referred to in Section 3.3. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor shall have executed a counterpart to the Company's operating agreement. In the event of a vacancy in the position of Independent Manager, the Members shall, as soon as practicable, appoint a successor Independent Manager. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in these Articles of Organization. Except as provided in the second sentence of this Section 3.6, in exercising their rights and performing their duties under these Articles of Organization, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

3.7 Capitalized Terms not otherwise defined herein shall have the following meanings:

"Act" shall mean the Florida Limited Liability Company Act, Chapter 608, as amended from time to time, and any successor thereto.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person or any Person who has a direct familial relationship, by blood, marriage or otherwise with the Company or any Affiliate of the Company.

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**"Bankruptcy"** means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Section 608.402(4) of the Act.

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, 49% or more of the ownership interests.

**"Independent Manager"** means a natural person who is not at the time of initial appointment as a manager or at any time while serving as a manager of the Company and has not been at any time during the five (5) years preceding such initial appointment:

- (a) a stockholder, director, manager (with the exception of serving as an Independent Manager of the Company), officer, trustee, employee, partner, member, attorney or counsel of Company, the Members or any Affiliate of either of them;
- (b) a creditor, customer, supplier, or other Person who derives any of its purchases or revenues from its activities with the Members, the Company or any Affiliate of either of them;
- (c) a Person Controlling or under common Control with any Person excluded from serving as Independent Manager under (a) or (b); or
- (d) a member of the immediate family by blood or marriage of any Person excluded from serving as Independent Manager under (a) or (b).

A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Manager of the Company if such individual is an Independent Manager provided by a nationally-recognized company that provides professional independent managers (a **"Professional Independent Manager"**) and other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition other than subparagraph (a) by reason of being the independent director or manager of a "special purpose entity" affiliated with the Company shall not be disqualified from serving as an Independent Manager of the Company if such individual is either (i) a Professional Independent Manager or (ii) the fees that such

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Individual earns from serving as independent manager of Affiliates of the Company in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Manager may not simultaneously serve as Independent Manager of the Company and Independent manager or director of a special purpose entity that owns a direct or indirect equity interest in the Company or a direct or indirect interest in any co-borrower with the Company.

For purposes of this paragraph, a "special purpose entity" is an entity whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the Special Purpose Provisions of these Articles of Organization.

"Loan Documents" means any documents executed by the Company or any Affiliate in conjunction with that certain loan in the amount of \$14,300,000 from Lehman Brothers Holdings Inc. ("Lender") to the Company ("Loan").

"Manager" means the Person elected to be a manager from time to time by the Members, in its capacity as a manager of the Company. A Manager is hereby designated as a "manager" of the Company within the meaning of Section 608.402(18) of the Act.

"Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Obligation" means any obligation of the Company or any Affiliate under the Loan Documents.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Rating Agency" has the meaning assigned to that term in the Loan Documents, or if no such defined term exists, means a nationally-recognized rating agency that is rating or that has rated the Loan or any pool of loans of which the Loan forms a part or any securities issued in connection with a securitization of the Loan or such pool of loans.

"Rating Agency Condition" means with respect to any action taken at any time after the Loan evidenced and secured by the Loan Documents has been sold or assigned to a securitization trust, that each Rating Agency shall have notified the Company in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part, or of any of the securities issued by such securitization trust.



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**"Special Purpose Entity"** means an entity, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve its separateness that are substantially similar to the Special Purpose Provisions of these Articles of Organization.

**ARTICLE IV - Address:**

The mailing and street address of the principal office of the Limited Liability Company shall be 2600 S.W. 3<sup>rd</sup> Avenue, Suite 730, Miami, Florida 33129.

**ARTICLE V - Management/Members:**

The Limited Liability Company shall be manager-managed.

**ARTICLE VI - Registered Agent:**

The registered agent for service of process on the Limited Liability Company shall be SKRLD, Inc., 201 Alhambra Circle, Suite 1102, Coral Gables, Florida 33134.

Oscar R. Rivera, Esq.  
201 Alhambra Circle, Suite 1102  
Coral Gables, Florida 33134  
(305) 442-3334

**IN WITNESS WHEREOF**, the undersigned hereby affirm under the penalties of perjury that the facts stated hereinabove are true and have executed this instrument as of this 15<sup>th</sup> day of December, 2005.




Oscar R. Rivera, as authorized  
Representative of the members of the  
Limited Liability Company

**ACCEPTANCE OF DESIGNATION OF REGISTERED AGENT**

Having been named to accept service of process for the above stated Limited Liability Company, SKRLD, Inc. states that it is familiar with and hereby agrees to act in this capacity, and agrees to comply with the obligations of said position.

Dated this 15<sup>th</sup> day of December, 2005.

SKRLD, INC., Registered Agent

By: 

Oscar R. Rivera  
Florida Bar No. 329193

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