

Division of Corporations

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**INDIGO APARTMENTS AT WINTER PARK, LLC**

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**SECOND AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
INDIGO APARTMENTS AT WINTER PARK, LLC**

The undersigned, pursuant to the provisions of Section 608.411 of the Florida Statutes, desires to amend and restate the Amended and Restated Articles of Organization of Indigo Apartments at Winter Park, LLC, filed with the Florida Department of State on February 22, 2007, and hereby adopts the Second Amended and Restated Articles of Organization set forth below:

The following Second Amended and Restated Articles of Organization (the "Articles") were adopted and approved by at least seventy-five percent (75%) of the members of the Company as required by the Operating Agreement of the Company.

**ARTICLE I NAME**

The name of this limited liability company is INDIGO APARTMENTS AT WINTER PARK, LLC (the "Company").

**ARTICLE II PRINCIPAL OFFICE**

The mailing address and the street address of the principal office of the Company is 320 North Main Street, Suite 200, Ann Arbor, Michigan 48104.

**ARTICLE III REGISTERED OFFICE AND AGENT**

The street address of the registered office of the Company is 215 North Eola Drive, Orlando, Florida 32801, and the name of the registered agent of the Company at that address is Gary M. Kaleita.

**ARTICLE IV PURPOSE OF THE COMPANY**

**A. Purpose.**

Notwithstanding any provision hereof to the contrary, the nature of the business and of the purposes to be conducted and promoted by the Company, is to engage solely in the following activities:

1. Owning, holding, maintaining, repairing, improving, rehabilitating, remodeling, renovating, leasing space in, operating, managing, selling, assigning, exchanging, conveying and/or otherwise disposing of an interest in that certain parcel of real property located at 220 Semoran Boulevard, Winter Park, Florida 32792 (the "Property").

2. Exercising all powers enumerated in the Florida Limited Liability Company Act ("FLLCA") necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

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**B. Certain Prohibited Activities.**

1. Notwithstanding anything contained herein to the contrary, for so long as that certain first mortgage loan ("Loan") made by Merrill Lynch Mortgage Lending, Inc. (together with its successors and/or assigns "Lender") to the Company remains outstanding, in the event of any conflict between the provisions contained in this section and the other provisions of these Articles, the provisions of this section shall control and govern. All capitalized terms within this section shall have the meaning ascribed to them in that certain Loan Agreement between the Company and Lender.

2. Company has not, and for so long as the Loan shall remain outstanding, Company shall not:

(i) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;

(ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the operation of the Property;

(iii) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person;

(vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to Personal Property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Note;

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(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Company's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that such consolidated financial statements contain a footnote indicating that Company is a separate legal entity and that it maintains separate books and records;

(ix) enter into any contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Company, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns or files a consolidated federal income tax return with any Person (unless prohibited or required, as the case may be, by applicable Legal Requirements);

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that there are sufficient funds from the operation of the Property to do so;

(xvi) without the unanimous written consent of all of its Members, and the written consent of 100% of the Managers, (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official, (C) take any action that might cause such entity to become insolvent, or (D) make an assignment for the benefit of creditors;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

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(xviii) fail to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds, provided that there are sufficient funds from the operation of the Property to do so;

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable; or

(xx) fail to maintain a sufficient number of employees in light of its contemplated business operations.

3. Company shall at all times have: (i) a Manager that is a limited liability company whose sole asset is its interest in the Company (an "SPE Component Entity"); and (ii) a Manager that is an Independent Manager. The SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in Subsection (iii) - (vi) and (viii) - (xx) above, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Company; (iii) will not acquire or own any assets other than its Membership, or other equity interest in Company; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (v) will cause Company to comply with the provisions of this Section. Prior to the withdrawal or the disassociation of any SPE Component Entity from Company, Company shall immediately appoint a new Manager whose Articles of Organization and operating agreement are substantially similar to those of such SPE Component Entity. The term "Independent Manager" shall mean an individual who: (i) is not and has not been employed by the Company or any of its respective subsidiaries or affiliates as a Manager director, officer or employee within the five years immediately prior to such individual's appointment as an Independent Manager, (ii) is not (and is not affiliated with a company or firm that is) a significant advisor or consultant to the Company or any of its subsidiaries or affiliates, (iii) is not affiliated with a significant customer or supplier of the Company or any of its subsidiaries or affiliates; (iv) is not affiliated with a company of which the Company or any of its subsidiaries or affiliates is a significant customer or supplier; (v) does not have significant personal service contract(s) with the Company or any of its subsidiaries or affiliates; (vi) is not affiliated with a tax exempt entity that receives significant contributions from the Company or any of its subsidiaries or affiliates; (vii) is not a beneficial owner at the time of such individual's appointment as an Independent Manager, or at any time thereafter while serving as Independent Manager, of such number of Membership Units of any classes of Membership Interest of the Company the value of which constitutes more than 5% of the outstanding Interest of the Company; and (viii) is not a spouse, parent, sibling or child of any person described by (i) through (vii).

Except as may be necessary to effect the purposes and provisions of this Section 3, notwithstanding anything contained herein to the contrary, the authority and powers of the Independent Manager may be restricted as provided for in the Operating Agreement of the Company.

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4. For so long as the Loan shall remain outstanding, Company, shall not allow direct and/or indirect transfers of ownership interests in Company that would violate the provisions of Article 5 and/or Article 6 of the Loan Agreement executed by Company in connection with the Loan.

5. For so long as the Loan shall remain outstanding, Company's obligation hereunder, if any, to indemnify its directors and officers, partners, members or managers, as applicable, is hereby fully subordinate to the Loan and the loan documents executed in connection therewith (the "Loan Documents") and no indemnity payment from funds of Company (as distinct from funds from other sources, such as insurance) of any indemnity hereunder, if any, shall be payable from amounts allocable to any other person pursuant to the Loan Documents.

6. For so long as the Loan shall remain outstanding, Company shall not amend, terminate or otherwise alter the provisions of the Section without Lender's prior written consent.

IN WITNESS WHEREOF, the undersigned have duly executed these Second Amended and Restated Articles of Organization on this 27th day of September, 2007.

GPR McKINLEY MANAGER, LLC, a Michigan  
limited liability company

By: McKinley Associates, Inc., a Michigan  
Corporation, its Manager

By: Leslie Lynn Smith, Vice President

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**ACCEPTANCE OF REGISTERED AGENT**

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, Florida Statutes.

  
\_\_\_\_\_  
Gary M. Kaleita

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