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## LIMITED LIABILITY AMENDMENT

RIVERGATE INVESTORS, LLC

Certificate of Status	0
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**CERTIFICATE OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
RIVERGATE INVESTORS, LLC**

Pursuant to the provisions of Section 608.411 of the Florida Statutes, **RIVERGATE INVESTORS, LLC**, a Florida limited liability company (hereinafter, the "Company") adopts the following Certificate of Amendment to its Articles of Organization:

**FIRST:** The name of the Company is: **RIVERGATE INVESTORS, LLC**.

**SECOND:** The date of filing of the Articles of Organization was June 11, 1998.

**THIRD:** The following amendments to the Articles of Organization were adopted by all of the Members and all of the Managers of the Company on June 15, 2001.

**FOURTH:** Article III of the Company's Articles of Organization is hereby amended to read in its entirety as follows:

**ARTICLE III. DURATION AND CONTINUATION**

The period of the Company's duration shall commence with the filing of these Articles of Organization with the Secretary of State, and shall continue perpetually, unless terminated (i) in accordance with the Company's Amended and Restated Operating Agreement, (ii) by the unanimous written agreement of all Members, (iii) by the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or (iv) upon the occurrence of any other event which terminates the continued membership of a Member; provided, however, upon any such termination event, the existence and business of the Company may be continued with the consent of a majority of the remaining Members of the Company, or by amendment of these Articles of Organization providing for the continued existence of the Company; provided further, however, none of the foregoing events shall cause the Company to dissolve or terminate while any amount under the Loan (as defined herein) remains outstanding.

**FIFTH:** Article IV of the Company's Articles of Organization is hereby amended to read in its entirety as follows:

#### ARTICLE IV. PURPOSE

The Company is organized solely to (i) acquire fee title to, hold, own, maintain, develop, improve, operate, sell, exchange, lease, mortgage, hypothecate and otherwise use that certain real property and the improvements thereon located at 444 Brickell Avenue, 77 Southeast 5<sup>th</sup> Street and 99 Southeast 5<sup>th</sup> Street, Miami, Florida, and any and all improvements located thereon and all proceeds, rents, income and revenue of any nature derived therefrom (collectively, the "Company Property"); (ii) enter into a loan agreement (the "Loan") in the approximate amount of \$31,340,000.00 with Secore Financial Corporation or Morgan Stanley Dean Witter Mortgage Capital Inc., and (iii) transacting any lawful business necessary, incidental and appropriate to accomplish the foregoing.

**SIXTH:** Article IX of the Company's Articles of Organization is hereby amended to read in its entirety as follows:

#### ARTICLE IX. NEGATIVE COVENANTS

Notwithstanding any other provision of these Articles of Organization or any provision of law that otherwise so empowers the Company, and so long as any obligations of the Company in favor of MORGAN STANLEY DEAN WITTER MORTGAGE CAPITAL INC. ("Lender") or its successors and assigns remain outstanding and not paid in full, including by reason of having been transferred by the Lender to an entity for rated securitization purposes, the Company shall not, do any of the following:

- A. engage in any business or activity other than those set forth in Article IV or in its Amended and Restated Operating Agreement, dated as of June 19, 2001, as amended (the "Operating Agreement"), or amend Article IV hereof or the Operating Agreement to change the purpose of the Company as set forth therein;
- B. incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than the mortgage given by the Company to the Lender, "Member Loans" (which are subordinate to the Loan as provided in Section 3.3 of the Operating Agreement) and operating expenses incurred in the ordinary course of business;
- C. extend any indebtedness to any third party;
- D. dissolve or liquidate, in whole or in part;

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- E. consolidate or merge with or into any other entity or convey or transfer its property and assets substantially as an entirety to any entity, except for such sales as are permitted under the documents relating to the Loan;
- F. without the affirmative vote of all of its members, including its SPE Member, institute proceedings to be adjudicated bankrupt or insolvent or consent to the institution or bankruptcy or insolvency proceeding against the Company, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of property of the Company, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take action in furtherance of any of the foregoing;
- G. change its principal place of business without providing Lender with at least thirty (30) days prior written notice of such change; and
- H. amend Articles IX, X, XI, or XII of these Articles of Organization; unless the holder of the Loan consents and after securitization the applicable rating agencies confirm that such amendment will not result in the qualification, withdrawal or downgrade of any securities rating.

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SEVENTH: Article X of the Company's Articles of Organization is hereby amended to read in its entirety as follows:

#### ARTICLE X. AFFIRMATIVE COVENANTS

Notwithstanding any other provision of these Articles of Organization or any provision of law that otherwise so empowers the Company, and so long as any obligations of the Company under the Loan remain outstanding and not paid in full, including by reason of having been transferred by the Lender to an entity for rated securitization purposes, the Company shall:

- A. maintain books and records and bank accounts separate from those of any other person;
- B. maintain its assets in such manner that it is not costly or difficult to segregate, identify or ascertain such assets;

- C. hold regular meetings of the members of the Company, as appropriate, to conduct the business of the Company, and observe all other organizational formalities;
- D. hold itself out to creditors and the public as a legal entity separate and distinct from any other entity and correct any known misunderstanding regarding its separate identity;
- E. prepare separate tax returns and financial statements, and if part of a consolidated group, then it will be shown as a separate member of such group;
- F. do or cause to be done all things necessary to preserve its existence;
- G. conduct business in its own name, and use separate stationery, invoices and checks;
- H. not commingle its assets or funds with those of any other person and hold all of its assets in its own name;
- I. not hold itself to be responsible or its credit as being available for the debts or obligations of any person;
- J. Pay its own liabilities out of its own funds;
- K. Enter into transactions with affiliates only on a commercially reasonable basis and on terms substantially similar to those of an arms-length transaction;
- L. Pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations;
- M. Not acquire the obligations or securities of its affiliates;
- N. Not buy or hold evidence of indebtedness issued by any other person;
- O. Allocate fairly and reasonably any overhead expenses shared with affiliates;
- P. Not pledge its assets for the benefit of any other person, other than to secure the Loan;
- Q. Not identify itself as a division or part of any other person;

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R. Maintain adequate capital in light of its contemplated business operations; and

S. Not form, hold or acquire any subsidiary.

EIGHTH: Article XI of the Company's Articles of Organization is hereby added to read in its entirety as follows:

#### ARTICLE XI. SPE MEMBER

At all times any amount under the Loan remains outstanding, the Company shall have at least one member (an "SPE Member") that owns at least a 0.5% interest in the Company and has a single purpose and covenants in its organizational documents substantially similar to those contained in the organizational documents of 444 Brickell Manager LLC on the date hereof, including the requirement of its managing member having at least one independent director. The initial SPE Member shall be 444 Brickell Manager LLC.

Upon the dissolution, bankruptcy or other event that causes the SPE Member to be disassociated from the Company, a new SPE Member shall be promptly appointed and (i) a new non-consolidation opinion shall be delivered to the holder of the Loan and the applicable rating agencies, and (ii) the applicable rating agencies shall confirm that the change in SPE Members will not result in the qualification, withdrawal or downgrade of any securities rating.

NINTH: Article XII of the Company's Articles of Organization is hereby added to read in its entirety as follows:

#### ARTICLE XII. TRANSFER RESTRICTIONS

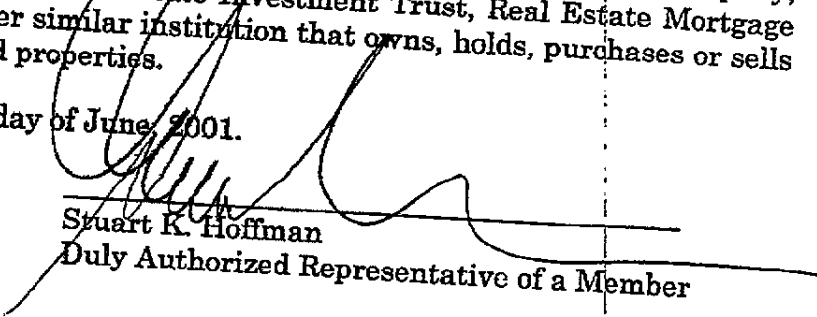
The following transfers of direct or indirect ownership interests in the Company shall be permitted (I) without the consent of, but with prior notice to, Lender and (II) if as a result of such transfer 49% or more of the direct or indirect interests in the Company (aggregating affiliates and family members) is controlled by a party that did not previously have a controlling interest, then an acceptable non-consolidation opinion concerning the Company and such new member shall be delivered to Lender and a Rating Agency Confirmation shall be delivered to Lender prior to such transfer: (i) any transfer of interests in the Company by members of the Company, provided that such transfer is either to (A) any entity which controls, is controlled by, or is under common control with the transferor or (B) an Institutional Transferee (as hereinafter defined); (ii) transfers of membership interests in the Company among the members of the Company; (iii) transfers of the non-managing members' interest in the Company to the managing member of the Company and transfers of the managing member's interest in the Company to any non-managing member of the Company or any such non-managing member's affiliates; (iv) the Company and/or the members of the Company may sell, transfer,

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assign or convey their interest in the Company to (a) Allen C. de Olazarra ("ADO") or Rodolfo Prio Touzet ("RPT") or a successor entity controlled by ADO or RPT and/or (b) members of their immediate family (spouse, son, daughter, father or mother), and/or (c) any new entity in which they and/or one or more members of their immediate family and/or trust described in clause (d) below control one hundred percent (100%) of the beneficial and record interests in such new entity, and/or (d) a trust of which ADO or RPT and/or one or more members of their immediate family is the trustee and/or sole beneficiaries; and (v) up to 10% of the aggregate equity interests in the Company to the employees of America's Capital Partners or its affiliates set forth in the documents relating to the Loan. An "Institutional Transferee" shall mean a bank, investment bank, insurance company, real estate opportunity fund, Real Estate Investment Trust, Real Estate Mortgage Investment Conduit or other similar institution that owns, holds, purchases or sells real estate investments and properties.

Signed and dated this 18<sup>th</sup> day of June, 2001.

  
Stuart R. Hoffman

Duly Authorized Representative of a Member

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