

OPERATING AGREEMENT

OF

aaaaaaaaaaaaaaaaaaaaa LLC

(Manager Managed/SPE Limitations^{1})**

^{1**} Note: The Special Purpose Entity language contained in Article 6 may vary and is subject to the approval of the individual lender involved.

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OPERATING AGREEMENT

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THIS OPERATING AGREEMENT (the “Agreement”) is made as of the ____ day of _____, 20__, by and between _____ and _____ the undersigned (collectively, the “Members”).

RECITALS:

A. The parties hereto hereby form aaaaaaaaa LLC (the “Company”) as a limited liability company pursuant to the Delaware Limited Liability Company Act (the “Act” as hereinafter defined).

B. The parties hereto desire to enter into this Agreement in order to govern the affairs of the Company and set forth their rights, obligations and understandings with respect to the Company.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I - FORMATION

1.01 **Formation.** The Members hereby form the Company as a limited liability company under the provisions of the Act. The Manager shall take all action required by law to perfect and maintain the Company as a limited liability company under the Act and under the laws of all other jurisdictions in which the Company may elect to conduct business, including but not limited to the filing of the Certificate of Formation (as hereinafter defined) with the State of Delaware Division of Corporations (the “Division”), and registration of the Company as a foreign limited liability company in any jurisdiction which may be necessary for the Company to conduct its business. The Manager shall also promptly register the Company under any applicable assumed or fictitious name statutes or similar laws.

1.02 **Name.** The name of the Company shall be aaaaaaaaaaaaaaaaaaaaaa LLC.

1.03 **Place of Business; Registered Office; Registered Agent.** The registered office and principal office of the Company shall be located at [[_____]]. The registered agent for service of process of the Company at such address shall be [[_____]]. The principal office of the Company shall be located at [[_____]] The Manager may make such changes in the registered office, registered agent and principal office as he may deem advisable and shall give notice to all Members promptly following any such change. The Company may maintain such other or additional business offices at such other place or places as the Manager may from time to time deem advisable.

1.04 **Duration.** The Company's existence shall commence as of the date of the Division's acceptance of the Certificate of Formation, and shall continue until dissolved in accordance with the Act and this Agreement.

ARTICLE II - INTERPRETIVE PROVISIONS

2.01 **Certain Definitions.** The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters:

Act: The Delaware Limited Liability Company Act, Delaware Code §§18-101 et seq., and the regulations, if any, promulgated thereunder, as the same may be amended from time to time.

Affiliate: With respect to any referenced Person, such Person or a member of his immediate family, or any entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with any Member. As used herein, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

Agreement: This Limited Liability Company Operating Agreement and the Exhibits attached hereto, as it may be amended and in effect from time to time.

Assets: At any particular time, the Real Property and any other assets or real or personal property, tangible or intangible, held or owned by the Company.

Bankrupt(cy): Either (i) the initiation by a referenced Person of a proceeding, or initiation of any proceeding against a referenced Person which has not been vacated, discharged or bonded within thirty (30) days of initiation, under a federal, state or local bankruptcy or insolvency law, (ii) an assignment by a referenced Person for the benefit of creditors, (iii) the inability of a referenced Person to pay his debts as they become due, or (iv) the agreement by a referenced Person to appointment of a receiver or trustee for all or a substantial part of his property, or court appointment of such receiver or trustee which is not suspended or terminated within thirty (30) days after appointment.

Capital Account: The account maintained by the Company for each Member described in Section 4.06 hereof.

Capital Contribution: The total amount of property (net of liabilities) and money contributed by each Member to the Company pursuant to the terms of this Agreement as set forth on Exhibit "A", including the Capital Contribution made by a predecessor holder(s) of the Membership Interest of such Member, unless the context requires otherwise.

Code: The Internal Revenue Code of 1986 (or any corresponding provision of succeeding law), as amended from time to time.

Company: The Limited Liability Company referred to herein as aaaaaaaaaa LLC, as such Company may from time to time be constituted.

Certificate: The Company's Certificate of Formation, as amended from time to time, as required by the Act.

Economic Interest: Shall have the meaning set forth in Section 8.04 hereof.

Fiscal Year: The calendar year or such other twelve (12)-month period designated by the Members.

Manager: Shall have the meaning set forth in Section 6.01 hereof.

Majority Approval: The affirmative vote of Members owing fifty-one percent (51%) of the Percentage Interests.

Member: Any of those persons identified as Members on Exhibit "A" attached hereto and incorporated herein by reference, or any permitted Substituted Member. Reference to a Member with respect to allocations and distributions pursuant to the provisions of Exhibit "C" shall be deemed to include any assignees of interest where appropriate.

Membership Interest or Interest: As to any Member, such Member's Percentage of Membership Interest, right to distributions under Article V hereof, and any other rights, and all obligations which such Member has in the Company.

Net Distributable Cash: With respect to any Company accounting year shall mean the taxable income for federal income tax purposes shown on the books of the Company, increased by (i) the amount of depreciation and amortization deductions taken in computing such taxable income, (ii) any non-taxable income or receipts of the Company (excluding Capital Contributions and the proceeds of any loans to the extent used to finance capital improvements and/or replacements), and (iii) any other funds (including amounts previously set aside as reserves by the Manager, where and to the extent the Manager no longer regards such reserves to be reasonably necessary to the efficient conduct of the Company's business) deemed available for distribution by the Manager, reduced by (x) payments of principal of any loans or other obligations of the Company for borrowed money, excluding loans made by Members, (y) expenditures by the Company for the development of the Real Property or other property, for construction period interest and taxes which are capitalized and for capital improvements and/or replacements (except to the extent financed by Capital Contributions, loans or reserves previously set aside by the Company for such purposes), and (z) such reserves for capital improvements and/or replacements or repairs and to meet anticipated expenses as the Manager shall deem to be reasonably necessary to the efficient conduct of the Company's business.

Notice: A writing containing all information necessary to satisfy the purposes for which notice is being given which is personally delivered, sent by postal or reputable commercial overnight delivery service, or mailed first-class postage prepaid and certified with a return receipt requested and addressed as applicable if to a Member at his address as it appears from the Company's records or if to any other person at his last known address; provided, however, that in all events the actual timely receipt by a Member or other person of a writing directed to him containing the required information shall constitute Notice to him. Notice shall be deemed to have been given as of the first business day following personal delivery or deposit with a postal

or reputable commercial overnight delivery service or as of the third business day following deposit in the United States mail, first-class postage prepaid.

Percentage of Membership Interest: As to any Member, the percentage in the Company shown opposite the name of such Member on Exhibit "A" attached hereto, as the same may be adjusted from time to time in accordance with this Agreement.

Person: Any individual, limited liability company, corporation, partnership, joint venture, trust or other entity.

Prime Rate: That rate of interest per annum publicly announced from time to time by [[_____]] (or any successor financial institution) as its corporate base rate, it being understood that such announced rate may not necessarily reflect the lowest rate of interest actually charged by such financial institution to any particular class or category of customers.

Purchase Price. The amount to be paid for the Membership Interest to be transferred pursuant to Section 9.01(A) of this Agreement.

Real Property: The land and any improvements now or hereinafter located thereon, located in [[_____]] and as more particularly described in Exhibit "B" attached hereto.

Regulations: The income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

Substituted Member: That Person or those Persons admitted to the Company as an additional or substitute Member(s), in accordance with Article VIII of this Agreement. A Substituted Member, upon his admission as such, shall succeed to the rights, privileges and liabilities of his predecessor in interest as a Member.

ARTICLE III - BUSINESS PURPOSE

3.01 Business.

(A) The business of the Company shall be to (i) acquire, hold, own, develop, improve, lease, manage, operate and, when and if applicable, sell or otherwise transfer the Real Property and/or other Company Assets as investment assets; and (ii) carry on any and all activities incidental or related thereto as may be lawfully conducted by a limited liability company under the laws of the State of Delaware; provided, however, that the Company shall not engage in any other business without the prior consent of all Members.

(B) Notwithstanding anything to the contrary in Section 3.01(A), immediately above, if the Company is required to be a "Special Purpose Entity" in connection with any financing undertaken by the Company, then, in such event, the business of the Company shall be, expressly, as described in the Company's Certificate or any Amended or Restated Certificate, and the Company's authority to transact such business shall be limited by Section 6.03(B) of this Agreement.

3.02 **Authorized Activities.** In carrying out the purposes of the Company, but subject to all other provisions of this Agreement, the Company is authorized to:

(A) Enter into such contracts and take such actions as are required to improve, develop, finance, construct, operate, lease, manage, and sell, exchange or otherwise dispose of the Real Property and other Company Asset, and to enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Company, so long as such activities and contracts may be lawfully carried on or performed by a limited liability company under the laws of the State of Delaware;

(B) Operate, maintain, finance, improve, construct, repair, alter, buy, own, sell, convey, assign, mortgage or lease the Real Property and any other real estate and any personal property necessary to the accomplishment of the purposes of the Company;

(C) Borrow money for and on behalf of the Company to cover the costs and expenses of the Company or for any other Company purposes, including without limitation, to improve the Real Property and any other Company Assets, to pay real estate taxes, costs of insurance, and principal and interest on any encumbrances on the Real Property and any other Company Assets, and as security therefor to mortgage or grant deeds of trust on all or any part of the Real Property and the other Company Assets, real, personal or mixed in connection with any such borrowings;

(D) Prepay in whole or in part, refinance, recast, increase, modify, or extend mortgages affecting the Real Property, and in connection therewith execute any extensions, renewals or modifications of any mortgage or deed of trust on the Real Property;

(E) Enter into, perform, deliver and carry out contracts, certificates and instruments of any kind, including but not limited to giving receipts, releases and discharges with respect to the Company's business and any matters incident thereto as the Manager may deem advisable or appropriate for the accomplishment of the purposes of the Company;

(F) Purchase, at the reasonable expense of the Company, liability and other insurance to protect the Company's properties and business and the Members;

(G) Employ Persons in the operation and management of the business of the Company including, without limitation, attorneys, accountants, mortgage bankers, management and leasing agents, insurance brokers, real estate brokers, engineers, architects, contractors and consultants;

(H) Make any and all reasonable expenditures which the Manager, in his discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of their obligations and responsibilities under this Agreement, including, without limitation, all operating costs, and other related expenses incurred in connection with the organization and operation of the Company and the Manager shall insure that operating costs and such related expenses are timely paid or provision for the payment thereof is timely undertaken;

(I) Hold title to Company property in the names of trustees or nominees;

(J) Make interim investments in appropriate banking or investment accounts; provided, however, that the members shall have a fiduciary responsibility for the safe-keeping and use of all funds and assets of the Company.

(K) Bring, defend, pay, extend, renew, modify, adjust, submit to arbitration, prosecute or compromise any obligation, suit, liability, cause of action or claim with respect to the Company; and

(L) Engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable in connection with the accomplishment of the purposes of the Company.

ARTICLE IV - MEMBERSHIP INTERESTS, CAPITAL CONTRIBUTIONS MEMBER LOANS AND CAPITAL ACCOUNTS

4.01 **Members.** The Members, their addresses, Capital Contributions, and Percentages of Membership Interest are set forth on Exhibit "A" attached hereto. Except as set forth on Exhibit "A" or in this Article IV, or as may otherwise be required by law, no Member shall have any obligation to make any additional Capital Contributions to the Company.

4.02 Loans and Advances.

(A) In the event that at any time the Company must raise required additional funds in excess of Capital Contributions, then the Manager, acting for and on behalf of and in the name of the Company, may cause the Company to borrow such required additional funds, at then prevailing interest rates, from commercial banks, savings and loan associations and/or other lending institutions.

(B) In the event the Company is unable to borrow such required additional funds, one or more of the Members may elect to loan such funds to the Company. Any such loan by a Member shall not increase such Member's Capital Contribution and shall not entitle such Member to any increase in its share of the distributions of the Company. The amount of any such loan shall be an obligation of the Company and shall bear interest at the Prime Rate, and the principal balance of such loan shall be repaid to such Member out of Net Distributable Cash in accordance with the provisions of Section 5.03 hereof.

4.03 Additional Capital Contributions.

(A) In the event that at any time funds in excess of (i) Capital Contributions made by the Members, (ii) available loan proceeds from lending institutions, (iii) loans from Members, and (iv) other receipts of the Company, are required to pay all or any part of the operating costs, obligations, liabilities or expenditures of the Company or to pay all or any part of the interest and principal due under any loan made to or for the benefit of the Company, then upon Majority Approval of the Members, each Member shall contribute to the capital of the Company his proportionate share of such required additional funds. Each Member's share of such required additional funds shall be in accordance with and pro rata in proportion to such Member's Percentage of Membership Interest in the Company.

(B) (i) The failure by any Member to make any additional capital contribution within fifteen (15) days after demand therefor has been given by the Company shall constitute an event of default by such Member under this Agreement. In case of a default by a Member, the nondefaulting Members shall each make an additional capital contribution to the Company in an amount computed as follows: (a) the proportion that a nondefaulting Member's Percentage of Membership Interest bears to the Percentage of Membership Interest of all nondefaulting Members, (b) multiplied by the amount of money that the defaulting Member failed to contribute.

(ii) After an event of default and payment by the nondefaulting Members as set forth above, the defaulting Member shall repay to the nondefaulting Members the amounts advanced on such Member's behalf, together with interest thereon at the Prime Rate plus three percent (3%) per annum. Repayment of such advances shall constitute the personal obligation of the defaulting Member and, if not sooner paid, shall be repaid from the amount of any payment otherwise available to be made to the defaulting Member from Net Distributable Cash or from any other distribution which would otherwise be made to the defaulting Member under the provisions of this Agreement, until all such amounts so advanced, with interest thereon at the rate set forth above, shall have been repaid in full. It is the intention of the Members that the Membership Interest of a defaulting Member shall serve as collateral to the nondefaulting Members for satisfaction by a defaulting Member of his obligations to the nondefaulting Members hereunder, and the nondefaulting Members shall be entitled to bring an action in law or in equity as a creditor of the defaulting Member to collect all amounts to which the nondefaulting Members are entitled hereunder, plus all costs and expenses of maintaining such suit, including, without limitation, reasonable attorney's fees.

4.04 **Member Intent.** With respect to Section 4.02 and 4.03 hereof, the Members acknowledge and agree as follows:

(A) To the extent that the Company must raise required additional funds for any reason, it is the Members' intent that such funds should generally be raised by borrowing funds in the following order of priority: (i) loans from financial institutions, and (ii) loans from Members, rather than from additional Capital Contributions, unless the Members elect to raise such funds under the other applicable provisions of Section 4.02 and 4.03.

(B) The interest rate of the Prime Rate plus three percent (3%) is a commercially reasonable rate of interest for all purposes of this Article IV.

(C) Interest on any loan between the Company and any Member and made pursuant to Section 4.02 shall be compounded semi-annually.

(D) The provisions of this Article IV are not intended to be for the benefit of any creditor or other person (other than the Members in their capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has a claim against) the Company or the Members, and no such creditor or other person shall obtain any rights under any of such provisions or shall by reason of any such provisions make any claim in respect to any debt, liability or obligation (or otherwise) against the Company or the Members.

4.05 **No Increase of Percentage of Membership Interest.** Except as otherwise provided in this Agreement, no loan or loans made by any Member to the Company shall increase or decrease any such Member's Percentage of Membership Interest.

4.06 **Capital Accounts.** The Company shall establish and maintain a separate Capital Account for each Member in accordance with Exhibit "C" attached hereto and incorporated herein by reference.

4.07 **Return of Capital Account.** Except as otherwise specifically provided in this Agreement, (i) no Member shall have any right to withdraw or reduce his Capital Contributions, or to demand and receive property other than cash from the Company in return for such Member's Capital Contribution, (ii) no Member shall have any priority over any other Members as to the return of their Capital Contributions, and (iii) any return of Capital Contributions or Capital Accounts to the Members shall be solely from the Company Assets, and no Member shall be personally liable for any such return.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

5.01 **Limited Liability.** Except as expressly provided in this Agreement, no Member (in his capacity as a Member) shall be personally liable for losses, costs, expenses, liabilities or obligations of the Company in excess of such Member's Capital Contribution required under Article IV hereof. The foregoing shall not affect any liability which a Member may incur if such Member undertakes additional obligations to the Company, to the Members or to third parties in a capacity other than as a Member.

5.02 **Allocations of Profits and Losses.** The allocation of profits and losses of the Company to the Members shall be made in accordance with the provisions of Exhibit "C" attached hereto.

5.03 **Distributions.**

(A) **Net Distributable Cash.** At the end of each Company accounting year (or more frequently if the Manager so determines), the Manager shall determine the amount of Net Distributable Cash available for distribution, if any, and shall distribute Net Distributable Cash in the following order of priority:

(i) In payment of loans of the Company owing to the Members. If more than one Member has loaned funds to the Company, the repayment of such loans by the Company out of Net Distributable Cash shall be made on a pari passu basis (i.e. proportionally) to the Members in the proportion that the then principal and interest balance of a Member's loan bears to the then principal and interest balance of all Member loans.

(ii) In payment to all Members in accordance with and pro rata in proportion to their respective Percentage of Membership Interests in the Company.

(B) Notwithstanding the provisions of Section 5.03(A) hereof, in the event Net Distributable Cash shall result from the dissolution or liquidation of the Company, any such Net Distributable Cash shall be distributed to the Members in the following order of priority:

(i) In payment of loans of the Company owing to the Members. If more than one Member has loaned funds to the Company, the repayment of such loans by the Company out of Net Distributable Cash shall be made on a pari passu basis (i.e. proportionally) to the Members in the proportion that the then principal and interest balance of a Member's loan bears to the then principal and interest balance of all Member loans.

(ii) In payment to all Members in accordance with and pro rata in proportion to their respective Capital Account balances in the Company.

5.04 **Restrictions on Distribution.**

(A) No distribution may be made by the Company if after giving effect to the distribution: (i) the Company would not be able to pay its debts as they became due in the usual course of business, or (ii) the Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed if the Company were to be dissolved at the time of the distribution to satisfy the preferential rights upon dissolution of Members, whose preferential rights are superior to the rights of Members receiving the distribution.

(B) The Company may base a determination that a distribution is not prohibited under this Section 5.04(A) either on: (i) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or (ii) a fair evaluation or other method that is reasonable in the circumstances.

(C) The effect of a distribution under this Section 5.04(A) is measured as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

5.05 **Liability for Distribution.** At the time a Member becomes entitled to a distribution such Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

ARTICLE VI - COMPANY MANAGEMENT

6.01 **Management by Manager.**

(A) The operations of the Company shall be managed by [[_____]] (hereinafter referred to as the "Manager", which term shall include any successor Manager hereinafter named or designated hereunder). Subject to and limited by the provisions of this Agreement, including, but not limited to Section 6.03(B), the Manager (i) shall have the authority, discretion, obligation and responsibility to manage and control the affairs of the Company to the best of his ability, (ii) shall use his reasonable best efforts to carry out the business of the Company, and (iii) shall oversee the day-to-day affairs of the Company and shall make all decisions and take all actions with respect thereto.

(B) Subject to Section 6.03(B), Majority Approval of the Members shall be required prior to any action by the Manager or agent with respect to all decisions affecting the business of

the Company, including, but not limited to, the following: (i) amendment, modification, termination or waiver of rights under this Agreement; (ii) executing a recourse or a confessed judgment promissory note or otherwise confessing a judgement against the Company in connection with any threatened or pending legal action; (iii) admitting any other person as a Member; or (iv) commencement of any litigation or arbitration proceedings involving the Company and settlement of any such proceedings. In the event that any Member shall fail to respond within ten (10) days to a request for such consent, such Member shall conclusively be deemed to have acquiesced to the proposed action.

(C) Subject to the Majority Approval requirement set forth in Section 6.01 (B), the Manager may execute, for and on behalf of the Company, deeds absolute, mortgages, (including, without limitation, deeds of trust, financing statements, chattel mortgages, pledges, conditional sales contracts, and similar security instruments), leases, contracts, dedications of or easements on all or any part of the Real Property, promissory notes, or other legal documents, all of which instruments when so executed by the Manager shall be valid and binding upon the Company without any liability or obligation on the part of any purchaser, lender, title company or other third party to see the application of any money or property paid or delivered or the authority of the Manager to so act.

6.02 Authority to Bind the Company. Except as otherwise provided by this Agreement or by Majority Approval of the Members, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by Majority Approval of the Members to act as agent of the Company in accordance with the previous sentence.

6.03 Limitations on Authority.

(A) No Member/Manager shall have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) any act in contravention of this Agreement or failing to do any act required by this Agreement, (iii) any act which would make it impossible to carry on the ordinary business of the Company, or (iv) any act without any consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of this Agreement.

(B) Notwithstanding any other provision of this Agreement and so long as the [[_____]] Loan remains outstanding and not discharged in full, the Manager, the Members and the Company shall have no authority to:

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

(ii) acquire or own any material assets other than the Real Property and assets relating to or involved in the operation of the Real Property;

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

or change its legal or capital structure, without in each case, Lender's prior written consent and in compliance with the terms and conditions set forth herein;

(iv) fail to preserve its existence as an entity duly organized and in good standing under the laws of the State of Delaware, and qualification to do business in the State of Delaware, if applicable, or without the prior written consent of the Lender, amend, modify, terminate or fail to comply with the provisions of this Agreement;

(v) own any Subsidiary or make any investment in any person without the prior written consent of Lender;

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

(vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the [[_____]] Loan and the Senior Loan, except for trade payables in the ordinary course of its business of owning and operating the Real Property, provided that such debt (a) is not evidenced by a note, and (b) is paid when due;

(viii) guarantee or become obligated for the debts of any Affiliate or any other Person, or pledge any of its assets for the benefit of any Affiliate or any other Person, except in connection with the Loan;

(ix) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;

(x) fail to maintain its records, books of account, its financial statements and/or its bank accounts separate from those of any Affiliates or any other Person;

(xi) hold itself out to be responsible for the debts of any other Person;

(xii) make loans or advances to any third party, including any Affiliate;

(xiii) fail to file its own tax returns;

(xiv) fail to either hold itself out to the public as a legal entity separate and distinct from any other Person or fail to conduct its business solely in its own name, in order not (a) to mislead others as to the identity with which such other party is transacting business, or (b) to suggest that the Company is not responsible for the debts of any Affiliate or any other Person;

(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;

(xvi) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make any assignment for the benefit of creditors;

(xvii) fail to pay any of the Company's liabilities out of the Company's own funds (including, without limitation, employees' salaries);

(xviii) enter into any contracts or transactions with Affiliates other than on terms and conditions that are substantially the same as those that would be available on an arms-length basis with third parties other than an Affiliate, and as otherwise approved by Lender;

(xix) fail to conduct the Company's business in the Company's own name or in the name of the subject building itself;

(xx) share any common logo with, or directly or expressly hold itself out as or be considered as a department or division of (a) any Affiliate, or (b) any other Person; or

(xxi) so long as the [[_____]] Loan remains outstanding, fail to require the consent of the Independent Manager in connection with the filing of any proceeding under the Bankruptcy Code or other insolvency proceeding, dissolution, consolidation, merger, sale of all or substantially all of the assets of, engagement in other business activities by, or amendment to the organizational documents of, the Company.

6.04 No Compensation; Reimbursement of Expenses. No Member shall be paid any direct salary or other compensation for managing or supervising the affairs of the Company. Except as otherwise set forth in this Agreement, the Members shall be fully and entirely reimbursed by the Company for any and all direct and indirect costs and expenses incurred in connection with the formation of the Company, the operation of the Real Property and the management and supervision of the Company's business. With respect to any such reimbursement, such Member shall present the Company with such invoices as are necessary to substantiate such costs and expenses.

6.05 No Management by Members. No Member (other than the Manager), in his/her capacity as a Member, shall take part in the day-to-day management, operation or control of the business and affairs of the Company or have any right, power, or authority to act for or on behalf of or to bind the Company or transact any business in the name of the Company. The Members shall have no rights other than those specifically provided herein or granted by law where consistent with a valid provision hereof.

6.06 Liability for Acts and Omissions.

(A) The Members shall not be liable, responsible or accountable in damages or otherwise to the Company or any of the other Members for any act or omission performed or omitted in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority granted by this Agreement and in the best interests of the Company, but shall be so liable, responsible or accountable for fraud, gross negligence, intentional misconduct or any breach of their fiduciary duty with respect to such acts or omissions.

(B) The Company shall indemnify the Members (to the extent of available assets, but without the requirement that any Member make additional Capital Contributions for this purpose) against any loss or damage incurred by the Members by reason of any act or omission performed or omitted by them (or their employees or agents) in good faith on behalf of the Company and in a manner reasonably believed by the Members to be within the scope of the authority granted to them by this Agreement and in the best interests of the Company (but not, in

any event, any loss or damage incurred by reason of fraud, gross negligence, intentional misconduct or breach of the Members' fiduciary duty with respect to such act or omission).

6.07 **Cross Indemnification Rights Among Members.**

(A) To the extent that any Member (the "Member Guarantor") expressly undertakes individual, joint and several liability for any debt, liability or other obligation of the Company (a "Guaranteed Obligation") the Members agree to assume and undertake liability for such guaranteed obligation in the same proportions that the Percentage of Membership Interest owned by each Member bears to the total Percentage of Membership Interests owned by all Members (a Member's "Proportionate Share").

(B) The following contribution rights shall govern among the Members with respect to any amounts incurred or paid by or collected from a Member Guarantor or other value given by or recovered from a Member Guarantor but only to the extent incurred, paid, collected, given or recovered in accordance with and as required by the terms of the Guaranteed Obligation regardless of whether the aggregate of all such amounts or value results in full satisfaction or discharge of the Guaranteed Obligation.

(i) Each Member (in any applicable circumstances the "Indemnitor") shall indemnify, save and hold harmless each Member Guarantor (the "Indemnitee") from and against (and will pay when and as due and payable but in any event upon demand made) all liabilities, debts, claims, demands, judgments or other obligations paid, incurred, threatened or collected from the Indemnitee in excess of the Indemnitee's Proportionate Share of such liabilities, debts, claims, demands, judgments or other obligations.

(ii) It is the purpose and intent of this Section 6.07 that each Member bear whatever sums or other value are paid or incurred by or collected from any Member Guarantor in the aggregate incidental to the Guaranteed Obligation in proportion to such Member's respective Proportionate Share regardless of whether the amount paid or incurred by or collected from any Indemnitee is discharged as against the Indemnitor as a result.

(C) An Indemnitee shall be entitled to recover from Indemnitor all legal costs or expenses, including attorneys' fees incurred by him to enforce such Member's rights hereunder, or to collect any sums due from Indemnitor hereunder.

(D) The rights and obligations set forth in this Section 6.07 may be varied with the express written agreement of the Member Guarantors with respect to any Guaranteed Obligation. Absent such written agreement, the terms of this Section 6.07 shall govern.

ARTICLE VII - ACCOUNTING AND REPORTS

7.01 **Books and Records.** The Manager shall maintain at the office of the Company full and accurate books of the Company showing all receipts and expenditures, assets and liabilities, profits and losses, names and current addresses of Members, and all other records necessary for recording the Company's business and affairs. All Members and their duly authorized representatives shall have the right to inspect and copy any or all of the Company's books and records, including books and records necessary to enable a Member to defend any tax

audit or related proceeding, during reasonable hours upon three (3) business days notice to the other Members, and shall have, on demand, true and full information of all matters affecting the Company.

7.02 Annual Audit and Tax Matters.

(A) The books and records of the Company shall be kept on the accrual basis or such other accounting method selected by the Manager. The accounts of the Company shall be audited or reviewed by the Company's accountants at such time that the Manager may deem it necessary or desirable. Any Member shall further have the right at any time to a private audit of the books and records of the Company, provided the audit is made at the expense of the Member desiring it and is made at a reasonable time after due notice.

(B) [[_____]], or such other Member as he shall designate in writing, is hereby designated as the Member over tax matters for purposes of Section 6231 of the Code and he shall prepare or cause to be prepared, all tax returns required of the Company at the Company's expense.

7.03 Reports and Notices.

(A) The Members shall each be provided with the following reports no later than the dates indicated or as soon thereafter as circumstances permit: (i) by March 31 of each calendar year, a complete copy of IRS Form 1065 and all Schedule K-1s attached thereto, or similar forms as may be required by the IRS, stating each Member's allocable share of income, gain, loss, deduction or credit for the prior Fiscal Year; and (ii) to the extent authorized to be prepared by the Members, by May 31 of each calendar year, a balance sheet and the related statements of income, cash flow, Members' capital and changes in financial position.

(B) The Members shall also be given prompt notice of any and all notices received from the Internal Revenue Service concerning the Company, including, without limitation, any notice of audit, any notice of action with respect to a revenue agent's report, any notice of a 30-day appeal letter and any notice of a deficiency in tax concerning the Company's federal income tax return and will furnish each Member with status reports regarding any negotiation between the Internal Revenue Service and the Company.

7.04 Company Funds. The Manager shall have total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in his direct or indirect possession or control. The funds of the Company shall not be commingled with the funds of any other Person, and no Member shall employ such funds in any manner except for the benefit of the Company. All funds of the Company not otherwise invested shall be deposited in one or more accounts maintained in such banking institutions as the Manager shall determine, and withdrawals shall be made only in the regular course of Company business by the Manager.

ARTICLE VIII - TRANSFER OF MEMBERSHIP INTERESTS

8.01 Restriction on Transfers by Members.

(A) A Member may not transfer all or any part of his Membership Interest, or pledge, grant a security interest in, or otherwise encumber his Membership Interest unless all Members consent in writing. In addition, no assignment, transfer, sale, exchange or other disposition of the Membership Interest of a Member shall be made if such disposition would, in the opinion of the Members (i) cause the Company to be terminated for federal income tax purposes or to be treated as an association taxable as a corporation (rather than a limited liability company) for federal income tax purposes; (ii) violate the provisions of any federal or state securities laws; or (iii) violate the terms of (or result in a default or acceleration under) any law, rule, regulation, agreement or commitment binding on the Company.

(B) Notwithstanding the foregoing restrictions, a Member may assign all or any portion of his Membership Interest without the consent of the other Members to members of his “Family” during lifetime or at death. The term “Family” shall mean the spouse, children, and grandchildren of a Member, or any family partnership, trust, limited liability company or corporation composed solely of or owned beneficially by any of the foregoing individuals.

(C) A permitted assignee under this Section 8.01 shall only receive an Economic Interest in the Company and shall not be admitted as a Substituted Member unless all of the requirements of Section 8.03 hereof have been satisfied.

8.02 Right of First Refusal.

(A) A Member (the “selling Member”) may not sell or assign such Member’s Membership Interest without first offering to sell or assign all, and not less than all, of such Member’s Membership Interest to all of the other Members. The selling Member shall notify all Members in writing of his intent to sell or assign such Member’s interest and the price and terms thereof. Thereafter, all Members or any of them shall have thirty (30) days from the date of receipt of such notice to notify the selling Member of their desire to purchase such Membership Interest at the price and on the terms and conditions set forth in the Member’s offer. If more than one Member accepts such offer, the Membership Interest shall be apportioned among the Members so accepting in proportion to their respective Percentage of Membership Interests in the Company or in such other proportion upon which they mutually agree. Settlement of any sale to the Members under this Section 8.02(A) shall be made by the selling Member and the applicable purchasing Members within (i) thirty (30) days after notice of desire to purchase or (ii) the time, if any, provided in the Member’s offer, whichever is later.

(B) In the event none of the other Members notify the selling Member in writing that they intend to exercise their right to purchase such interest, the selling Member shall be free to seek a “bona fide offer” (as hereinafter defined) to purchase such Membership Interest from third parties. Upon receipt of a bona fide offer to purchase on terms more favorable or at a price lower than offered to the other Members, the selling Member shall offer in writing to sell and assign such Membership Interest to the other Members upon the terms and conditions set forth in the bona fide offer, with a complete copy of the bona fide offer attached. The other Members or any of them shall have fifteen (15) days from receipt of written notice of such bona fide offer within which to notify the selling Member of their intent to exercise their right of first refusal to purchase such Membership Interest upon the terms and conditions of the offer. If more than one Member accepts such offer, the Membership Interest shall be apportioned among the Members so accepting according to Section 8.02 (A) hereof. For purposes of this Section 8.02 (B), the term

“bona fide offer” shall mean and constitute an offer in writing from an outside purchaser (i.e., a person who is not directly or indirectly related to or affiliated with the selling Member and who is financially capable of carrying out the terms of the offer) which (i) sets forth all relevant terms and conditions of the purchase, (ii) is to be accompanied by a good faith deposit equal to five percent (5%) of the proposed consideration to be paid for the Membership Interest, (iii) is in a form legally enforceable against the outside purchaser, and (iv) the consideration to be paid for the Membership Interest must be cash only, payable at settlement or on a deferred basis. Settlement of any sale to the other Members under this Section 8.02 (B) shall be made by the selling Member in accordance with those terms provided in Section 8.02 (A).

(C) In the event no Member exercises the right to purchase under Section 8.02(B) within the fifteen (15) day period, the selling Member may sell and assign such Membership Interest to the prospective purchaser but only in accordance with the terms of the bona fide offer. The prospective purchaser shall only receive an Economic Interest in the Company and shall not be admitted as a Substituted Member unless all of the requirements of Section 8.03 hereof have been satisfied.

8.03 **Substituted Member.**

(A) An assignee or successor to all or any portion of a Membership Interest of a Member shall become a Substituted Member in place of his assignor only upon satisfaction of the following conditions:

(i) Except as otherwise provided in Section 8.03 (D) below, all of the non-assigning Members consent to the admission of the assignee as a Substituted Member;

(ii) The assignor and assignee file a Notice or other evidence of transfer and such other information reasonably required by each of the Members, including, without limitation, names, social security numbers or employer identification numbers, addresses and telephone numbers of the assignor and assignee;

(iii) The assignee agrees to be bound by the terms and conditions of the Certificate and this Agreement and executes such other documents as may be reasonably requested by the Members including without limitation, all documents necessary to comply with applicable tax and/or securities rules and regulations; and

(iv) The assignor or assignee pays all costs and fees incurred or charged by the Company to effect the transfer and substitution, including without limitation counsel fees in connection with any opinion the Members may determine to be prudent to obtain in connection with such transfer and substitution.

(B) If an assignee of a Member does not become a Substituted Member pursuant to this Section 8.03 the assignee shall not have any rights to require any information on account of the Company’s business, to inspect the Company’s books, to participate in the management or operation of the Company, or to vote or otherwise take part in the affairs of the Company.

(C) Unless named in this Agreement, or unless admitted to the Company as above provided in this Article VIII, no Person shall be considered a Member, and the Company, each Member, and any other Persons having business with the Company need deal only with

Members so named or so admitted and shall not be required to deal with any other Person by reason of an assignment by a Member or by reason of the death of a Member, except as otherwise provided in this Agreement. In the absence of substitution of a Member for an assigning or deceased Member, any payment to a Member or to the successors, assigns, executors, administrators or personal representatives of a Member shall acquit the Company of all liability to any other Persons who may be interested in such payment by reason of an assignment by such Member, by reason of the dissolution or death of such Member, or otherwise.

(D) Notwithstanding anything to the contrary in this Agreement, (i) the assignees of a Member as a result of such Member's death or total disability shall automatically become Substituted Members of the Company; and (ii) a Member of the Company and/or all assignees falling within the definition of his Family who are admitted as a Substituted Member under this Section 8.03 shall, in the aggregate, be entitled to only one (1) vote on all Company matters.

8.04 **Rights of Assignee of Economic Interest.**

(A) An assignee of an Economic Interest shall be entitled to receive, to the extent assigned, only distributions to which the assignor otherwise would be entitled while such assignment remains in effect. Such assignee, however, will be responsible for all obligations, including, without limitation, the obligation to make additional Capital Contributions upon a call pursuant to Section 4.03 herein. An assignee of an Economic Interest shall not be entitled to participate in the management or affairs of the Company or to be admitted as a Member or exercise any rights of a Member unless admitted as a Substitute Member pursuant to Section 8.03 hereof.

(B) Except as otherwise expressly provided in this Article VIII or by applicable law, no assignment of an Economic Interest shall be effective for any purpose nor shall the Company be obligated in any manner to an assignee of an interest until the Company has received notice of such assignment.

(C) Whether or not admitted as a Substitute Member, each assignee of an Economic Interest shall be fully bound by all limitations set forth in this Article VIII with respect to any further assignment.

8.05 **Resignation of Member.** A Member may resign upon not less than six (6) months prior written notice to each Member at his address on the books of the Company. Except as otherwise provided in this Article VIII, upon resignation, any resigning Member is entitled to receive any distribution to which he is entitled under this Agreement. If not otherwise provided in this Agreement, a resigning Member shall also be entitled to receive within reasonable time after resignation the fair value of his Membership Interest as of the date of resignation.

ARTICLE IX - OPTIONAL BUY-OUT UPON DISPUTE

9.01 **Optional Buy-Out.**

(A) Notwithstanding anything to the contrary set forth in this Agreement, in the event that a dispute shall arise over any matter requiring the Majority Approval of the Members

pursuant to Section 6.01 hereof and the Members are unable to resolve such dispute within thirty (30) days after written notice from either Member that such dispute exists, then either Member (“Tendering Member”) may, at his option, cause a sale of his Membership Interest in accordance with, and subject to, the following terms and conditions:

(i) The Tendering Member shall submit a written proposal (“Buy-Sell Offer”) to the other Member (“Non-Tendering Member”) for a sale of the Tendering Member’s Membership Interest based on the Tendering Member’s reasonable estimate of the value of one hundred percent (100%) of the Company Assets, as set forth in the Buy-Sell Offer (the “Buy-Sell Value”). The Non-Tendering Member shall have the right to elect, by written notice to the Tendering Member given no later than thirty (30) days following the receipt of such Buy-Sell Offer, to either (a) purchase the Membership Interest of the Tendering Member for a price equal to an amount determined by multiplying the Tendering Member’s Percentage of Membership Interest in the Company times the Buy-Sell Value, or (b) sell his Membership Interest to the Tendering Member for a price equal to an amount determined by multiplying the Non-Tendering Members Percentage of Membership Interest in the Company times the Buy-Sell Value.

(ii) If a sale of a Membership Interest by a Member pursuant to the foregoing sentence does not occur on or before the date which is one hundred eighty (180) days after the date of the Buy-Sell Offer, then, absent, willful and intentional efforts to hinder, delay or impede such sale, the rights and obligations of the Members with respect to the Buy-Sell Offer shall expire and any such subsequent sale of Membership Interest by the Members under this Article IX shall require the submission of a new Buy-Sell Offer and be subject to the procedures set forth in this Article IX. If the Non-Tendering Member fails to notify the Tendering Member of his election under this Article IX within a thirty (30) day period required herein, then the Non-Tendering Member shall be conclusively deemed to have elected to sell his Membership Interest to the Tendering Member pursuant to the foregoing Section 9.01(A)(i)(b).

9.02 **Buy-Out Settlement.**

(A) Settlement shall be held either (i) within ninety (90) days following the receipt of the Non-Tendering Member’s notice to either purchase or sell as set forth in Section 9.01(A)(i)(a) and (b), respectively, by the Tendering Member, or (ii) within sixty (60) days following the expiration of the thirty (30) day period commencing on the date the Non-Tendering Member received the Tendering Member’s notice of sale, as the case may be. Unless otherwise mutually agreed by the Members, the payment of the Purchase Price shall be as set forth in Section 9.03(B).

(B) At settlement, the purchasing Member shall pay at least forty percent (40%) of the Purchase Price in cash. The remaining balance of the Purchase Price to be paid, if any, shall be represented by a promissory note of the purchasing Member (the “Note”) made payable to the withdrawing Member. The following provisions shall be applicable to the Note:

(i) The principal balance of the Note shall bear interest at annual rate equal to the greater of ten percent (10%) or the then “applicable federal rate” for short-term instruments as announced by the Internal Revenue Service for the month preceding the month in which settlement is to occur.

(ii) Commencing one month after settlement, the Note shall provide for the payment of equal, consecutive monthly installments of principal and interest for a period thirty-six (36) months under a self-amortizing schedule. At the end of such thirty-six (36) month period, the remaining principal balance of the Note, if any, together with all accrued interest thereon, shall immediately become due and payable.

(iii) The Note shall be a recourse obligation and, in addition, shall be secured by the portion of the Membership Interest acquired by the purchasing Member. The purchasing Member shall execute a security agreement, financing statement and all other documents reasonably requested by the withdrawing Member to perfect the withdrawing Member's security interest under applicable law.

(iv) The Note shall contain a provision allowing the maker thereof to prepay all, but not less than all, of the Note at any time without penalty.

9.03 **Additional Buy-Out Terms.** Unless waived by the withdrawing Member, the following provisions shall also apply:

(A) All loans between the Company and the withdrawing Member or any Affiliate thereof, together with all accrued interest thereon, must be repaid at settlement.

(B) Each loan owed by the purchasing Member to the withdrawing Member as a result of the investment in this Company, together with all accrued interest thereon, must be repaid at settlement, and each loan owed by the withdrawing Member to the purchasing Member as a result of the investment in this Company, together with all accrued interest thereon, shall be repaid at settlement.

(C) The withdrawing Member shall be entitled to his proportionate share of the profits, losses and Net Distributable Cash of the Company from the beginning of the Company accounting year in which the buy-out option is exercised to the date of settlement.

9.04 **Further Assurances.** In the event of a buy-out under this Article IX, the purchasing Member shall prepare or cause to be prepared and file all necessary amendments to this Agreement to reflect the buy-out. Each Member hereby appoints the other Member as his attorney-in-fact, in such Member's name and behalf, to execute and deliver any such amendment to this Agreement. The foregoing power of attorney is irrevocable and, as such, is final and binding on all of such Members. Notwithstanding the foregoing, each Member further agrees to execute and deliver any such amendment of this Agreement upon request and to execute and deliver such further assurances as may be requisite to the transfer of a Membership Interest pursuant to a buy-out under this Article IX.

ARTICLE X - DISSOLUTION AND LIQUIDATION

10.01 **Term and Dissolution.** The Company commenced as of the date hereof and shall continue until dissolution occurs for any one of the following reasons:

(A) An election to dissolve the Company is made in writing by all Members; or

(B) The sale, exchange or other disposition of the Real Property or all or substantially all of the property of the Company; provided, however, that if the Company receives a purchase money mortgage in connection with any such sale of the Real Property, the Company may be continued in the discretion of the Members until such mortgage is satisfied, sold or otherwise disposed of; or

(C) The entry of a decree of judicial dissolution.

Notwithstanding the foregoing, the death of, or other withdrawal by, a Member shall not dissolve the Company. In addition, if the Real Property and/or other Company Assets are exchanged for similar property, the Company shall not be dissolved as a result of any such exchange.

10.02 **Liquidation of Company Assets.**

(A) In the event of dissolution and final termination of the Company, a full accounting of the assets and liabilities shall be taken, and the Company assets shall either be (i) distributed in kind or (ii) liquidated, with the Net Distributable Cash therefrom distributed in accordance with the provisions of Section 5.03(B) hereof by the later of (i) the last day of the Fiscal Year in which the termination occurs or (ii) ninety (90) days after the date on which the termination occurs.

(B) The Members shall cause to be filed all certificates and notices of the dissolution of the Company required by law. The Members shall proceed without any unnecessary delay to sell and otherwise liquidate the Company Assets; provided, however, that if the Members shall determine that an immediate sale of part or all of the Company Assets would cause undue loss to the Members, the Members may defer the liquidation except (i) to the extent provided by the Act, (ii) as required by Section 10.02(A) hereof or (iii) as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company Assets, the Members shall cease to be Members of the Company, and the Members shall execute, acknowledge and cause to be filed all certificates and notices required by law to terminate the Company.

(C) Upon the dissolution of the Company pursuant to Section 10.01 hereof, the Members shall cause to be prepared, and shall furnish to each Member, a statement setting forth the assets and liabilities of the Company. Promptly following the complete liquidation and distribution of the Company Assets, each Member shall be furnished a statement showing the manner in which the Company Assets were liquidated and distributed.

ARTICLE XI - GENERAL PROVISIONS

11.01 **Adoption of Amendments Generally.** Any amendments to this Agreement may only be made by a written instrument executed by the unanimous consent of all Members.

11.02 **Title to Property.** All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any ownership of such property. The Company may hold any

of its assets in its own name or, in the name of its nominee, which nominee may be one or more individuals, corporations, companies, trusts or other entities.

11.03 **Other Activities.** Except as expressly provided otherwise in this Agreement, any of the Members or their Affiliates may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not such other enterprises shall be in competition with any activities of the Company; and neither the Company nor the other Members shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Nothing herein contained shall be construed to constitute any Member hereof the agent of any other Member hereof or to limit in any manner the Members in the carrying on of their own respective businesses or activities.

11.04 **Applicable Law.** It is the intent of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the provisions of the laws of the State of Delaware in such cases made and provided, without giving effect to the choice of law rules thereof.

11.05 **Binding Agreement.** Subject to the restrictions on transfers set forth herein, this Agreement shall inure to the benefit of and be binding upon the undersigned Members and their respective heirs, executors, legal or personal representatives, successors and assigns. Whenever in this instrument a reference to any party or Member is made, such reference, where appropriate, shall be deemed to include a reference to the heirs, executors, legal or personal representatives, successors and assigns of such party or Member.

11.06 **Minority Members.** In order to avoid obstruction by a minority Member refusing to execute any document or instrument necessary to effectuate a decision or vote made or taken in accordance with the provisions of this Agreement, and in order to avoid the loss of any transaction due to any possible litigation, prolongation or delay, and to protect all other Members against any recalcitrant and unfair acts and delays of a minority Member, a minority Member hereby appoints the other Members as attorney-in-fact for such minority Member, to execute any and all instruments and documents which may be necessary to effectuate such decision or vote. All Members, by their execution hereof as Members of the Company, hereby agree that this power of attorney is irrevocable and binding and coupled with an interest in the non-minority Members and, as such, is final, binding and conclusive upon all Members. (All Members understand that the determination of who will be a "minority Member" at any time or times is not capable of being made at this time, but nonetheless agree on the irrevocability and binding effect of this power of attorney on all of them at any future time or times).

11.07 **Waiver of Partition.** Unless otherwise specifically provided in this Agreement, no Member will, either directly or indirectly, take any action to require partition or appraisal of the Real Property or the Company, and notwithstanding any provision of applicable law to the contrary, each Member (and his estate, personal or legal representative, heirs, beneficiaries, distributees and successors and assigns) hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale with respect to his Membership Interest or with respect to the Real Property.

11.08 **Counterparts.** This Agreement may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against the Person who executed it.

11.09 **Survival of Representations.** All representations and warranties herein shall survive the dissolution and final liquidation of the Company.

11.10 **Entire Agreement.** This Agreement (and all Exhibits hereto) contains the entire understanding among the parties hereto and supersedes all prior written or oral agreements among them respecting the within subject matter, unless otherwise provided herein. There are no representations, agreements, arrangements or understandings, oral or written, among the Members hereto relating to the subject matter of this Agreement which are not fully expressed herein and in said Exhibits.

11.11 **Waiver.** No consent or waiver, express or implied, by any Member to or of any breach or default by any other Member in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the other in the performance by such other party of the same or any other obligations of such Member hereunder. Except as otherwise provided in Section 6.01(B) hereof, the failure on the part of any Member to object to or complain of any act or failure to act of any of the other Members or to declare any of the other Members in default, irrespective of how long such failure continues, shall not constitute a waiver by such Member of its rights hereunder.

11.12 **Titles and Captions.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of the context of this Agreement.

11.13 **Exhibits.** All exhibits and schedules referred to herein and attached hereto are incorporated by reference into this Agreement.

11.14 **Time Periods.** Any time period hereunder which expires on, or any date hereunder which occurs on, a Saturday, Sunday or legal United States holiday, shall be deemed to be postponed to the next business day. The first day of any time period hereunder which runs “from” or “after” a given day shall be deemed to occur on the day subsequent to that given day.

11.15 **Gender.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require.

11.16 **Severability.** Each provision of this Agreement shall be considered severable from the rest, and if any provision of this Agreement or its application to any Person or circumstances shall be held invalid and contrary to any existing or future law or unenforceable to any extent, the remainder of this Agreement and the application of any other provision to any Person or circumstances shall not be affected thereby and shall be interpreted and enforced to the greatest extent permitted by law so as to give effect to the original intent of the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

MEMBERS

aaaaaaaaaaaaaaaaaaaaa LLC

**EXHIBIT "A"
TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

Schedule of Members

<u>Members:</u>	Percentage Of Membership	Capital Contribution
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aaaaaaaaaaaaaaaa LLC

**EXHIBIT "B"
TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

Description of Real Property

[[TO BE COPIED FROM THE FINAL DRAFT OF DEED TO PROPERTY]]

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**EXHIBIT “C”
TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

ALLOCATION OF PROFITS AND LOSSES**

1. **Interpretation.** All section references in this Exhibit “C” shall be deemed to be references to sections in this Exhibit “C”, unless otherwise noted.

(A) For purposes of this Exhibit “C”, the term “Member Nonrecourse Debt” shall be given the same interpretation as the term “Partner Nonrecourse Debt” within the meaning of Regulations Section 1.704-2(b).

2. **Capital Accounts.**

(A) The Company shall establish and maintain a separate Capital Account for each Member in accordance with Code Section 704 and Regulations § 1.704-1. The Capital Account of each Member shall be credited with the sum of:

(i) the amount of cash and the fair market value of any property (net of liabilities assumed by the Company and liabilities to which the contributed property is subject) contributed to the Company by such Member; and

(ii) all income, gain, or profits of the Company computed in accordance with Section 2(B) and allocated to such Member pursuant to Section 3 (other than Section 3(L)) (including for purposes of this Section 2(A) income and gain exempt from tax); and shall be debited with the sum of:

(iii) all losses or deductions of the Company computed in accordance with Section 2(B) and allocated to such Member pursuant to Section 3 (other than Section 3(L));

(iv) such Member’s distributive share of expenditures of the Company described in Code Section 705(a)(2)(B); and

(v) all cash and the fair market value of any property (net of liabilities assumed by such Member and liabilities to which such property is subject) distributed by the Company to such Member pursuant to Section 5.03 of the Agreement.

Any reference in any section or subsection of the Agreement to the Capital Account of a Member shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above.

(B) For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in Capital Accounts, the determination, recognition and classification of each

such item shall be the same as its determination, recognition and classification for federal income tax purposes, provided that:

(i) immediately prior to the distribution of any Company Asset under Section 5.03(B) of the Agreement, any unrealized gain or unrealized loss attributable to such Company Asset shall, for purposes hereof, be deemed to be gain or loss recognized by the Company and shall be allocated among the Members in accordance with Section 3; and

(ii) the computation of all items of income, gain, loss, and deduction for book purposes shall be made without regard to any Section 754 election that may be made by the Company, except to the extent required in accordance with the provisions of Regulations Sections 1.704-1(b)(2)(iv)(I) and (m).

(C) Any transferee of a Membership Interest shall succeed to the Capital Account relating to the Membership Interest transferred.

3. Allocations of Profits and Losses.

(A) The income, profits, gains, losses, deductions and credits of the Company shall be determined in accordance with the capital accounting rules and principles established by Code Sections 702 and 704 and the regulations thereunder and, to the extent not inconsistent therewith, in accordance with generally accepted accounting principles, and shall be allocated as follows and in the following order of priority:

(i) All items of income, gain and credit of the Company from current operations shall be allocated to the Members, pro rata in accordance with their respective Percentages of Membership Interest.

(ii) All items of loss and deduction from current operations shall be allocated to the Members, pro rata in accordance with their respective Percentages of Membership Interest.

(iii) Items of income and gain of the Company arising from or attributable to the sale of all or substantially all of the Company Assets or other event giving rise to a distribution under Section 5.03(B) of the Agreement shall be allocated:

(a) First, to the Members with negative Capital Account balances, pro rata in accordance with such negative Capital Accounts, until the Capital Account balances of all Members have been brought to zero; provided that no income or gain shall be allocated to any Member under this Section 3(A)(3)(a) once his Capital Account balance has reached zero;

(b) Next, to those Members having disproportionately low Capital Accounts, gain shall be allocated until all Members' Capital Accounts first stand in the same relative proportions as their Percentages of Membership Interest; and

(c) The balance, if any, to the Members pro rata in accordance with their respective Percentages of Membership Interest.

(iv) Items of loss and deduction arising from or attributable to the sale of all or any part of the Company Assets shall be allocated:

(a) First, to the Members with positive Capital Account balances, pro rata in accordance with such positive Capital Accounts, until the Capital Account balances of all Members have been brought to zero; provided that no losses shall be allocated to a Member under this Section 3(A)(4)(a) once his positive Capital Account has been brought to zero; and

(b) The balance, if any, to the Members, pro rata in accordance with their respective Percentages of Membership Interest.

(B) Notwithstanding the provisions of Section 3(A), if the allocation of Company loss and deduction to a Member pursuant to Section 3(A) would result in or increase a negative balance in such Member's Capital Account and such negative balance would exceed the "minimum gain" allocable to the Member as of the end of the Fiscal Year (such excess being referred to as "Excess Net Loss"), such Excess Net Loss shall be allocated, pro rata, among the other Members, (to the extent, if any, they would not be subject to this Section 3(B)) in accordance with Section 3(A). Before any allocations of Company income, gain or credit are made pursuant to Section 3(A) in any subsequent Fiscal Year, an amount of Company income, gain or credit equal to the total amount of any Excess Net Loss allocated pursuant to this Section 3(B) shall be allocated to the Members to whom Excess Net Loss was allocated to the extent of and in proportion to the amount of Excess Net Loss allocated to such Members. For purposes of this Agreement, "minimum gain" means an amount determined by computing, with respect to each nonrecourse liability of the Company, the amount of gain (of whatever character), if any, that the Company would realize if it disposed of (in a fully taxable transaction) the Company Assets subject to such liability in full satisfaction thereof, and by then aggregating the amounts so computed; for purposes of computing the amount of minimum gain, (i) the adjusted basis of a Company Asset subject to two or more liabilities of equal priority shall be allocated among such liabilities in proportion to the outstanding principal balances of such liabilities; (ii) the adjusted basis of a Company Asset subject to two or more liabilities of unequal priority shall be allocated to the liabilities of an inferior priority (in accordance with (i) above) only to the extent of the excess, if any, of the adjusted basis of the Company Asset over the aggregate outstanding balance of the liabilities of superior priority; and (iii) only the portion of a Company Asset's adjusted basis allocated to nonrecourse liabilities of the Company shall be used in computing the minimum gain.

(C) Notwithstanding the foregoing provisions of this Section 3, in the event that any fees, interest, or other amounts paid to a Member or Affiliate of a Member pursuant to this Agreement, or any agreement between the Company and the Member or Affiliate providing for the payment of such amounts, and deducted by the Company in reliance on Code Section 707(a) or Code Section 707(c), are disallowed as deductions to the Company on its federal income tax return for the Fiscal Year in or with respect to which such amounts are paid and are treated as Company distributions, then:

(i) items of Company income, gain, credit, loss or deduction, as the case may be, for the Fiscal Year in or with respect to which such fees, interest, or other amounts were paid shall be increased or decreased, as the case may be, by the amount of such fees, interest, or other amounts which are so disallowed and treated as Company distributions; and

(ii) there shall be allocated to the Member who received (or whose Affiliate received) such payments, prior to the allocations pursuant to Section 3(A), an amount of gross income for

the Fiscal Year in or with respect to which such fees, interest, or other amounts were paid equal to the amount of such fees, interest or other amounts that are so disallowed and treated as Company distributions.

(D) Notwithstanding the provisions of Section 3(A) or (B) above, in the event a Member receives an adjustment, allocation, or distribution described in subparagraphs (4), (5), and (6) of Regulations Section 1.704-1(b)(2)(ii)(d) that will result in such Member's having a negative balance in his Capital Account (as increased by such Member's share of minimum gain), such Member shall be allocated income or gain in an amount and manner sufficient to eliminate such negative balance as promptly as possible. This Section 3(D) is intended to comply with the qualified income offset provision in Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(E) Except as otherwise specifically provided in this Agreement and as provided in the next sentence below, the distributive share of a Member of each specific item of loss and deduction and item of income, loss, and credit of the Company for federal income tax purposes for any Fiscal Year shall be the same as such Member's proportionate share (determined as set forth in this Section 3) of Company income, gain, credit, loss or deduction, as the case may be, for book purposes in such Fiscal Year. Notwithstanding the foregoing, any income recognized pursuant to Code Sections 1245 and 1250 shall be allocated among the Members in the same proportions as the depreciation deductions and investment credits giving rise to such income or recapture were allocated among such Members and their respective predecessors in interest.

(F) Notwithstanding the foregoing provisions of this Section 3:

(i) If in any Fiscal Year there is a net decrease in minimum gain attributable to any nonrecourse debt (or portion thereof) for which no Member bears (or is deemed to bear) the economic risk of loss within the meaning of Regulations Section 1.704-2(b)(3) then each Member who has a share of the minimum gain attributable to such nonrecourse debt shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in such minimum gain that is allocable to the disposition of Company property subject to nonrecourse liabilities, determined in accordance with Regulations Sections 1.704-2(f) and (g), subject to the chargeback exceptions forth therein. This Section 3(F)(1) is intended to comply with the minimum gain chargeback requirements of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) If in any Fiscal Year there is a net decrease in minimum gain attributable to any nonrecourse debt (or portion thereof) for which a Member bears (or is deemed to bear) the economic risk of loss within the meaning of Regulations Section 1.704-2(b)(4) ("Member Nonrecourse Debt"), then each Member who has a share of the minimum gain attributable to such Member Nonrecourse Debt shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in such minimum gain that is allocable to the disposition of Company property subject to Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i), subject to the chargeback exceptions set forth therein. This Section 3(F)(2) is intended to comply with the minimum gain

chargeback requirements of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(G) Notwithstanding the foregoing provisions of this Section 3, if in any Fiscal Year there is a net increase in the amount of minimum gain attributable to any nonrecourse debt (or portion thereof) for which a Member bears (or is deemed to bear) the economic risk of loss within the meaning of Treasury Regulations Section 1.704-2(b)(3) then such Member shall be specifically allocated items of Company loss or deduction in an amount equal to the excess of (i) such Member's share of the amount of such net increase, over (ii) the aggregate amount of any distributions during such year to such Member of the proceeds of such debt that are allocable to such increase in minimum gain. It is intended that items to be so allocated shall be determined and allocations made in accordance with the required allocation of "partner nonrecourse deductions" pursuant to Treasury Regulations Section 1.704-2(i)(2) and (3) and this Section 3(G) shall be interpreted consistently therewith.

(H) Income, profits, gains, losses, deductions and credits allocated to a Membership Interest assigned or reissued during a Fiscal Year shall be allocated to the Person who was the holder of such Membership Interest during such Fiscal Year in proportion to the number of days that each such holder was recognized as the owner of such Membership Interest during such Fiscal Year or in any other proportion permitted by the Code and in accordance with this Agreement, without regard to the results of Company operations during the period in which each such holder was recognized as the owner of such Membership Interest during such Fiscal Year, and without regard to the date, amount or recipient of any distributions which may have been made with respect to such Membership Interest.

(I) To the extent required by Code Section 704(b)(2) and Regulations Section 1.704-1(b)(2)(iv)(m), any increase or decrease in the amount of any item of income, profit, gain, loss, deduction or credit attributable to an adjustment to the basis of Company Assets made pursuant to a valid election under Code Sections 734, 743 and 754, and pursuant to corresponding provisions of applicable state and local income tax laws, shall be charged or credited, as the case may be, and any increase or decrease in the amount of any item of credit or tax preference attributable to any such adjustment shall be allocated, to the Capital Accounts of those Members entitled thereto under such laws.

(J) It is the intent of the Members that each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be allocated in accordance with Section 5.02 of the Agreement and this Section 3 to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the allocations provided for in this Section 3, the Members, upon obtaining the advice of counsel to the Company are authorized and directed to allocate income, gain, loss, deduction or credit (or item thereof) arising in any year (the "New Allocation") differently than otherwise provided for in this Section 3 if, and to the extent that, the allocations under this Section 3 would not fully conform with Section 704(b) of the Code, but only so long as no Member is materially affected thereby. Any New Allocation made pursuant to this Section 3(J) shall be deemed to be a complete substitute for any allocation otherwise provided for in this Section 3, and no amendment of this Agreement or approval of any Member shall be required. The Members shall use their best efforts to cause the New Allocation to resemble in all material respects and to the maximum extent possible the allocations contained in this Agreement as originally adopted; the Members, however, make no warranties in this regard.

No New Allocation, and no choice by the Members among possible alternative New Allocations, shall give rise to any claim or cause of action by any Member against any party, including but not limited to, other Members, the Company's counsel or accountants, or any individual related thereto.

(K) Notwithstanding anything to the contrary in this Agreement, in the event any property of the Company is credited to the Capital Account of a Member at a value other than its tax basis (as a result of the contribution of such property or a revaluation of such property in accordance with Regulations Section 1.704-1(b)(2)(iv)(f)), then allocations of taxable income, gain, loss and deduction with respect to such property shall be made in a manner which will comply with the provisions of Section 704(c) of the Code. Such allocations shall be for federal, state and local income tax purposes only, and shall not be reflected in, or result in any adjustment to, the Capital Accounts of the Members. Any income, gain, loss, deduction or credit attributable to property contributed to the Company by a Member shall be allocated among the Members in the manner determined by the Members so as to take into account any variation between the basis of property contributed to the Company and its agreed value at the time of contribution, in accordance with Code Section 704(c) and the Regulations thereunder.