SHOULD YOUR SMALL BUSINESS BE A DELAWARE LIMITED LIABILITY COMPANY OR A CORPORATION?

PRESENTED BY;
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LLC vs. A Corporation: What are the Principal Non-Tax Differences?

1. Organization.

a. Corporations.

Delaware has a single corporation statute, the Delaware General Corporation Law ("DGCL"), set out in Title 8 of the Delaware Code. Stock and non-stock corporations, whether or not operated for profit, have historically been consolidated together under the DGCL. The DGCL has some provisions which differ between stock and non-stock corporations, however, there has historically not been clarity as to how non-stock corporations, whether or not operated for profit, were treated under the DGCL. Presently before the Delaware General Assembly are omnibus amendments to the DGCL dealing with non-stock corporations. By the date of this seminar, those amendments may have been already approved by the General Assembly.

The omnibus amendments make it clear that non-stock corporations may be operated for profit as well as being either not for profit or having a charitable purpose. It should be noted that filing a certificate of incorporation for a non-stock, not-for-profit corporation does not make the company exempt from taxation or a contribution to that corporation deductible for either or state or federal tax purposes. The company must file Form 1382 with the Internal Revenue Service to qualify the company. Delaware follows the federal statute, and any entity which is exempt for federal purposes is likewise exempt for state purposes.

The certificate of incorporation of a stock corporation is a very simple document. The contents of the certificate of incorporation are governed by Section 102 of the DGCL. The omnibus amendments contain changes in Section 102 as it applies to non-stock corporations. The following document is a simple form of a certificate of incorporation which meets the minimum provisions of Section 102 for a stock corporation. Many times there is included in the certificate language set out in Section 102(b)(2) dealing with compromises or arrangements between the corporation and its creditors. The form attached includes that language.

CERTIFICATE OF INCORPORATION
OF

_____

FIRST: The name of the corporation is _____, Inc.

SECOND: The address of its registered office in the State of Delaware is 4406 Tennyson Road, Wilmington, New Castle County, Delaware 19802. The name of its registered agent at such address is Delaware Corporate Agents, Inc.

THIRD: The nature of the business or purpose to be conducted or promoted is to engage in any lawful act or activity which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of stock which the corporation shall have authority to issue is 1,500 shares of common stock without par or nominal value.

FIFTH: The name and mailing address of the incorporator is as follows:

NAME	ADDRESS
Jane S. Goldberg	Delaware Corporate Agents, Inc. 4406 Tennyson Road Wilmington, Delaware 19802.

SIXTH: The corporation is to have perpetual existence.

SEVENTH: The Board of Directors is expressly authorized to make, alter or repeal the By-Laws of the corporation.

EIGHTH; The name and mailing address of each person who is to serve as a director until the first annual meeting of the stockholders or until a successor is elected and qualified, is as follows:

Name:	Mailing Address:

NINTH The number of directors of the Corporation shall be from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation, but not less than one (1), with the initial Board of Directors consisting of ___ (_) members. Election of directors need not be by ballot unless the By-Laws of the Corporation shall so provide.

TENTH: No director shall have personal liability to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for facts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of Title 8 of the Delaware Code; (iv) for any transaction from which the director derived an improper personal benefit.

ELEVENTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for

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this corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in any manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, as the case may be, and/or stockholders or class of stockholders of this corporation agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

TWELFTH: To the extent permitted by law, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was an incorporator, a director or officer or employee or agent of the Corporation, or is or was serving at the request of the Corporation as an incorporator, a director or officer or employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action or proceeding.

The Corporation may advance expenses (including attorneys' fees) incurred by an incorporator, director or officer in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of the incorporator, director or officer to repay such amount if it shall ultimately be determined that such incorporator, director or officer is not entitled to the indemnification.

The Corporation may advance expenses (including attorneys' fees) incurred by an employee or agent in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Board of Directors deems appropriate

I, the undersigned, being the incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, acknowledging the penalty of perjury, hereby declaring and certifying that this instrument is my act and deed and the facts herein stated are true, pursuant to 8 Del. C. §103(b)(2) and accordingly have hereunto set my hand this _____ day of _____, 200__.

_____

Jane S. Goldberg, Incorporator

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Prior to the proposed omnibus amendments, it was not entirely clear that a non-stock corporation must have members. Section 102(a)(4) now clarifies that a non-stock corporation shall have members, however, it contains a curative provision which states: "But failure to have members shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation." The following form of certificate of incorporation is for a non-stock corporation which was not organized as a charitable or not-for-profit corporation. Note that in Article IV the language may be included which limits the voting powers of members. Additionally, language similar to Section 102(b)(2) has been included. Section 102(b)(2) has been renumbered as Section 102(b)(2)(i), and the new language has been added as (ii).

CERTIFICATE OF INCORPORATION
OF
_____ INC.

THE UNDERSIGNED INCORPORATOR, in order to form a non-stock corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, **DOES HEREBY CERTIFY**:

_____ Inc.

ARTICLE 2: The address of its registered office in the State of Delaware is 4406 Tennyson Road, Wilmington, New Castle County, Delaware 19802. The name of its registered agent at such address is Delaware Corporate Agents, Inc.

ARTICLE 3: The Corporation is a non-stock organization organized and operated exclusively for the purpose of engaging in any lawful act or activity which corporations may be organized under the General Corporation Law of Delaware. This Corporation is not organized as a charitable or nonprofit corporation.

ARTICLE 4: The Corporation shall be a non-stock membership corporation and shall have no authority to issue capital stock. The condition of membership of the Corporation shall be as set forth in the Bylaws of this Corporation. The Membership Interests held by the Members shall be as provided in the Bylaws. [Members shall have the power to vote solely upon the election of members of the Board of Directors and shall not have the right to vote upon any other matter including but not limited to any amendment to or restatement of this Certificate of Incorporation or Bylaws, any transaction, merger, consolidation, conversion or dissolution.][Members shall have the right to vote upon all matters which a shareholder of a stock corporation under the Delaware General Corporation Law have the right to vote.]

ARTICLE 5: No member of the Corporation or officer shall be personally liable for the payment of the debts of the Corporation except as such member or officer may be liable by reason of his own conduct or acts.

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ARTICLE 6: In furtherance and not in limitation of the powers conferred upon the Directors by law, the Directors shall have the power to make, adopt, alter or repeal, from time to time, the By-Laws of the Corporation.

ARTICLE 7: No director shall have personal liability to the Corporation for monetary damages for breach of fiduciary duty as a director, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of the Director's duty of loyalty to the Corporation; (ii) for facts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of Title 8 of the Delaware Code; (iv) for any transaction from which the Director derived an improper personal benefit.

ARTICLE 8: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its members or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or member thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the members or class of members, of this corporation, as the case may be, and also on this corporation

[Articles 9 and the last sentence of 10 are alternative provisions, if 9 is included then the last sentence of 10 must be included, however if 9 is not included, then the last sentence of 10 may not be included]

ARTICLE 9: The names and business addresses of the initial Directors are:

ARTICLE 10: The name and mailing address of the Incorporator is Jane S. Goldberg, 4406 Tennyson Road, Wilmington, Delaware 19802. The powers of the Incorporator shall terminate upon the filing of this Certificate.

I, the undersigned, being the Incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, acknowledging the penalty of perjury, hereby declaring and certifying that this Instrument is my act and deed and the facts herein stated are true, pursuant to 8 Del. C. §103(b)(2) and accordingly have hereunto set my hand this 3rd day of April, A.D., 2003.

sdgoldberg@delcorp.com

Jane S. Goldberg, Authorized Person

The next form is for a non-stock corporation that has been organized as a charitable not-for-profit corporation. The highlighted language in Articles III, VIII and X are intended to comply with the provisions of the Internal Revenue Code so that when a proper application on Form 1382 has been filed with the Internal Revenue Service, the corporation will qualify so that the corporation will be exempt for income tax purposes.

CERTIFICATE OF INCORPORATION
OF
_____, Inc.

THE UNDERSIGNED INCORPORATOR, in order to form a not-for-profit corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

ARTICLE 1: The name of the Corporation is _____.

ARTICLE 2: The address of its registered office in the State of Delaware is 4406 Tennyson Road, Wilmington, New Castle County, Delaware 19802. The name of its registered agent at such address is Delaware Corporate Agents, Inc.

ARTICLE 3: The Corporation is a not-for-profit corporation organized and operated exclusively for the purpose of engaging in any lawful act or activity which corporations may be organized under the General Corporation Law of Delaware. As a means of accomplishing the foregoing purposes, the Corporation shall have the power to do any and all acts as are necessary or conducive to the attainment of any of the objects and purposes hereinbefore set forth, to the same extent and as fully as any natural person might or could do; provided, however, that notwithstanding any provision of this Certificate or any provisions of applicable State law to the contrary, the Corporation shall not have the power to carry on any activities which would cause it to fail to qualify, or to continue to qualify, as (a) an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any subsequent United States Internal Revenue law; or (b) an organization contributions to which are deductible under Sections 170(c)(2) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent United States Internal Revenue law. The Corporation shall be authorized to solicit, receive and administer funds for the above purposes, but the Corporation shall not be authorized to accept gifts or contributions for other than the purposes hereinbefore stated. The funds of the Corporation shall not be restricted in use to people of any race, color, sex, national

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origin, religion, marital status, disability, sexual orientation, veteran status or creed, but such funds shall be administered on a non-discriminatory basis.

ARTICLE 4: No part of the earnings of the Corporation shall ever inure to the benefit of or be distributable to any member or individual having a personal or private interest in the activities of the Corporation, and no substantial part of the activities of the Corporation shall ever be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office. No officer, member or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary profit from the operations and activities of the Corporation, except reimbursement of out-of-pocket expenditures and reasonable compensation for services actually rendered to or on behalf of the Corporation.

ARTICLE 5: The Board of Directors of the Corporation shall constitute the only members of the Corporation, the Corporation shall have no authority to issue capital stock.
[The Conditions for membership shall be stated in the Bylaws of this Corporation. Members shall have the power to vote solely on the election of members of the Board of Directors and shall not have the right to vote upon any other matter including but not limited to any amendment to or restatement of this certificate of incorporation or Bylaws, any transaction, merger, consolidation, conversion or dissolution. The Corporation shall have no authority to issue capital stock.]

ARTICLE 6: The affairs and business of the Corporation shall be managed and conducted by the Board of Directors. The qualifications, election, number, tenure, powers and duties of the Board of Directors shall be provided in the By-Laws.

ARTICLE 7: No member of the Board of Directors of the Corporation or officer shall be personally liable for the payment of the debts of the Corporation except as such member or officer may be liable by reason of his own conduct or acts.

ARTICLE 8: In furtherance and not in limitation of the powers conferred upon the Board of Directors by law, the Directors shall have the power to make, adopt, alter or repeal, from time to time, the By-Laws of the Corporation.

ARTICLE 9: In the event of the liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary, involuntary, or by operation of law, the Directors of the Corporation shall, except as may be otherwise provided by law, transfer all of the assets of the Corporation in such manner as the Directors, in the exercise of their discretion, may by a majority vote determine; provided, however, that any such distribution of assets shall be calculated to carry out the objects and purposes hereinbefore stated in ARTICLE 3 hereof, and only such objects and purposes; and, provided further, that such distributions must be to one or more organizations (a) which are exempt from tax as organizations described in Section 501(c)(3) of the Internal

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Revenue Code of 1954, as amended, or the corresponding provision of any subsequent United States Internal Revenue laws; and (b) contributions to which are deductible under the provisions of Section 170, 2055 and 2522 of the Internal Revenue Code of 1954, as amended, or the corresponding provisions of any subsequent United States Internal Revenue laws.

ARTICLE 10: The Corporation reserves the right to amend, alter or repeal any provisions contained in this Certificate of Incorporation in a manner now or hereafter prescribed by applicable statutes, and all rights conferred herein are granted subject to this reservation; provided, however, that no amendment shall authorize the Directors of the Corporation to conduct the affairs of the Corporation in any manner or for any purpose contrary to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any subsequent United States Internal Revenue laws. This Corporation may not enter into a merger if the charitable status of this Corporation would thereby be lost or impaired.

[Articles 11 and the last sentence of 12 are alternative provisions, if 11 is included then the last sentence of 12 must be included, however if 11 is not included, then the last sentence of 12 may not be included]

ARTICLE 11: The names and business addresses of the initial Directors are:

ARTICLE 12: The name and mailing address of the Incorporator is Jane S. Goldberg, 4406 Tennyson Road, Wilmington, Delaware 19802. The powers of the Incorporator shall terminate upon the filing of this Certificate.

I, the undersigned, being the incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, acknowledging the penalty of perjury, hereby declaring and certifying that this Instrument is my act and deed and the facts herein stated are true, pursuant to 8 Del. C. §103(b)(2) and accordingly have hereunto set my hand this ____ day of _____, A.D., 200__.

_____

Jane S. Goldberg, Incorporator

b. Close Corporations.

A close corporation is a corporation formed under Subchapter XIV of the DGCL. It is a corporation where all of the shares are held of record by not more than thirty persons, all of the stock is subject to one of the transfer restrictions set forth in Section 202 of the DGCL, and the corporation is barred from making a public stock offering within the meaning of the Securities Act of 1933. Under Section 351 of the DGCL, the certificate of incorporation of a close corporation may provide that the

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business of the corporation shall be managed by its stockholders rather than by a board of directors. If the corporation is organized such that it is managed by its shareholders, no meetings of shareholders need be called to elect directors, the shareholders shall be deemed to be directors for the purpose of applying the provisions of the DGCL, and the stockholders shall be subject to all liabilities of directors (i.e., fiduciary duties).

The concept of the close corporation gained traction among corporate scholars in the 1950's as a manner of reducing the complexity of corporations for small businesses. Close corporations have never gained sufficient popularity in the United States. The name as it appears in the certificate of incorporation must state that it is a "close corporation." Most non-attorneys do not truly understand the concept, and being a close corporation often creates problems with bankers and other third parties who require an explanation of why the company is called a close corporation. The additional restrictions required under Section 342 have also hampered the adoption of close corporations. Possibly if the Section 202 restrictions were optional rather than mandatory, more close corporations would be formed.

The next form is a certificate of incorporation for a close corporation.

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CERTIFICATE OF INCORPORATION
OF
_____, INC.
A CLOSE CORPORATION

FIRST: The name of the corporation is _____, Inc.

SECOND: The address of its registered office in the State of Delaware is 4406 Tennyson Road, Wilmington, New Castle County, Delaware 19802. The name of its registered agent at such address is Delaware Corporate Agents, Inc.

THIRD: The nature of the business or purpose to be conducted or promoted is to engage in any lawful act or activity which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of stock which the corporation shall have authority to issue is 1,500 shares of common stock without par or nominal value. All of the issued stock, exclusive of treasury shares, shall be represented by certificates and shall be held of record by not more than __(__) persons.

FIFTH: The name and mailing address of the incorporator is as follows:

NAME	ADDRESS
Jane S. Goldberg	Delaware Corporate Agents, Inc. 4406 Tennyson Road Wilmington, Delaware 19802.

SIXTH: The corporation is to have perpetual existence.

SEVENTH: The Board of Directors is expressly authorized to make, alter or repeal the By-Laws of the corporation.

EIGHTH: The name and mailing address of each person who is to serve as a director until the first annual meeting of the stockholders or until a successor is elected and qualified, is as follows:

Name:	Mailing Address:

NINTH The number of directors of the Corporation shall be from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation, but not less

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than one (1), with the initial Board of Directors consisting of ___ (_) members. Election of directors need not be by ballot unless the By-Laws of the Corporation shall so provide.

TENTH: No director shall have personal liability to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for facts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of Title 8 of the Delaware Code; (iv) for any transaction from which the director derived an improper personal benefit.

ELEVENTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in any manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, as the case may be, and/or stockholders or class of stockholders of this corporation agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

TWELFTH: To the extent permitted by law, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was an incorporator, a director or officer or employee or agent of the Corporation, or is or was serving at the request of the Corporation as an incorporator, a director or officer or employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action or proceeding.

The Corporation may advance expenses (including attorneys' fees) incurred by an incorporator, director or officer in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of the

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incorporator, director or officer to repay such amount if it shall ultimately be determined that such incorporator, director or officer is not entitled to the indemnification.

The Corporation may advance expenses (including attorneys' fees) incurred by an employee or agent in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Board of Directors deems appropriate.

THIRTEENTH: All of the shares of stock of this Corporation shall be subject to the restriction that _____.

FOURTEENTH: This Corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933 (15 U.S.C. §77(a) et seq.) as it may be amended from time to time.

FIFTEENTH: The business of the Corporation shall be managed by the stockholders of the Corporation rather than a Board of Directors.

I, the undersigned, being the incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, acknowledging the penalty of perjury, hereby declaring and certifying that this instrument is my act and deed and the facts herein stated are true, pursuant to 8 Del. C. §103(b)(2) and accordingly have hereunto set my hand this _____ day of _____, 200__.

_____

Jane S. Goldberg, Incorporator

c. Limited Liability Companies

In legal terms, the limited liability company is a relatively recent addition to Delaware law. Delaware adopted its first Limited Liability Company Act in 1991. In underwent major revisions in 1995 and 1997, and thereafter it has been incrementally amended each year.

A limited liability company is a non-corporate business form which provides its members with limited liability and also allows the members to participate actively in the entity's management without becoming personally liable for the entity's obligations, unlike a limited partner in a limited partnership who may incur personal liability by virtue of participation. At its most basic level, a limited liability company may be viewed as a partnership whose partners have limited liability. The limited liability company has all of the best features of partnerships and corporations, with none of the corporate rigidity and with corporate limited liability which the

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partnership form lacks. As with a partnership, the relationship between the members, and the members and the company, is determined by contract. That contract is called a "company agreement" or "operating agreement." The company agreement may be either written or oral. In the absence of any agreement or where the agreement is otherwise silent, the Delaware Act provides default provisions. All of the default provisions may be varied or waived by agreement other than the implied contractual obligations of good faith and fair dealing.

A recent Delaware case held that the Delaware statute of frauds applies to a provision of an oral company agreement where the provision cannot be completed within one year. Section 1 of the proposed 2010 amendments to the Delaware Act, Section 18-101(7), states: "A limited liability company agreement is not subject to any statute of frauds (including Section 2714 of this Title)." (Section 2714 is titled "Necessity of Writing Contracts; Definition of Writing; Evidence." This is the traditional statute of frauds.) Another recent Delaware decision determined that the default provisions of the Delaware Act are incorporated into every company agreement where they are not specifically modified or excluded. This decision will create a trap for the unwary and underscores the need for a carefully drafted company agreement and, of course, another danger in having an oral company agreement.

Under the Delaware Act, the company may be managed by all or some of its members or by one or more non-members. If it is managed by less than all of its members, the person(s) who manage the business is called the "manager." In some cases, the company agreement may refer to a "managing member" who has certain management responsibilities. The Delaware Act does not include the concept of managing member. It is unlikely that a Delaware court would conclude that a person who serves as the managing member does not have the duties set forth in the Delaware Act for a manager.

The LLC may have one or more managers. The Delaware Act does not require that the manager be a member. Companies are generally referred to as either member-managed or manager-managed companies. Under the Delaware Act, the manager may adopt titles such as president, etc. The manager may also delegate management to a non-manager who also may have a corporate type title such as president. The act of delegating management responsibility to a non-manager does not strip the manager of his power to manage unless otherwise provided in the company agreement.

The following is a form of Certificate of Formation

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CERTIFICATE OF FORMATION
OF
_____ LLC

This Certificate of Formation of _____ LLC, dated ____, 201_, is being duly executed and filed by _____, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 *Del. C.* § 18-101, *et seq.*).

FIRST: The name of the Limited Liability Company formed hereby is _____ LLC.

SECOND: The address of its registered office in the State of Delaware is 4406 Tennyson Road, Wilmington, New Castle County, Delaware, 19802. The name of its registered agent at such address is Delaware Corporate Agents, Inc.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

_____
Jane S. Goldberg, Authorized Person

2. <u>Member Control of Assets, Ownership</u>

Under the Delaware Act, the assets of the LLC are owned by the LLC and no member has any right to lay claim of ownership to any specific LLC assets. If the LLC is member-managed, unless otherwise provided in the company agreement, all members of the LLC have an equal right to manage the company and have the power and authority to bind the company, as is the case in a general partnership.

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3. Personal Fiscal Responsibility/Liability of the Members

Under the Delaware Act, no member of the LLC has personal liability under tort contract or otherwise for the obligations of the LLC by virtue of the fact that he or she is a member unless the member affirmatively agrees to be obligated for those debts or other obligations. Likewise, no member, in the absence of a provision to the contrary in the company agreement, has any obligation to contribute additional sums to the company over and above his or her agreed capital contribution. The obligation to make an agreed to capital contribution is absolute. Not even the death of the member will excuse the member from the obligation to make a capital contribution or to provide services promised to be performed as part of that capital contribution. Unless the agreement provides otherwise, the obligation of a member may not be modified without the unanimous consent of all members.

4. Investor Attraction

The selection of entity by an investor will be dependent in large measure on the conditions being placed upon the entity by the investor in exchange for his or her investment. Investors know that the corporate form has substantial rigidity. The corporation is managed by its directors and each director has one vote. The DGCL does not provide for cumulative or proportional voting by directors. A corporate board cannot be structured so as to give the investor additional votes. The only option is to expand the board and have an agreement under which the shareholders agree to vote in favor of electing a specified number of board members aligned with the investor. In order for an investor to have the maximum control in exchange for the investment, the limited liability company seems to be the preferred vehicle.

This section of the presentation deals with non-tax entity selection, however, I wanted to share some tax considerations with you, as they are significant in making the entity decision from not only the investor point of view, but for the individuals involved. The table below, which presumes that all federal taxes currently under discussion are fully phased in by 2018, shows the net proceeds to the shareholders of a C corporation, the shareholders of an S corporation, and the members of a partnership or LLC for a sale of the business where the member actively participates in the business. The hypothetical has net sale proceeds of $500,000. The net proceeds to the shareholders of the C corporation are 34% lower than the proceeds to either the shareholders of an S corporation or the members of an LLC. For a business where the potential sale in the future is important to the owners and investors, the LLC is clearly a preferable vehicle. Given the substantial difference in the net proceeds between an LLC and a C corporation, the practitioner suggesting a C corporation must have a good legal reason for making the suggestion. While the difference between an S corporation and an LLC are minimal (except for self-employment taxes), the issues relating to complete governance shall militate in favor of the LLC.

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Sale of Business after all proposed tax law changes are phased in 2018

	C Corporation	S Corporation	Partnership/LLC
Sales Proceeds	$500,000.00	$500,000.00	$500,000.00
Initial Tax	($170,000.00)	($106,750.00)	($106,750.00)
	$330,000.00	$393,250.00	$393,250.00
Double Tax	($70,455.00)	0	0
Net Proceeds	$259,545.00	$393,250.00	$393,250.00

The next three tables show comparisons of net operating income from the C corporation, S corporation or LLC in the years 2010, 2011 and 2018. The tax rates are based upon the highest rates currently under discussion. For the S corporation, no FICA or self-employment tax is included in the calculation. Generally, earnings and profits distributed by the S corporation are not subject to either FICA or self-employment tax, however, if the S corporation distributes all of its income as earnings and profits and not as salary, there is a risk that the IRS may reclassify part of the distribution as salary. (There is no safe harbor rule that would allow only a given percentage of the distribution to be considered salary.) In the case of the LLC, the self-employment tax is included. If the company and individual portions of FICA were applied to the S corporation, the overall tax rate would be identical between the two.

2010
C Corporation/S Corporation/LLC

	C Corporation		S Corporation	LLC
	Dividends	Wages		
Income	$100,000.00	$100,000.00	$100,000.00	$100,000.00
Corporate Tax	($35,000.00)	0	0	0
Corporate FICA	0	($1,429.00)	0	0
	$65,000.00	$98,571.00	$100,000.00	$100,000.00
Individual Tax	($9,750.00)	($34,500.00)	($35,000.00)	($35,000.00)
FICA/SE Tax	0	($1,429.00)	0	($2,858.00)
	$55,250.00	$62,642.00	$65,000.00	$62,642.00
Overall Rate	44.75%	37.36%	35.00%	37.36%

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2011
Possible Amendments
C Corporation/S Corporation/LLC

	C Corporation		S Corporation	LLC
	Dividends	Wages		
Income	$100,000.00	$100,000.00	$100,000.00	$100,000.00
Corporate Tax	($35,000.00)	0	0	0
Corporate FICA	0	($1,429.00)	0	0
	$65,000.00	$98,571.00	$100,000.00	$100,000.00
Individual Tax	($26,512.00)	($40,250.00)	($40,788.00)	($40,205.00)
FICA/SE Tax	0	($1,429.00)	0	($2,858.00)
	$26,512.00	$56,937.00	$59,212.00	$56,937.00
Overall Rate	61.51%	43.06%	40.79%	43.06%

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2018
Possible Amendments
C Corporation/S Corporation/LLC

	C Corporation		S Corporation	LLC
	Dividends	Wages		
Income	$100,000.00	$100,000.00	$100,000.00	$100,000.00
Corporate Tax	($35,000.00)	0	0	0
Corporate FICA	0	($3,335.00)	0	0
	$65,000.00	$96,665.00	$100,000.00	$100,000.00
Individual Tax	($13,878.00)	($44,804.00)	($46,350.00)	($44,806.00)
FICA/SE Tax	0	($3,335.00)	0	($6,662.00)
	$51,122.00	$48,5267.00	$53,650.00	$48,532.00
Overall Rate	48.88%	51.47%	46.35%	51.47%

5. The Lifetime of the Business Entity

a. Corporations

A corporation which has issued stock may be dissolved in two manners. If the corporation is a "joint venture" having only two shareholders each of whom own 50% of the stock who were unable to agree on the desirability of discontinuing the joint venture and disposing of its assets, either stockholder may, unless otherwise provided in the certificate of incorporation or in a written agreement between the stockholders, file a petition in the Court of Chancery stating that it desires to discontinue the joint venture and dispose of the assets under Section 273 of the DGCL. Section 273 provides the mechanism under which the joint venture may unwind itself and dispose of its assets.

Most stock corporations which have issued stock dissolve under Section 275. Corporations which have not issued stock and have not commenced operations may dissolve under Section 274. Under Subsection (a), the directors, after adopting a resolution by vote of a majority of the whole board at any meeting called for that purpose, are required to mail to each stockholder entitled to vote on the resolution a notice of a meeting of stockholders to take action upon the resolution. At the meeting, a

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vote is required to be taken upon the dissolution. If a majority of the outstanding stock entitled to vote votes for the proposed dissolution, a certificate of dissolution is filed with the Secretary of State. Under Subsection (c), dissolution of the corporation may also be authorized without action of the directors if all of the stockholders entitled to vote shall consent in writing and a certificate of dissolution is filed with the Secretary of State pursuant to Subsection (d). You will notice that the provision of Subsection (c) requires "All of the stockholders entitled to vote thereon shall consent in writing. . ." This provision does not allow a majority of the stockholders to cause the corporation to dissolve without the consent of a majority of the directors.

Once dissolution has been authorized, a certificate of dissolution is filed with the Delaware Secretary of State. The certificate must include (a) the name of the corporation, (b) the date the dissolution was authorized; (c) either that the dissolution has been authorized by the board of directors and the stockholders or that the dissolution has been authorized by all of the stockholders in accordance with Section 275(c); and (d) the names and addresses of all directors and officers of the corporation. Under Section 277, the certificate cannot be filed until all franchise taxes due to the State have been paid. The State will also require that the annual report for the current year be filed. Remember that the franchise tax year for all entities is the calendar year, while the corporate franchise tax becomes subject to penalty if not paid on or before March 1 and the LLC/LP franchise tax becomes subject to penalty if not paid on or before June 1. Those taxes are in fact due on January 1, so that a corporation dissolving between January 1 and March 1 will be required to pay the franchise tax ordinarily due on or before March 1, as well as the franchise tax for the then current year, which in the ordinary case does not become payable until January 1 of the following year and payable on or before March 1 of the following year.

Once the corporation has filed a certificate of dissolution, the corporation then begins a winding up process under which the assets of the corporation are liquidated, liabilities of the corporation are paid, and the remaining assets distributed to the stockholders. Under Section 278, the corporation is continued for a term of three years from the date of filing the certificate of dissolution, or for such longer period as the Court of Chancery may in its discretion direct, for the purpose of prosecuting and defending suits and enabling the corporation gradually to settle and close its business, to dispose of and convey its property, to discharge its liabilities, and to distribute to the stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized.

Under Section 279, any creditor, stockholder or director, or any other person who shows good cause, may petition the Court of Chancery to appoint one or more of the directors of the corporation to be a liquidating trustee or to appoint one or more persons to be receivers for the corporation, to take charge of the corporation's property, collect the debts and property due and belonging to the corporation with power to prosecute and defend in the name of the corporation any legal actions. These processes are generally adopted in the event of a dispute within the corporation or where a creditor is concerned about its prospect of payment.

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In some cases, the corporation may determine to give notice to creditors in order to determine and cut off creditor claims. The procedure for giving notice to claimants and requiring that parties file claims is set forth in Section 280. After giving notice in accordance with the Section, the corporation may require that all creditors and claimants submit claims within not less than sixty days from the date of the notice. Corporations with assets of greater than $10,000,000 are required to provide notice once in all editions of a daily newspaper with national circulation.

A corporation which has complied with Section 280 makes payments and distributions to claimants and stockholders under Section 281. Under Section 281(a), the dissolved corporation must pay all claims not rejected under Section 280, post security offered and not rejected by the claimants under Section 280, post any security ordered by the Court of Chancery in any proceeding under Section 280, and pay or make provision for all other claims that are mature, known and uncontested or that have been fully determined to be owing by the corporation or a successor entity. If there are sufficient assets of the corporation, all obligations are required to be paid in full. If there are insufficient assets, they are required to be paid in accordance with their priority and among claims of equal priority ratably to the extent of assets legally available.

A corporation or its successor entity which has not followed the procedure described in Section 280 or its successor entity shall, prior to the expiration of the three-year period set forth in Section 278 or any extension to that period ordered by the Court of Chancery, adopt a plan of distribution under which the dissolved corporation or its successor entity shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims known to the corporation or the successor entity, shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claims against the corporation which may be subject to pending litigation, and shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that based on facts known to the corporation or the successor are likely to arise or to become known to the corporation or successor entity within ten years after the date of dissolution.

A corporation that has either gone through the provisions of Section 280 or has adopted the plan under Section 281(b), the directors of the dissolved corporation "shall not be personally liable to the claimants of the dissolved corporation."

Section 282 is a protective provision for stockholders of a dissolved corporation. If the corporation has complied with either Sections 281(a) (used the provisions of Section 280) or (b) (adopted a plan under Section 281), the stockholder "shall not be liable for any claim against the corporation in any amount in excess of such stockholder's prorata share of the claim or the amount so distributed to such stockholder, whichever is less." A stockholder is not liable for any of the obligations of the corporation based upon any claim against the corporation when the action is not begun prior to the expiration of the three-year period described in Section 278, as the same may be extended by the Court of Chancery. Finally, the aggregate liability of any stockholder

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of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed such stockholder in dissolution. This final provision is not premised upon compliance with either Section 280 or Section 281.

b. Limited Liability Companies

Dissolution of the LLC is governed under Section 18-801 of the LLC Act. The default provisions under Subsection (a) are: (1) the time specified in the limited liability company agreement, if any; (2) upon the happening of events specified in the limited liability company agreement, if any; (3) unless otherwise provided in the limited liability company, upon the affirmative vote or written consent of members of the company, or if there is more than one class or group of members, then by each class or group of members, by members who own more than two-thirds of the then current percentage or other interest of the profits of the LLC owned by all members or by the members of each class or group, as appropriate; or (4) at any time there are no members unless otherwise provided in the limited liability company agreement, within ninety days or such other period as is provided in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the LLC, and to the admission of the personal representative of such member or its nominee or designee to the LLC as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member. The LLC may make the provisions of (4) above mandatory. This language is always found in the company agreement of a single-member LLC used in structured finance transactions so that the lender can be assured that the company will not dissolve as a result of the death or dissolution of the single-member.

Under Section 18-802, on application by or for a member or manager, the Court of Chancery may decree dissolution of the LLC "whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement." The Courts have made it clear that practicability does not equate with impossibility. It is important to consider the phrase "to carry on the business in conformity with the limited liability company agreement." If the LLC has a broad or general purpose clause rather than a narrowly crafted purpose clause which conforms with the parties' intended business plan, the Court will be reluctant to judicially dissolve the company if the remaining members or managers put forth a reasonable basis to continue its operations or have previously made business decisions to continue the business in some reasonable manner. Thus, a company which was in the business of operating a single piece of real estate was not dissolved by the Court when the manager determined to continue the company after the sale of the real estate and manage and invest the proceeds for the benefit of the company and its members.

Under Section 278 of the DGCL, the corporation continued for a period of three years to wind up its affairs. A similar provision is not included in the LLC Act. Under the LLC Act, Section 18-803, the LLC after determining to dissolve is required to proceed to wind up its affairs, however, there is no time limit for the winding up process. Once the winding up has concluded, then a certificate of cancellation is filed

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under Section 18-203 rather than a certificate of dissolution. Once the certificate of cancellation has been filed, the LLC ceases to exist and the members or managers have no power or authority to take any action in the name of the company.

Section 18-804 is similar in concept to Section 281 of the DGCL, providing for payment of the company's obligations and priority for payment. Under Section 18-804(c), "A member who receives a distribution in violation of subsection (a) of this section and who knew at the time of the distribution that the distribution violated subsection (a) of this section [subsection (a) provides for the payments to creditors], shall be liable to the limited liability company for the amount of the distribution." The definition of distribution does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business to a bona fide retirement plan or other benefits plan. "A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution." Under Subsection (d) there is a three year limitation on the liability for a person who knowingly receives distribution in violation of Subsection (a).

You will notice that in Subsection (c) the member "shall be liable to the limited liability company for the amount of the distribution." The Section does not provide that the member is liable to any creditor or claimant, but only to the limited liability company itself.

6. International Business Ramifications of Using an LLC

The Delaware LLC has become a popular vehicle for use, both within the United States and internationally. Businesses outside of the United States use the Delaware LLC for the same business reasons that Delaware LLC's are used domestically. In addition, there is an international perception of value to a Delaware LLC. There are empirical studies of corporations finding that being a public Delaware corporation enhances the corporation's value over being formed in another jurisdiction.

Again, while this is not a tax discussion, a U.S. chartered LLC is a U.S. citizen for tax purposes, and its worldwide income is subject to the United States tax system. That being said, the United States has tax treaties with virtually every nation in the world, and the liability of the Delaware LLC for U.S. taxes based upon its income outside of the U.S. will be based upon the tax treaty. A discussion of federal tax treaties is well beyond the scope of these materials.

Delaware does not impose an income tax on the revenue of a Delaware business entity earned outside of the State of Delaware. A corporation or LLC operating wholly outside of the State of Delaware will likely be subject to income taxes in the state or states in which it operates, as well as the Internal Revenue Code.

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7. Determining Which Business Structure Fits the Specific Situation Best – Pros and Cons of Using Either

If the business of the LLC is that it primarily collects rent from passive investments such as real estate investments or has other similar income, a member who does not materially participate in the management of the LLC will not be subject to self-employment tax but will in fact pay income taxes at the member's state and federal tax rates. In that situation, the marginal tax rate for the LLC will be somewhat less than other entities. There are tax reasons why the Subchapter S corporation may not be the appropriate vehicle. Because of the substantially higher marginal tax cost upon the sale of a C corporation, it is typically the view of tax practitioners that the C corporation should be avoided. That is not to say that a C corporation is always the wrong entity. There are some employee benefits that may be provided to employee/owners of a C corporation which are not available for tax purposes to stockholders of a Subchapter S corporation, partners of a partnership or members of an LLC.

In selecting the proper entity, the drafter must remember that if the drafter recommends to his or her client the use of the corporate form, they must consider the fact that in order to protect the limited liability shield, the corporation must observe the corporate formalities of having annual meetings of shareholders and at least an annual meeting of the board of directors. The practical problem is that once the client has left your office, the likelihood of their having meetings and preparing minutes is minimal, and that frankly is a charitable view. Unless there is some business or tax reason to adopt the corporate form, we generally recommend against it and in favor of an LLC. The corporation, unless it elects to be a close corporation, must be managed by its directors. The officers are selected by the directors. Directors each have one vote without cumulative or proportional voting. Therefore, in the case of a corporation with multiple shareholders owning their stock in unequal percentages, those stockholders, in their capacity as directors, then have equal voting power, notwithstanding the fact that they have different economic interests in the corporation. A stockholder agreement can provide some benefits and some controls, however, the stockholder agreement cannot provide for cumulative or proportional voting.

In most case we recommend to our clients the use of an LLC. The Delaware Act requires that the company have a company agreement, which may be written, oral or implied. The attorney should insist that their clients have a written agreement which is not simply the last form on your word processor. Thought must be given to the agreement and to the business purpose that the clients have enunciated.

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The Process of Incorporation v. LLC Formation

1. Selecting the State in which to Incorporate

Delaware attorneys are indeed fortunate that we can recommend to our clients that they form their corporation or LLC in Delaware. Delaware has historically been the jurisdiction in which parties across the country and the world have selected rather than their home jurisdiction.

In recent years there has been a great deal of empirical data collected on why a company forms outside of its home jurisdiction. These research papers have determined that the primary reason that parties select Delaware is based on what they refer to as the "quality of the legal environment." The U.S. Chamber of Commerce's Institute for Legal Reform annually conducts a survey of the 50 states which ranks the states based upon the Institute's perceived fairness of the State's legal system. There are numerous factors that are involved in that survey. Since the inception of the survey, Delaware has always ranked No. 1.

Another factor is the skills and sophistication of the members of the Bar and the well-developed body of case law which permits attorneys to issue opinions with reasonable assurance as to the likely outcome. With a fair and skilled judiciary, businesses can reasonably obtain predictability of a particular outcome.

Another factor often discussed is innovation in the statute itself. Delaware has always been on the threshold of new developments in both the DGCL and the LLC Act.

Finally, the parties look to what the commentators refer to as "debtor protection." This includes not only the concept of limited liability, but also the ability of a creditor to reach the property of the debtor. In the case of the LLC, Delaware has adopted an absolute bar within the context of a charging order. Under the LLC Act, if a judgment creditor seeks to realize upon the judgment debtor's interest in the LLC, the judgment creditor can only receive distributions which are made to the judgment debtor by the LLC and has no right to participate in the management of the LLC and no right to cause the LLC interest to be foreclosed upon and sold at sale. This is a powerful factor in selecting a jurisdiction. In making the argument, however, one must consider the concept of piercing the corporate veil. If the judgment debtor has used the LLC to commit fraud, is the alter ego of the LLC, or the LLC is undercapitalized for the purpose for which it has operated, the Court may pierce the corporate veil and look for the member to be responsible to the creditor of the LLC. It is instructive, however, to note that while in many jurisdictions courts will often pierce the corporate veil, Delaware courts to the contrary are extremely reluctant to pierce the corporate veil, and in those cases where this has occurred, the facts are uniformly egregious.

If the corporation or LLC intends to do business in a jurisdiction other than Delaware, it must consider the cost of qualifying to do business in that state.

2. Drafting the Articles of Incorporation and Filing with the State Government

As pointed out earlier in this discussion, the form of certificate of incorporation is set out in Section 102 of the DGCL. The form which we provided in the earlier discussion is filed with the Secretary of State. The incorporation is effective upon filing or the certificate may provide for a later effective date. Generally, the Secretary will not accept a filing which is effective on a date which is not a business day except upon payment of additional fees, which are substantial. Once the certificate has been filed and accepted by the Secretary of State, there are no additional steps, such as advertising, which need to be taken to form the corporation. A corporation must, however, adopt by-laws and hold an organizational meeting of the board of directors to elect officers, issue stock and take other actions to be duly formed.

3. LLC Articles of Organization and the Filing Process

The LLC is formed by filing a certificate of formation with the Secretary of State. We previously provided a certificate of formation for the LLC. Upon filing and paying the filing fee, the LLC has been formed. No additional steps are necessary to complete the formation. Again, as with the corporation, the filing is effective upon receipt by the Secretary of State or as such later as may be provided in the certificate. We discussed earlier that the LLC must have a company agreement, however, there is no requirement under the LLC Act that the members or managers hold meetings. We always recommend to our clients that meeting take place and minutes be provided, particularly with respect to significant business decisions or significant business transactions.

4. Operating Agreement v. Shareholders Agreement

Following this discussion you will find a form of company agreement and a form of shareholders agreement. Both agreements are relatively sophisticated in their approach. The shareholder agreement contains put and call rights, as well as drag along rights. There are extensive provisions dealing with the protection of the Subchapter S election. If the company does not elect to be a Subchapter S corporation, those extensive provisions must be deleted. In our presentation we will go through the shareholder agreement provision by provision and discuss their implications.

The company agreement attached to these materials is also relatively sophisticated in its approach. It too has put and call provisions, buy and sell provisions and drag along provisions. The general concept of the company agreement is that the parties have invested in this company and will continue to be members until the company is dissolved. There are provisions in the agreement which allow for certain rights to sell to third parties, however, no sale to third parties is permitted except in accordance with the terms of the agreement.

SHAREHOLDER AGREEMENT

This Shareholders' Agreement (hereinafter called ``Agreement") is dated as of the _____ day of_____, 20___ by and among the persons whose names and addresses are listed on Schedule A hereto and those persons who join herein by way of executing a Joinder Agreement in the form attached hereto as Exhibit 1 (each of whom is, hereinafter, sometimes called ``Shareholder"; those persons named on Schedule A hereto and designated as ``Management Shareholders" being hereinafter sometimes called ``Management Shareholders"; those persons named on Schedule A hereto and designated as ``Investor Shareholders" being hereinafter sometimes called ``Investor Shareholders"); and_____, a Delaware corporation (hereinafter called the ``Company").

WITNESSETH

WHEREAS, the Company has, issued and outstanding,_____ (_____) shares of its Common Stock [with][without] par value (as defined herein);

WHEREAS, the Company does not have, issued and outstanding, any other type or class of stock, option, warrant or other right to purchase shares of stock or to cause any class or type of stock to be issued;

WHEREAS, the Company and the Shareholders desire to set forth certain restrictions upon the transfer of Securities to be issued by the Company or owned by the Shareholders, as the case may be, to provide for certain preemptive rights in the event the Company proposed to issue New Securities (as hereinafter defined) and to provide for the manner in which Securities having voting rights will be voted in certain contingencies;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the respective meanings indicated:

1.1. ``Affiliate" means any person controlling, controlled by, or under common control with the subject Shareholder or the Company, as the case may be.

1.2. ``Book Value" of each share of any Securities, including Common Stock, shall mean the total shareholders' investment as set forth in the financial statements of the Company regularly prepared as of the Valuation Date, divided by the number of shares of all Securities outstanding as of the Valuation Date. Such financial statements shall be

prepared in accordance with generally accepted accounting principles in the United States consistently applied, except that no allowance of any kind shall be made for goodwill, trade names or similar intangible assets. Appropriate adjustment of the Book Value of each share of Securities shall be made for any split-up or combination of the outstanding shares of Securities, recapitalization, reorganization, reclassification of shares, cash or stock dividend, or like event subsequent to the Valuation Date. The determination of Book Value by the Company's Board of Directors shall be final and binding upon the relevant parties hereto.

1.3. ``Cash Flow Limitation." The Company may suspend the payment of installments of purchase price required by Section 2.3(g) hereof, or any portion thereof, to the extent that such installment or portion thereof will cause the aggregate amount paid by the Company between the first day of its fiscal year during which such payment is due to the date of such payment, for the purchase of Securities pursuant to the terms of all agreements between it and any of its shareholders or warrant holders and former shareholders or warrant holders to exceed the sum of:

a. the proceeds of insurance received by the Company during such period and used to fund such purchase; plus

b. fifty percent (50%) of the estimated consolidated earnings of the Company and its Subsidiaries during such period after adequate provisions have been made for the payment of all taxes attributable to such earnings, including without limitation, any distributions made for the payment of all taxes attributable to such earnings, including without limitation, any distributions made or to be made to shareholders for payment of taxes in the event that the Company is an ``S" corporation; plus

c. estimated depreciation and amortization deductible in computing consolidated earnings for such period; minus the sum of

d. consolidated capital expenditures not funded by (i) the proceeds from the sale of fixed assets not included in earnings or (ii) any borrowings which the Company or any of its Subsidiaries has made and expects to make during that fiscal year; and

e. consolidated amortization payments, to the Company's and its Subsidiaries' long-term debt not funded by borrowings (excluding the long-term portion, if any, of any revolver) paid and to be paid during that fiscal year.

For purposes of this Agreement, the determination of the foregoing cash flow limitations shall be computed in accordance with generally accepted accounting principles consistently applied.

1.4. ``Commission" means the Securities and Exchange Commission of the United States.

1.5. ``Competition" shall mean the participation, engagement, possession of a financial interest or management position or other interest (directly or indirectly, whether individually or as an employee, agent, partner, shareholder, consultant or otherwise) by such Shareholder in, any business operation of any Person which engages in competition with any business operation conducted by the Company or its Subsidiaries or any

successor or assign thereof, or the solicitation by such Shareholder of any other Person to engage in any of the foregoing activities, in any of the foregoing cases during a Shareholder's employment with the Company or any of its Subsidiaries. Participation in the management of any enterprise or any business operation thereof other than in connection with operations of such enterprise which are in competition with the Company or its Subsidiaries shall not be deemed to be Competition. The ownership of an interest constituting not more than five percent (5%) of the outstanding debt or equity in a corporation or partnership whose securities are traded in a recognized stock exchange or traded in the over-the-counter market, even though that corporation or partnership may be a competitor of the Company or its Affiliates, shall not be deemed financial participation in a competitor.

1.6. ``Common Stock" means the Company's Common Stock, [par value $_____ per share][without par value], and shares of stock or other securities of any class resulting from the reclassification, split, combination, or other change thereof, dividends of securities paid thereon, and securities of any other issuer received in exchange for such Common Stock in connection with any merger, consolidation, reorganization, or acquisition involving the Company.

1.7. ``Current Market Price" of each share of any Securities, including Common Stock, as of any given day shall mean the fair value thereof, as determined by the Board of Directors (unless an appraisal is requested pursuant to the terms of this Section 1.7), as at the last day of any month ending within 60 days preceding the date as of which the determination is to be made. In determining the Current Market Price, the Board of Directors shall value the Company as a ``going business" and shall not diminish or enhance the value of the Securities because of:

a. the fact that the Securities are not registered for public trading; or

b. the effect on the Company of the loss of the services of a deceased or Disabled Shareholder; or

c. the proceeds of life insurance payable to the Company because of the death or Disability of a Shareholder.

In the event that, within five (5) days after any party or his Successor shall have received notice of the Board's valuation and that party or his Successor gives the Company notice that he believes that the Board's valuation is unreasonable, then the Current Market Price of the Securities shall be determined in accordance with the standards of this Section 1.7 by a firm of independent certified public accountants or an investment banking firm chosen by such objecting party, which is not affiliated with or previously in the employ of any party to the transaction and reasonably acceptable to the Board of Directors. The Company and the objecting party shall be afforded adequate opportunities to discuss said appraisal with the independent accountants or investment bankers. If the Current Market Price so established is ten percent (10%) or more higher or lower than the price established by the Board of Directors, the expense of such public accountants or investment banking firm shall be borne completely by the Company. Otherwise it shall be borne by the objecting party. The determination of such public accountants or investment

banking firm shall be final and binding upon all parties hereto and, unless the Board's valuation is challenged in accordance with this Section 1.7, the Board's Valuation shall be final and binding on all parties to this Agreement.

1.8. ``Disability'' shall mean inability of a Shareholder to perform his duties of Employment for the Company because of disability, where such disability shall exist for an aggregate period of more than six (6) months in any twelve (12) month period or for any consecutive four (4) month period.

1.9. ``Disinterested Board'' means a majority of the directors of the Company who are not named as a proposed transferee in a Notice of Offer (as defined in Section 2.4(a)), or any Affiliate of any Shareholder named as a proposed transferee in a Notice of Offer, serving as directors of the Company.

1.10. ``Disposition'' means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, issuance or other disposition of any securities or any interest therein, whether voluntary or involuntary, including, but not limited to, any Disposition by operation of law, by court order, by judicial process, or by foreclosure, levy or attachment.

1.11. ``Just Cause'' shall mean gross negligence, willful misconduct, ceasing to perform normal and customary functions for an extended period for any reason other than death or disability; fraud or embezzlement in the course of employment; intentional disclosure of confidential information to the material detriment of the Company or any of its Subsidiaries; willfully engaging in Competition or aiding a competitor of the Company or any of its Subsidiaries to the material detriment of the Company or any of its Subsidiaries; misappropriation of a material opportunity of the company or any of its Subsidiaries; and the conviction of a felony or any crime involving moral turpitude involving the Company or any of its Subsidiaries.

1.12. ``New Securities'' means any capital stock of the Company whether now or hereafter authorized, including any Securities repurchased by the Company, and all rights, options or warrants to purchase capital stock of the Company, and securities or indebtedness of any type whatsoever that are, or may become, convertible into or exchangeable for capital stock of the Company; provided that the term ``New Securities'' does not include (i) any securities issued upon exercise or conversion in accordance with their terms of any other securities which, when issued, were the subject of Section 2.6 herein; (ii) securities issued pursuant to the acquisition of another Person by the Company by merger, purchase of all or substantially all of the assets of such other Person or any other reorganization which results in the Company or any Subsidiary thereof owning not less than 51% of the voting power of such other Person, provided that the stock or other assets acquired by the Company through such transaction has a fair value equal to at least 100% of the then aggregate Current Market Price of the securities so issued; (iii) shares of Common Stock, not exceeding in the aggregate 5% of the outstanding shares of Common Stock, reserved for issuance to employees pursuant to employee stock option plans or other employee benefit plans approved by the Board of

Directors of the Company; (iv) the shares of Common Stock purchased by the Shareholders prior to or contemporaneously with the execution of this Agreement; (v) securities issued in connection with any pro rata reclassification, split, combination, or other change of any then outstanding securities of the Company; (vi) securities offered to the public in a transaction or transactions required to be registered under the Securities Act; and (vii) securities paid as dividends on any then outstanding Securities.

1.13. ``Permitted Disposition'' means:

a. a Disposition of the community property interest of a Shareholder's spouse in all or any part of the Securities to such Shareholder upon the death of such spouse;

b. a Disposition of the community property interest of a Shareholder's spouse in all or any part of the Securities to such Shareholder in connection with the termination of the marital relationship of the Shareholder and the Shareholder's spouse;

c. a Disposition by a Shareholder to a trust of the type described in Section 1361(c)(2)(A)(i) or Section 1361(c)(2)(A)(ii) of the Internal Revenue Code of 1986, as amended, provided that (i) the Shareholder gives Company and the other Shareholders prior written notice of his desire to make such transfer, which notice shall be given at least thirty (30) business days prior to the date of the proposed transfer and shall be accompanied by a copy of the indenture of trust or other instrument creating such trust, (ii) the Shareholder desiring to make such transfer furnishes to Company and the other Shareholders an opinion, in form and substance satisfactory to Company, of legal counsel approved by Company, that such transfer will not prevent Company from electing to be treated as an ``S'' corporation pursuant to Section 1362 of the Internal Revenue Code of 1986, as amended, or, if at the time such transfer is made, Company already is an ``S'' corporation, will not cause Company to lose its status as an ``S'' corporation and (iii) the trustees of such trust execute a written instrument agreeing to be bound by all of the terms of this Agreement which are applicable to its grantor;

d. any Disposition by a deceased Shareholder to his estate or from his estate to any individual nominee in order to comply with the provisions of 1361 of the Internal Revenue Code of 1986, as amended; provided that such transferee remains bound to all the provisions of this Agreement, including without limitation, Article 2 hereof;

e. a Disposition resulting from a bona fide pledge of all or a portion of a Shareholder's Securities as security for any loan to the Company or any Subsidiary of the Company;

f. subject to the prior approval of the Board of Directors, a Disposition resulting from a Shareholder's bona fide pledge of all or a portion of his Securities as security for indebtedness of such Shareholder incurred contemporaneously with the making of such pledge; provided that the pledgee agrees with the Company in writing that prior to foreclosing or otherwise realizing upon the Securities so pledged as a result of a default in the payment or other terms of the obligation secured by such pledged Securities, the pledgee will offer to sell such Securities to the Company and the Shareholders (other than the pledging Shareholder) as if the pledgee were a Shareholder proposing to make a Disposition of the Securities in the manner stated in Article 2 herein and the pledging Shareholder shall be bound by and shall join in the conveyance of the pledged Securities so purchased by the Company and/or the other Shareholders; and

g. a Disposition of Securities to the Company.

1.14. ``Person'' means any individual, corporation, partnership, joint venture, association, joint-stock company, unincorporated organization or government (or any agency or political subdivision thereof).

1.15. ``Preemptive Share'' means, in any particular instance, the proportion which the number of shares of Securities owned by a Shareholder bears to the total number of shares of Securities outstanding.

1.16. ``Pro Rata Part'' means, in any particular instance, the proportion which the number of Securities owned by a Shareholder bears to the aggregate number of Securities owned by (a) for purposes of Section 2.3, 2.4 or 2.7 hereof, all Shareholders electing to purchase Securities under each such Section, (b) for purposes of Section 2.5 hereof, all Shareholders and (c) for purposes of Article 3 hereof, all Shareholders electing to participate in any public offering of shares of Common Stock thereunder.

1.17 ``Securities'' means (a) the Common Stock, (b) any other securities of the Company which generally entitle the holder thereof to vote for the election of directors at a meeting of shareholders, whether now or hereafter authorized and (c) any rights, warrants, options, convertible securities or indebtedness, exchangeable securities or indebtedness, or other rights, which are exercisable for or convertible or exchangeable into, directly or indirectly, Common Stock, such other securities and securities convertible into Common Stock or such other securities; the number of shares of a Security which is a right, warrant, option or convertible or exchangeable securities or indebtedness shall be the number of shares of Common Stock or such other securities which would result upon the immediate exercise of such right, warrant, option, or convertible or exchangeable securities or indebtedness.

1.18 ``Securities Act'' means the Securities Act of 1933, together with any amendments thereto and rules and regulations thereunder and any similar federal statute, rules or regulations in force in the future.

1.19 ``Subsidiary'' when used in reference to any other Person shall mean any corporation of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors of such corporation are owned directly or indirectly by such other Person.

1.20 ``Successor'' shall have the meaning given to it by Section 8.1 hereof.

1.21 ``Valuation Date'' shall mean (i) in respect of ``Book Value,'' the last day of the fiscal quarter of the Company immediately preceding, and (ii) in respect of ``Current Market Price,'' any date within 30 days preceding, the closing of any purchase and sale of Securities pursuant to Section 2.3.

ARTICLE 2

TRANSFER OF SECURITIES

2.1. Restrictions on Transfer of Securities.

a. There may be no Disposition of the Company's Securities by any Shareholder except as permitted by this Agreement. Each Shareholder represents to and covenants with each other party hereto that none of the Securities which he now owns or hereafter acquires, are, or at any time will be, subject to any restriction or limitation other than those set forth in, or permitted by this Agreement, none of which contains or at any time will contain any provision inconsistent with the provisions of this Agreement. No Shareholder will create or permit to exist any lien, restriction, encumbrance or limitation with respect to any Securities owned by him not specifically contemplated or permitted by this Agreement or will give any proxy with respect to Securities owned by him which is inconsistent with the provisions of this Agreement.

b. The Company will not issue any New Securities without the prior unanimous consent of each Investor Shareholder.

2.2 Certain Permitted Dispositions. The restrictions contained in this Agreement with respect to transfers of Securities shall not apply to Permitted Dispositions; provided that each transferee in a Permitted Disposition shall, prior to the Disposition of Securities to such transferee, execute and deliver to the Company a valid and binding agreement satisfactory to the Company to the effect that any Securities so disposed of shall continue to be subject to all of the provisions of this Agreement.

2.3 Management Shareholders.

a. At any time within one year after a Management Shareholder's relationship with the Company as a director, officer or employee (any such relationship being herein referred to as ``Employment'') shall have been terminated for any reason, including by death, Disability, retirement, termination for Just Cause or otherwise, the Company and/or the other Shareholders shall have the right, but not the obligation, to purchase, and such Management Shareholder and/or such Management Shareholder's Successor(s) pursuant to paragraph (iii), (iv) or (vi) of Section 1.13 shall be obligated to sell, all of the Securities then held by such management Shareholder and/or such Successor(s) (the ``Subject Securities'') on the terms set forth herein.

b. Within ten (10) days following the termination of Employment of any Management Shareholder, the Company shall give written notice of such termination to all Shareholders of record, indicating when and how many shares of the Subject Securities it proposes to purchase, if any, and the purchase price therefor, if relevant. If the Company's notice does not provide for the purchase by the Company of all the Subject Securities, then, within 30 days following delivery of the Company's written notice, each Shareholder of record shall notify the Company as to the number of Subject Securities it proposes to purchase and, if the Company has elected not to purchase any Subject Securities, the proposed date for the closing of such purchase. Within 10 days

after the termination of such 30-day period, if the Company and/or the other Shareholders propose to purchase all of the Subject Securities, the Company shall give written notice thereof to the relevant Management Shareholder and/or his Successor(s) and to the other Shareholders purchasing any Subject Securities, indicating the number of Subject Securities to be purchased by each such Shareholder. If the Company and one or more of the other Shareholders have elected to purchase a number of Securities which in the aggregate exceeds the total number of the Subject Securities, the Company shall be entitled to purchase the number of Subject Securities elected to be purchased by it, and each of the other Shareholders electing to purchase the Subject Securities shall be entitled to purchase his Pro Rata Part of the remainder, if any, of the Subject Securities; provided that no such Shareholder shall be required to purchase a number of Subject Securities greater than the number originally elected to be purchased by such Shareholder. If the Company and/or the other Shareholders do not elect, pursuant to the procedure outlined in the foregoing provisions of this Agreement, to purchase all of the Subject Securities, the Company shall repeat such notice procedure.

c. The purchase price to be paid for each share of Securities purchased pursuant to this Section 2.3 shall be the lower of the Book Value or Current Market Price as of the relevant Valuation Date, if the following events occur:

i. if such Management Shareholder is terminated for Just Cause, or could have been terminated for Just Cause at the time he was terminated regardless of any actual or apparent reason for termination;

ii. if such Management Shareholder voluntarily terminates his Employment prior to the third (3d) anniversary of this Agreement for any reason other than retirement upon reaching the age of at least 60, death or Disability.

If a Management Shareholder's Employment is terminated for any other reason than those set forth above, the purchase price to be paid for each share of Securities purchased shall be the Current Market Price as of the Valuation Date.

d. If a Management Shareholder's Employment is terminated due to (i) death or Disability, (ii) retirement upon reaching the age of at least sixty (60) or (iii) termination by the Company for any reason other than Just Cause, then such Management Shareholder and/or his Successor(s) shall have the right to put all, but not less than all, of his Securities to the Company at any time within sixty (60) days of such termination. The Company shall purchase any such Shares put to it by such Management Shareholder and/or his Successor(s) for such Shares' aggregate Current Market Value.

e. Each of the parties to this Agreement, his heirs and assigns, agrees that he will, on a basis which is prorated with the percentage of Securities owned by him, indemnify, defend and hold the Company and each of the members of the Board of Directors harmless from and against any liability arising out of or in any way connected with the determination of the Book value or Current Market Value of Securities pursuant to Section 2.3, except, in the case of the Company, for liability arising out of the bad faith or gross negligence of the Company or any of its officers, directors, employees and/or

agents and, in the case of any member of the Board of Directors, for any liability arising out of the bad faith or gross negligence of such member.

f. The closing of each purchase and sale of Securities pursuant to Section 2.3(a) shall take place on a date not less than 20 days nor more than 30 days after delivery to the relevant Management Shareholder and/or his Successors and the other Shareholders of the Company's written notice relating thereto. The Closing of each purchase and sale pursuant to Section 2.3(d) shall occur at a date specified by the Company within 30 days of the Company receiving a demand to purchase securities from a Management Shareholder and/or his Successor(s). At the Closing, the Company and each purchasing shareholder, as the case may be, shall pay the purchase price for each share to be acquired by it or him in the manner set forth in Section 2.3(g). At the Closing, the Management Shareholder or his Successor shall deliver to the purchaser(s) of such shares the certificates reflecting his ownership of the shares of Securities being purchased properly endorsed for transfer or accompanied by appropriate stock transfer powers duly endorsed, in each case with signatures guaranteed by a commercial bank, trust company or registered broker-dealer, together with such other documents as the purchaser(s) may reasonably require. The shares so delivered shall be free and clear of all liens, security interests and adverse claims of any kind and nature (except for liens securing debts of the Company or its Subsidiaries to third party lenders not Affiliated with such Management Shareholder).

g. If a Management Shareholder's Employment is terminated due to an event described in the second sentence of Section 2.3(c), the purchase price for any Securities sold by him and/or his Successor(s) pursuant to Section 2.3(a) shall be payable in cash. If a Management Shareholder's Employment is terminated due to an event described in the first sentence of Section 2.3(c), the purchase price for any Securities sold by him and/or his Successor(s) pursuant to Section 2.3(a) shall be payable as follows (i) if Shareholders are the purchasers, the purchase price shall be paid in cash and (ii) if the Company is the purchaser, the purchase price shall be paid at the Company's sole option, either in cash or with the Company's subordinated promissory note, payable in twenty (20) equal (or as nearly equal as possible with any excess payable with the last installment) quarterly installments. If a Management Shareholder and/or his Successor(s) puts his Securities to the Company pursuant to Section 2.3(d), the purchase price for any such Securities shall be payable as follows:

i. If the Company owns an insurance policy insuring against the loss of life or Disability of such Management Shareholder, it shall, with all due diligence, prosecute a claim for the proceeds of such policy and, promptly upon its receipt of such proceeds (after payment of any amounts due to any assignee or beneficiary of the policy to whom the policy was assigned or who was named a beneficiary thereof in connection with any loan obtained by the Company or any Subsidiary), pay the purchase price in cash with up to one hundred percent (100%) of such net proceeds. If the net proceeds of such insurance policy shall exceed the Purchase Price, such excess shall be retained by the Company.

ii. Subject to the preceding clause i, if, in the reasonable discretion of the Board of Directors, the Company does not have or cannot raise sufficient funds to pay all or a portion of the purchase price in cash without materially adversely harming the Company, then the Company shall pay the purchase price (or any portion thereof not paid in cash) by delivering a promissory note payable in four (4) equal quarterly installments.

Any promissory note delivered pursuant to this Section 2.3(g) shall bear interest payable with respect to any unpaid portion of the purchase price for the period beginning on the closing date established in Section 2.3(f) and ending on the date of full payment of the purchase price. Such interest shall be at a rate equal to (i) the lowest rate then required by the Internal Revenue Service to avoid the imputation of interest or nine percent (9%), whichever is higher, when there is no default by the Company with respect to the purchase of Securities owned by such Shareholder or his Successors pursuant to Section 2.3 and (ii) the interest rate determined above plus 200 basis points per annum during any period of default by the Company. Such interest shall be paid with and in the same manner as the purchase price. Each quarterly payment shall first reduce accrued interest and then principal. The Company shall retain the right to prepay all of any part of the purchase price at any time without premium or penalty. The obligation of the Company to pay the purchase price for securities in accordance with the timetable set forth in this Section 2.3(g) is subject to any restrictions and limitations imposed (i) by applicable law, (ii) by Cash Flow Limitations and (iii) any agreements giving rise to actual or contingent indebtedness to which the Company, or any of its Subsidiaries is a party, whether as principal or as guarantor, with any Person that is not a party nor an Affiliate of a party to this Agreement. In order to avoid violating the limitations imposed by clauses (i), (ii) and (iii) of the preceding sentence, the Company may suspend payments of all or any portion of the purchase price required by any promissory note issued pursuant to this Section 2.3(g), until it can do so without violating those restrictions and limitations or causing an event of default thereunder. Unless prohibited by law, interest shall continue to accrue at the non-default interest rate and be paid during such period of suspension and the Company shall resume payment of both regularly schedule payments and arrearages as soon as it can do so and to the full extent that it can do so without exceeding the limits established hereby. Upon such redemption, the Company shall first make payment of any arrearages owed to any Shareholder in the order in which arrearages occurred and then make regularly scheduled payments.

h. So long as any promissory note issued by the Company pursuant to Section 2.3(g) remains outstanding:

i. if the Company is an ``S" Corporation at the time, the Company shall not distribute to any Shareholder more than the percentage of his allocable share of the Company's taxable income necessary to provide for the payment of all taxes attributable to such income (computed at the highest federal income tax rates plus the highest state income tax rates of any state where any shareholder is a legal resident, which may or may not be the actual rates applicable to any Shareholder) unless it prepays up to the full amount outstanding on such promissory notes an amount equal to the product of (x) the number of shares of Securities purchased by the Company from such Shareholder or his Successor upon the issuance of such promissory notes and (y) an

amount equal to the distribution, per share, in excess of that allowed by this Section 2.3(h)(i); or

ii. if the Company is not an ``S'' Corporation at the time, the Company shall not distribute to any Shareholder any amount unless it prepays up to the full amount outstanding on such promissory notes an amount equal to the product of (x) the number of shares of Securities purchased by the Company from such Shareholder or his Successor upon the issuance of such promissory note and (y) an amount equal to the distribution, per share, it makes to any Shareholder.

2.4. First Refusal Rights. Except as otherwise permitted under this Agreement a Shareholder may sell or otherwise transfer Securities only after_____ (date) and in compliance with the provisions of this Section 2.4:

a. A Shareholder desiring to sell or otherwise transfer Securities in compliance with this Section 2.4 (a ``Selling Shareholder'') after_____ shall first deliver written notice to the Company (hereinafter referred to as the ``Notice of Offer'') which Notice of Offer shall specify (i) the number of shares of Securities owned by the Selling Shareholder which he wishes to sell (the ``Offered Securities''); (ii) the proposed cash consideration per share being offered for the Offered Securities (the ``Offer Price''); and (iii) the intended purchaser, who must be a bona fide purchaser, of the Offered Securities and all other terms and conditions of the offer. The Notice of Offer shall constitute an irrevocable offer by the Selling Shareholder to sell to the Company and other Shareholders the Offered Securities at the Offer Price. Within five business days of its receipt of the Notice of Offer, the Company shall send a copy of the Notice of Offer to each Shareholder.

b. Within 30 days following its receipt of the Notice of Offer, the Company shall notify the Selling Shareholder and the other Shareholders as to the number of the Offered Securities which it is electing to purchase (such notification shall be referred to hereinafter as the ``Company Acceptance''). The election to purchase Offered Securities shall be made only to the extent Permitted by applicable law and by the Disinterested Board. The Company Acceptance shall be deemed to be an irrevocable commitment to purchase from the Selling Shareholder the number of the Offered Securities which the Company has elected to purchase pursuant to the Company Acceptance.

c.. If the Company does not deliver a Company Acceptance within 30 days following its receipt of the Notice of Offer or if the Company Acceptance does not provide for the purchase by the Company of all of the Offered Securities, then, within 15 days following the expiration of such 30-day notice period, each other Shareholder of record shall notify the Company and the Selling Shareholder as to the number of Offered Securities it is electing to purchase (such notification is hereinafter referred to as the ``Shareholder's Acceptance''). If the Company does not receive a Stockholder's Acceptance from any of the other Shareholders within such period, such other Shareholders who did not deliver a Shareholder's Acceptance shall be deemed to have declined to purchase any of the Offered Securities. A Stockholder's Acceptance shall be deemed to be an irrevocable commitment to purchase from the Selling Shareholder the

number of Offered Securities which such Shareholder has elected to purchase pursuant to its Shareholder's Acceptance, subject to allocation of Offered Securities among Shareholders accepting the Notice of Offer as hereinafter provided.

d. If the Company and one or more of the other Shareholders have elected to purchase a number of Offered Securities which in the aggregate exceeds the total number of Offered Securities, the Company shall be entitled to purchase the number of Offered Securities contained in the Company Acceptance and the remainder of the Offered Securities shall be allocated among the other Shareholders accepting the Selling Shareholder's offer (the ``Accepting Shareholders'') so that each Accepting Shareholder shall be entitled to purchase its Pro Rata Part of the remainder of the Offered Securities; provided, however, that no Accepting Shareholder shall be required or entitled to purchase a number of Offered Securities greater than the number set forth in its Shareholder's Acceptance. The Company shall promptly notify each such Accepting Shareholder of the number of shares allocated to it, and each such Accepting Shareholder shall be obligated to purchase such Offered Securities allocated to it at the Offer Price for such shares at a closing as set forth in Section 2.4(f).

e. If the Company and the Accepting Shareholders do not elect to purchase all of the Offered Securities available for purchase under this Section 2.4, the Selling Shareholder (a) shall be under no obligation to sell any of the Offered Securities to the Company or any Accepting Shareholder, unless the Selling Shareholder so elects, but (b) may, within a period of six months from the date of the Notice of Offer, subject to the provisions of Section 2.5, if applicable, sell the Offered Securities to the intended purchaser named in the Notice of Offer (the ``Third Party Transferee''), for cash at a price per share not less than the Offer Price and on such other terms and conditions as are no more favorable to the proposed Third Party Transferee than those specified in the Notice of Offer. Upon any such sale, the Third Party Transferee of such Securities shall execute an agreement in form and substance satisfactory to the Company and the Shareholders pursuant to which such Third Party Transferee agrees that the Securities it acquired from the Selling Shareholder are subject to the provisions of this Agreement. If the Selling Shareholder does not complete the sale of the Offered Securities within such six-month period, the provisions of this Section 2.4 shall again apply, and no sale of Securities of the Selling Shareholder shall be made otherwise than in accordance with the terms of this Agreement.

f. The closing of purchases of Offered Securities by the Company and/or other Shareholders pursuant to this Section 2.4 shall take place within 30 days after the delivery of the Company Acceptance or 60 days after the date of the Notice of Offer, whichever is later, at 11:00 A.M. local time at the principal office of the Company, or at such other date, time or place as the parties to the sale may agree. At such closing, the Selling Shareholder shall sell, convey, transfer. and deliver to each purchaser full right, title and interest in and to the Offered Securities so purchased, free and clear of all liens, security interests or adverse claims of any kind and nature (except as otherwise set forth in this Agreement or in the Notice of Offer), and shall deliver to each purchaser a certificate or certificates representing the Offered Securities sold, in each case duly

endorsed for transfer or accompanied by appropriate stock transfer powers duly endorsed and, in the case of a Selling Shareholder which is an individual, with signatures guaranteed by a commercial bank, trust company or registered broker-dealer. Each purchaser of the Offered Securities shall deliver to the Selling Shareholder, in full payment of the purchase price of the Offered Securities purchased, a certified or bank check payable to the order of the Selling Shareholder in an amount equal to the product of the Offer Price and the number of Offered Securities being acquired by such purchaser.

2.5. Right to Join in Sale.

a. If the Company and the Shareholders other than the Selling Shareholder do not elect to purchase all of the Offered Securities in accordance with Section 2.4, or a Shareholder or Shareholders propose to make a Permitted Disposition or Dispositions pursuant to Section 1.13 m, then in each case in which the Selling Shareholder or group or Selling Shareholders proposes, in a single transaction or a series of related transactions, to sell, dispose of or otherwise transfer 10% or more of the Securities then outstanding, such Selling Shareholder(s) shall refrain from effecting such transaction unless, prior to the consummation thereof, each other Shareholder of record shall have been afforded the opportunity to join in such sale, as hereinafter provided.

b. Prior to the consummation of any transaction subject to this Section 2.5, the Selling Shareholder(s) shall cause the person or group that proposes to acquire Securities in a transaction subject to this Section 2.5 (the ``Proposed Purchaser'') to offer (the ``Purchase Offer'') in writing to each other Shareholder of such Securities to purchase from such Shareholder such Shareholder's Pro Rata Part of the total number of Securities proposed to be purchased by the Proposed Purchaser at the price per share (the ``Offering Price'') and on such other terms and conditions (the ``Offering Terms'') as the Proposed Purchaser has offered to purchase Securities to be sold by the Selling Shareholder(s). If the Proposed Purchaser is acquiring Securities in a single transaction or a series of related transactions from one or more Selling Shareholders, the Offering Price shall be the highest of the prices and the Offering Terms shall be those terms offered by the Proposed Purchaser to any Selling Shareholder in any one of such transactions which are most favorable to the offeree. Each Shareholder shall have at least 20 days from the receipt of the Purchase Offer in which to accept such Purchase Offer. In order to participate, a Shareholder must deliver to the Proposed Purchaser Securities of the same type or types as are being transferred by the Selling Shareholder(s). If any Shareholder elects to sell less than such Shareholder's Pro Rata Part of the Securities being purchased pursuant to such transaction, the Selling Shareholder(s) shall be entitled to sell additional shares to make up any deficiency. In the event that a sale or other transfer subject to this Section 2.5 is to be made to a Proposed Purchaser who is not a Shareholder, the Selling Shareholder(s) shall notify the Proposed Purchaser that such sale or other transfer is subject to this Section 2.5 and shall ensure that no sale or other transfer is consummated without the Proposed Purchaser first complying with this Section 2.5. It shall be the responsibility of each Shareholder to determine whether any transaction to which it is a party is subject to his Section 2.5.

2.6. Preemptive Rights.

a. Grant of Right. Each Shareholder shall have the preemptive right to purchase up to such Shareholder's Preemptive Share of any New Securities which the Company may, from time to time, propose to sell or issue.

b. Exercise of Right. In the event the Company proposes to undertake an issuance or sale of New Securities, it will give each Shareholder written notice of its intention, describing the type of New Securities and the price and the general terms upon which the Company proposes to issue or sell the same. Each Shareholder will have 30 days from the date such notice is given to give the Company written notice of such Shareholder's election to purchase all or any portion of the Shareholder's Preemptive Share of such New Securities for the price and upon the general terms specified in the notice, stating the quantity of New Securities to be purchased. Any Shareholder who does not give such notice within such 30-day period shall be deemed to have waived his preemptive rights with respect to such New Securities, provided the Company consummates the issuance thereof within 120 days after the expiration of such 30-day period at a price equal to or higher than the price specified in the notice given to the Shareholders by the Company under this Section 2.6. New Securities may be offered in units of two or more different Securities or other evidences of indebtedness, and if so offered, the preemptive rights granted hereby shall apply only to such Units.

c. Sale Upon Waiver. Notwithstanding the preceding provisions of this Section 2.6, the Company may sell any portion of an issue of New Securities with respect to which such rights have been waived in writing by any Shareholder, prior to the expiration of the 30-day period contemplated by Section 2.6(b).

d. Exercise by Other Persons. The preemptive right of any Shareholder to purchase New Securities pursuant to this Section 2.6 may not be assigned or otherwise transferred in whole or in part by such Shareholder except to the extent such Disposition of such preemptive rights is permitted by this Agreement.

2.7. ``Push-Pull'' Provisions.

a. Anything in this Agreement to the contrary notwithstanding, if any Shareholder or group of Shareholders which in the aggregate hold at least 20% of the issued and outstanding Securities (the ``Receiving Shareholder'') receives an offer to sell, dispose or otherwise transfer 100% of the issued and outstanding Securities of the Company, in a single transaction or a series of related transactions, to a third party which is not a Shareholder or Affiliate of a Shareholder (a ``Control Offer''), such Receiving Shareholder may within 10 days from the date of receiving such Control Offer communicate such conditions of such Control Offer (the ``Notice of Control Offer'') to all of the other Shareholders. If the Receiving Shareholder sends the Notice of Control Offer to all other Shareholders, the provisions of Section 2.4 and 2.5 hereof shall not apply.

b. Within 20 days of a Shareholder receiving the Notice of Control Offer, such Shareholder shall, at its option, either (i) agree to sell all of its Securities in the Company held by such Shareholder in accordance with the terms and conditions of the Control Offer or (ii) agree to purchase all of the issued and outstanding Securities of the Company held by the Receiving Shareholder and all other Shareholders who agree to sell their Securities pursuant to the Control Offer at a purchase price and with terms and conditions which shall be not less than those contained in the Control Offer. Each Shareholder shall give notice to the Receiving Shareholder and to all other Shareholders of its decision to either accept the Control Offer or to purchase all of the Securities held by the Receiving Shareholder and all other Shareholders who agree to sell their Securities pursuant to the Control Offer; provided, however, that if a Shareholder fails to elect either of the foregoing options, it shall be deemed to have elected to accept the Control Offer. If two or more Shareholders elect to purchase all of the Securities held by other Shareholders, each such Shareholder agreeing to purchase shall acquire its Pro Rata Part of such Securities.

2.8 Right to "Call" Stock. Between _____, 20__ and _____, 20__, Stockholder A may require that Stockholder B or the holder(s) of Stockholder B's stock to sell to Stockholder A all of his stock in the Company. Such purchase shall be at a price of $_____ on the Agreement Terms set forth below.

a. Stockholder A may exercise this call right by written notice given to Stockholder B or the holder(s) of his stock of his intent to purchase _____ percent (__%) of the issued and outstanding shares held of record by Stockholder B or his successor in interest.

b. Stockholder B shall deliver to Stockholder A their stock subject to this purchase right, within thirty (30) days of the notice required under (a) above. Such stock shall be delivered duly endorsed and free and clear of all liens, claims or encumbrances. Uncertificated shares shall be evidenced by a certificate from the corporate secretary attesting to the number of shares of stock held of record by the Shareholder, and a stock power to transfer the stock.

c. Upon the delivery of the stock, Stockholder A shall pay the sum of $_____ by check or bank wire and deliver a Note, without interest, for the balance of the Purchase Price. The Note shall be payable quarterly with the first payment due on the first day of the third month following the initial $_____ payment. Payments shall be in the amount of $_____, with a final payment of $_____.

2.9 Right to "Put" Stock. Between _____, 20__ and _____, 20__, Stockholder B shall have the right to require Stockholder A, or the holder(s) of Stockholder A's stock, to purchase all, but not less than all, of Stockholder B's ____ percent (__%) of the issued and outstanding stock in the Company. Such purchase shall be at a price for Stockholder B's entire ____ percent (__%) interest of $_____ on the Agreement terms set forth below:

a. Stockholder B may exercise this put right by written notice given to Stockholder A or the holder(s) of his stock.

b. Stockholder A shall purchase Stockholder A's stock subject to this purchase right, within thirty (30) days of the notice required under (a) above. Such stock shall be delivered at the time of purchase duly endorsed and free and clear of all liens, claims or encumbrances. Uncertificated shares shall be evidenced by a certificate from the corporate secretary attesting to the number of shares of stock held of record by Stockholder B, and a stock power to transfer the stock..

c. Upon the delivery of the stock, Stockholder A shall pay Stockholder B the sum of $_____ by check or bank wire and deliver a Note, without interest, for the balance of the Purchase Price. The Note shall be payable quarterly with the first payment due on the first day of the third month following the initial $_____ payment. Payments shall be in the amount of $_____.

2.10. Termination of Certain Restrictions. The restrictions on or requirements concerning transfers contained in Section 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9 of this Agreement shall terminate on the date that any shares of Securities registered under the Securities Act are sold in a public offering as a result of which more than 30% of the outstanding Securities is held by persons other than the Shareholders.

2.11. Legend on Certificate. Certificates representing ownership of Securities shall bear the following legend:

This certificate is held subject to an agreement among the Company and its shareholders dated as of_____ and this certificate and the shares of stock represented hereby are transferable only in accordance with the terms, conditions and restrictions of that agreement, a copy of which is on file at the principal office of the Company.

In addition to the foregoing, certificates respecting ownership of shares of non-registered Securities shall bear the following legend:

The shares represented by this certificate have not been registered under the Securities Act of 1933. Such shares have been acquired for investment and may not be sold, transferred, pledged or hypothecated in the absence of an effective registration statement for such shares under the Securities Act of 1933, unless in the opinion (which shall be in the form and substance satisfactory to the Company) of the Company's counsel, or other counsel satisfactory to the Company, that such registration is not required.

Each Shareholder shall, within ten (10) days after the date on which he executes this Agreement, surrender to the Company the certificates reflecting his ownership of

Securities which do not bear the foregoing legends so that such legends, as applicable, may be placed on each such certificate.

2.12. Transfers Invalid. Any attempted Disposition of Securities, or any interest or right therein, made in violation of this Agreement shall be null and void. The transferee of such shares shall not be entitled to have them transferred upon the books of the Company and no person shall be entitled to vote such shares or receive dividends thereon until such transfer is rescinded.

2.13. Representations and Warranties. Each Shareholder acknowledges and represents that:

a. He has neither been offered any Securities by any form of general solicitation or advertising nor has he received any public media advertisements or any form of mass mailing solicitation with respect to the Securities and that he is not aware of any such advertisements or solicitations;

b. His acquisition of shares of Securities has been made for his account for investment purposes only and not with a view toward the resale or distribution thereof;

c. The Securities are not registered under the Securities Act;

d. The Securities are ``restricted securities" as that term is used in Rule 144 published by the Commission;

e. He has been furnished with such information about the Company as he requested and has had the opportunity to communicate with the other officers and directors of the Company in order to verify the accuracy of or supplement the foregoing information; and

f. He has such knowledge and experience in financial and business matters that he is capable of evaluating the risks and merits of the purchase of the Securities.

Each Shareholder agrees that prior to the Securities being registered for public sale, he will not sell, assign or otherwise transfer all or any of the Securities owned by him unless he furnishes the Company with an opinion of counsel in form and substance satisfactory to the Company, except if the Company waives the delivery of such opinion.

2.14. Nominee. The Company may designate a nominee to acquire Securities in any case in which the Company shall have the right or obligation to acquire Securities, upon giving all other parties hereto notice of the name and address of such nominee and such nominee acknowledging in writing to all other parties hereto that subject to the limitations, obligations, agreements and restrictions imposed upon the Company herein or by applicable law with regard to such Securities. Any Securities acquired by such nominee shall be so held by it.

ARTICLE 3

INFORMATION

Until such time as the restrictions on transfer of shares of Securities shall have terminated under Section 2.10 the Company will deliver to each of the Shareholders

3.1. Annual Reports and Financial Statements. As soon as available, but in any event within 120 days after the end of each fiscal year of the Company, a copy of the consolidated balance sheet of the Company and its Subsidiaries as at the end of each fiscal year and the related consolidated statements of income, shareholders' investment and changes in financial position of the Company and its Subsidiaries for each fiscal year, all in reasonable detail and stating in comparative form the figures as at the end of and for the previous fiscal year accompanied by an opinion of the accounting firm used by the Company, which opinion shall state that such audit was conducted in accordance with generally accepted auditing standards and included such tests of accounting records and such other auditing procedures as were considered necessary under the circumstances. All such financial statements shall be prepared in accordance with generally accepted accounting principles in the United States applied consistently throughout the periods reflected therein except as stated therein.

3.2. Other Reports and Statements. Promptly (but in any event within ten days) after any filing by the Company with the Commission, of any publicly available annual or periodic or special report or proxy statement or final registration statement, a copy of such report or statement; and promptly (but in any event within ten days) after the any delivery of a report of financial condition or default to any creditor of the Company who initially extended credit of $500,000 or more, a copy of such report of financial condition or default.

3.3. Access to Books and Records. The Company shall afford each Shareholder (or his representatives) full and complete access, at all reasonable times and on reasonable prior notice, to the books and records of the Company and its Subsidiaries.

3.4. Confidentiality. During the term of this Agreement, the Shareholders shall keep confidential, unless compelled to disclose by judicial or administrative process or, in the opinion of their respective counsel, by other requirements of law, all information, reports and statements supplied to such Shareholders by the Company pursuant to this Article 3, other than such information, reports and statements concerning the Company which have been made public by the Company or which the Shareholder has gained access to from another source not under a similar duty of confidentiality. Prior to the Company providing access to books and records under section 3.3, the Shareholder and his representatives shall execute a confidentiality agreement which , in form and in substance, shall be reasonably acceptable to the Company and the Shareholder. If the Shareholder is a competitor of the Company, the Company may reasonably restrict access to books and records so as not to disclose confidential information which may, in the

reasonable opinion of the Company, cause damage to the Company or its business in the hands of a competitor.

ARTICLE 4

VOTING OF SECURITIES

4.1. Merger, Consolidation, Reorganization or Conversion. Each Shareholder agrees that he will vote all of the Securities owned by him in favor of any merger, consolidation, reorganization or conversion of the Company, any public offering of Securities of the Company, or any sale or lease of assets comprising a majority in value of the assets of the Company to any Person, if under applicable law shareholder approval is required to consummate such transaction and if such transaction is recommended in writing and voted for by each Investor Shareholder.

4.2. Taxed as ``S" Corporation. Upon the recommendation at any time, in writing, of each Investor Shareholder, each of the Management Shareholders shall (i) consent to the election by the Company to be taxed as an ``S" Corporation pursuant to Section 1362 of the Internal Revenue Code of 1986, as amended (the ``S Election"), and (ii) execute such documents as may be necessary to effect the S Election. Thereafter, until such time as each of the Investor Shareholders shall have recommended in writing that the Company cease to elect to be taxed as an ``S" Corporation, each of the Shareholders shall take all action necessary to maintain the S Election and shall refrain from taking any action that would defeat the S Election, including any Disposition of Securities that would defeat the S Election. During such time as a S Election is in effect the Board of Directors shall make a quarterly distribution of earnings and profits to each Shareholders the percentage of his allocable share of the Company's taxable income necessary to provide for the payment of all taxes attributable to such income (computed at the highest federal income tax rates plus the highest state income tax rates of any state where any shareholder is a legal resident, which may or may not be the actual rates applicable to any Shareholder) at least ten (10) business days prior to the due date of the Shareholders' quarterly estimated tax payment.

4.3. Restrictions on Corporate Action. Each party to this Agreement agrees to use its best efforts to prevent the taking of any action described in Sections 4.1 or 4.2 without the unanimous written consent of each Investor Shareholder.

ARTICLE 5

S CORPORATION ISSUES

5.1. The provisions of this Section apply whenever the Company operates under an S Election. In addition to any other restrictions contained in this Agreement, the Company's bylaws, or elsewhere, the following additional restrictions shall apply in order to protect the Company's S election:

(i). No Stockholder may Transfer any of his or her shares of the Stock to any person if such Transfer may reasonably be expected to result in a termination of the S Election. Such prohibited Transfers include, but are not limited to:

(a). The Transfer of any such shares to a partnership, corporation (other than another S corporation that will thereupon own all of the stock of the Company and that will elect to treat the Company as a Qualified Subchapter S Subsidiary), nonresident alien individual, estate (other than the estate of the Stockholder himself or herself) or trust (other than a trust that, under the Code, may indefinitely hold S corporation stock without terminating an S Election); and

(b). The Transfer of any such shares to a person if such Transfer will increase the number of Stockholders to more than the maximum permissible number of Stockholders of an S corporation (presently, seventy-five (75)).

(c). The pledge or other Encumbrance of any shares of the Company's stock with respect to any loan from any person or entity if it reasonably could be believed that a Transfer of such shares to such secured lender would violate the restrictions of this Section 5.1.

(ii). No attempted Transfer or Encumbrance of any shares of the Stock in breach of the provisions of this item be valid or recognized on the Company's books.

(iii). Any Stockholder who believes that an attempted Transfer or Encumbrance of any shares of the Company's Stock is invalid under this Section 6.1 may request from the Company an opinion on the application of this Section. Such request shall be made by a written notice to the Company's President, setting forth the details of the proposed Transfer or Encumbrance and the reasons why the Stockholder believes it to be invalid. The Company's President shall promptly thereafter request a written opinion from the Company's counsel (who may be an employee of the Company or independent outside counsel) and such written opinion shall be binding on the Company and on all Stockholders.

(iv). The Company may assess against any Stockholder who attempts any such invalid Transfer or Encumbrance a fee to cover its expenses plus two thousand dollars ($2,000.00) in evaluating whether or not a Transfer or Encumbrance is invalid under this section.

5.2. No Stockholder may Transfer any shares of the Stock of the Company if that Transfer may reasonably be expected to result in an Impermissible (as defined below) number of persons holding the shares of the Stock held by the Transferor immediately prior to the Transfer. A number of persons holding shares of the Stock is "Impermissible" if it exceeds that percentage of the maximum permissible number of Stockholders of an S corporation (presently, seventy-five (75)), as the percentage of the Transferor's shares of the Stock (determined immediately prior to the Transfer) bears to the total number of issued and outstanding shares of the Stock.

5.3. Any Stockholder who is a U. S. citizen not residing in the United States and who ceases for any reason to be a U. S. citizen, and any Stockholder who is not a U. S. citizen who ceases to be a resident of the United States, shall be deemed to have offered to sell all of his or her shares of the Stock to The Company for Book Value and on the and upon the terms set forth in Section___ of this Agreement. The Company shall be deemed to

have accepted such offer and such shares shall be canceled and shall become Treasury stock of The Company. Such cancellation shall be effective on the date immediately preceding the date of such Stockholder's change in citizenship or residency. Notwithstanding the provisions of Section 2, the Company shall pay such Stockholder for his or her purchased shares in cash or by corporate check, within sixty (60) days of the date such shares are canceled.

5.4. Any Stockholder who files or on whose behalf is filed any voluntary petition in bankruptcy or against whom is filed any involuntary petition in bankruptcy, under applicable federal or state law, and any Stockholder who attempts to use any provision of federal or state bankruptcy acts, or who attempts to assign any assets for the benefit of creditors, shall be deemed to have offered to sell all of his or her shares to the Company for the Agreement Price and on the Agreement Terms. The Company shall be deemed to have accepted such offer, and such shares shall be canceled and shall become Treasury stock of the Company. Such cancellation shall be effective on the date immediately before the date on which such petition was filed or such Transfer was attempted.

5.5. Any Stockholder who takes any action, does anything or fails to take any action or do anything, the result of which would otherwise be to cause the Company 's S Election to be terminated involuntarily, and who can take any action that would cure such defect and preserve the Company 's S Election, shall take such curative action and do such things as may be required to preserve the Company 's S Election. Any Stockholder who believes that an action taken or not taken or a thing done or not done by another Stockholder will cause the Company's S Election to be terminated involuntarily and further that there may be an action that can be taken to cure such defect and preserve the Company's S Election, may request from the Company an opinion on the application of this item 5.5. Such request shall be made to the Company's President by a notice in writing, setting forth the details of the action or inaction which the Stockholder believes jeopardizes the Company's S Election and the action that may cure such defect and preserve the Company's S Election. the Company's President shall promptly thereafter request a written opinion from the Company's counsel (who may be an employee of the Company or independent outside counsel) and such written opinion shall be binding on the Company and on all Stockholders. If it is the opinion of the Company's counsel that the questioned Stockholder action or inaction may indeed jeopardize the Company's S Election, then the Company shall assess against the Stockholder who has done such act a fee to cover its expenses plus two thousand dollars ($2,000.00) in evaluating whether or not such action jeopardizes the Company's S Election and what curative steps may be taken. The opinion of the Company's counsel as to the curative steps that may be taken shall be conclusive on all parties.

5.6. Every stockholder agrees to take such actions, as a Stockholder, director, officer, or otherwise, to preserve the Company's S Election and to preclude the Company from doing anything that could reasonably be expected to result in the termination of its S Election. Any Stockholder who believes that a contemplated action of the directors or officers of the Company would jeopardize its S Election may request an opinion on the application of this Section from the Company. Such request shall be made to the Company's President in writing, setting forth the details of the proposed action and the reasons why the

Stockholder believes such action to jeopardize the Company's S Election. the Company's President shall promptly thereafter request a written opinion from the Company's counsel (who may be an employee of the Company or independent outside counsel), and such written opinion shall be binding on the Company and on all Stockholders. the Company shall pay all costs of obtaining such opinion, unless it can be shown that the person requesting such opinion acted in bad faith, in which case all actual costs of such opinion shall be assessed against the person requesting it.

5.7. If, notwithstanding the provisions of this Section, any Stockholder's Encumbrance, Transfer, vote as a director or officer, or other action results in or contributes to the termination of the Company's S Election, such Stockholder shall be liable to the Company for liquidated damages.

(i). Such liability for liquidated damages shall exist on a "no fault" basis, regardless of whether such Stockholder's termination of the Company's S Election was caused by acts which were intentional, unintentional, with or without malice or bad motives.

(ii). The liquidated damages shall be an amount equal to fifty thousand dollars ($50,000). Neither the Company nor any of its Stockholders shall have any duty to mitigate damages with respect to the termination of the Company's S Election by the act of one (1) or more of the other Stockholders.

5.8 Protected Fiscal Year. Whenever the Company files its federal income tax returns on a fiscal year (other than one ending December 31), no Stockholder may transfer all or any portion of his or her shares of the Stock to any person or entity, if such transfer will or reasonably may be expected to complete or cause a cumulative transfer of fifty percent (50%) or more of ' the Company s stock ownership and also terminate the Company's right to report its profits and losses on a fiscal year (other than one ending on December 31) for federal income tax purposes. No attempted transfer of any shares of the Stock in breach of the provisions of this item shall be valid or recognized on the Company's books. Any Stockholder who believes that an attempted Transfer of any shares of the Company's Stock is invalid under this item may request an opinion on the application of this Section from the Company. Such request shall be made to the Company's President in writing, setting forth the details of the proposed Transfer, the reasons why the Stockholder believes such Transfer to be invalid. the Company's President shall promptly thereafter request a written opinion from the Company's counsel (who may be an employee of the Company or independent outside counsel) and such written opinion shall be binding on the Company and on all Stockholders. the Company may assess against any Stockholder who attempts any such invalid Transfer a fee to cover its expenses plus two thousand dollars ($2,000.00) in evaluating whether or not a Transfer or Encumbrance is invalid under this section.

5.9. Termination. Nothing in this section shall restrict the right of all of the Stockholders acting together and by written instrument, to terminate the Company's S Election, and no damages shall be due to the Company or to any Stockholder on account of such termination.

ARTICLE 6

6.1. Directorship. The Stockholders shall at all times vote their shares of the Stock, directly or by proxy, so as to cause the Company's Board of Directors to be composed of four (4) directors selected by _____, so long as they are Stockholders, and thereafter by their assignees.

6.2. Officers. The Stockholders, as directors, agree to vote at any meeting called for the purpose of electing officers, or by resolution to elect the following persons as the following officers:

_____ President
_____ Vice President
_____ Secretary/Treasurer

6.3. Executive Committee. The Stockholders shall at all times vote their shares of the Stock, directly or by proxy, and vote as directors, so as to prohibit any amendment of the Company's bylaws that would have the effect of permitting the creation of or delegation of authority to any executive committee.

6.4. Transferees, Etc. The rights and limitations imposed under this Section shall inure to and be binding upon any assignee, transferee, or other successor in interest to any of the initial Stockholders.

6.5. Enforcement. It shall be permissible for this voting agreement to be enforced by any of the Management Stockholders (or his or her assignee, transferee, or successor interest) by suit to enjoin a Stockholder from voting his or her shares of the Stock in contravention to the terms of this Section.

6.6. Employment Agreements. The Stockholders agree to cause the Company to hire each of the Stockholders on the terms of the Employment Agreements attached hereto as Exhibit ____.

ARTICLE 7

MISCELLANEOUS

7.1. Binding Effect. This Agreement shall be binding upon the heirs, assigns, personal representatives, guardians, custodians and successors-in-interest of the parties hereto and of the trustees and beneficiaries of any trust to which Securities have been transferred pursuant to this Agreement, the voting trustees of any voting trust to which Securities are transferred and the trustees of any other trust to which Securities are or have been transferred (each of the foregoing is herein called a ``Successor"). For purposes of this Agreement, a Successor of a Management Shareholder shall be deemed to be a Management Shareholder and the Successor of an Investor Shareholder shall be deemed to be an Investor Shareholder.

7.2. Termination. This Agreement and all restrictions, limitations, rights and obligations set out herein with respect to the Securities shall terminate upon the occurrence of any of the following events: (i) the bankruptcy or dissolution of the Company; (ii) a single Shareholder becoming the owner of all of the Securities which are then subject to this Agreement; (iii) the execution of a written instrument terminating this Agreement by all the Shareholders a party hereto or (iv) the tenth (10th) anniversary of this Agreement. In addition, (i) except for the provisions of Section 5 hereof, this Agreement shall be temporarily suspended with respect to any Securities upon the registration of those shares for public sale becoming effective; provided, however, that all such provisions, including Section 5, shall terminate with respect to any such Securities upon the sale thereof to a Person who is not a party to this Agreement at any time following the registration of those shares for public sale becoming effective.

7.3. Certificate of Incorporation. The Company and each of the Shareholders agree that the Certificate of Incorporation of the Company shall not be amended in any manner which is inconsistent with the terms of this Agreement while this Agreement remains in effect.

7.4. Injunctive Relief. It is acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations imposed on them by this Agreement and that in the event of any such failure, an aggrieved Person will be irreparably damaged and will not have an adequate remedy at law. Any such Person shall, therefore, be entitled to injunctive relief and/or specific performance to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

7.5. Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. Each Shareholder hereby agrees to vote all shares of Voting Stock now or hereafter owned by such Shareholder at all times in whatever manner is necessary to accomplish the purposes of this Agreement, and to refrain from voting his or its shares of Voting Stock in any manner not consistent with any provision of this Agreement.

7.6. Governing Law, Venue. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without giving effect to the choice of law principles thereof. All parties hereto agree that any action at law or in equity to enforce the terms of this Agreement, to settle a dispute arising under this Agreement or to determine the rights of any party or parties under this Agreement shall only be heard in a Delaware State or Federal Court sitting in Wilmington, Delaware which shall have exclusive jurisdiction. Each party agrees to such jurisdiction and venue.

7.7. Entire Agreement; Amendment; Waiver. This Agreement (i) contains the entire agreement among the parties hereto with respect to the subject matter hereof, (ii) supersedes all prior written agreements and negotiations and oral understandings, if any, with respect thereto, (iii) may not be amended or supplemented except by an instrument or counterparts thereof in writing signed by all the parties hereto and (iv) may not be discharged except by such written instrument or by performance.

7.8. Invalidity of Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in such jurisdiction or the validity or enforceability of this Agreement, including such provision, in any other jurisdiction, and any provision hereof which may be invalid or unenforceable in any such jurisdiction shall be automatically replaced by another provision which is as similar as possible in terms to such invalid or unenforceable provision but is valid and enforceable.

7.9. No Obligation Regarding Continuing Employment. Nothing in this Agreement (i) shall constitute an agreement by, or shall impose any obligation upon, the Company or any of its Subsidiaries to employ, or to continue to employ any party hereto, or (ii) shall constitute an agreement by, or shall impose any obligation upon, the Company or any of its Subsidiaries with respect to the terms and conditions of employment of any party hereto who is or becomes a director, officer, employee or agent of the Company or any of its Subsidiaries.

7.10. Expenses and Attorneys' Fees. Any party who breaches this Agreement shall be obligated to pay the costs, including attorneys' fees, incurred by any non-breaching parties in enforcing their rights against such breaching party.

7.11. Distribution of Income. In the event that the Company is an ``S" Corporation at the time a Management Shareholder sells any of his Securities pursuant to Section 2.3 hereto, the Company shall distribute to such Management Stockholder, in addition to the purchase price for his shares of Stock, in cash, an amount equal to the percentage of his allocable share of the Company's taxable income for the period beginning on the first day of the fiscal year of the Company in which such sale occurred and ending on the date of such sale that is necessary to provide for the payment of all taxes attributable to such income computed at the federal and state income tax rates then used by the Company in making tax distributions to its other Shareholders. Such distribution shall be made no later than the date on which the Company files its federal income tax return for the fiscal year in question.

7.12. No Violations. Nothing herein shall be deemed to obligate the Company to make, declare or pay any dividend, distribution or other payment which declaration or payment would result in the violation of any covenant contained in any agreement, indenture or other contract to which the Company is a party, including without limitation any agreement relating to debt of the Company for borrowed money, to which the Company is or may at any time be subject.

7.13. Multiple Counterparts. This Agreement may be executed by one or more of the parties hereto by any number of identical separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same Agreement.

7.14. Notice. Any and all notices or other writings, which are required to be served, or which may be served under the provisions of this Agreement, shall be in writing, and shall be sufficiently served if delivered personally or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses indicated on Schedule A, or at such other address for a party as shall be specified by like notice; provided, that notices of a change of address shall be effective only upon receipt thereof. If mailed as aforesaid, three (3) days after the date of mailing shall be the date notice shall be deemed to have been received.

7.15. Headings. The headings and captions contained herein are for convenience only and shall not control or affect the meaning or construction of any provision hereof.

IN WITNESS WHEREOF, this Agreement has been executed by or on behalf of each of the parties hereto as of the date first above written.

ATTEST:
Inc.

_____

_____{SEAL}
Secretary

lines for

_____,

By:

President
[Add signature lines and witness
each Shareholder]

WAIVER OF SPOUSE

The Undersigned, being the spouse of _____, acknowledges that I have received and reviewed the Shareholder Agreement of _____ (the "Agreement"). I understand and acknowledge that my spouse will be the sole owner of the stock as described in the Agreement and that there are restrictions on the transfer of my spouse's stock. I accept the conditions of the Agreement and waive any right to become a stockholder of _____ except as provided in the Agreement.

_____

_____{SEAL}

Witness

_____

_____ (Print Name)

Date

EXHIBIT 1
JOINDER IN COMPANY
SHAREHOLDERS' AGREEMENT

In consideration of the issuance to (him) (her) of_____ shares of (Securities) of the Company, Shareholder and the Company agree that, as of the date written below, Shareholder shall become a party as a Shareholder to the Company Shareholders' Agreement dated as of _____. Shareholder agrees to be bound by all of the terms and provisions of the Shareholders' Agreement, as though he was an original party thereto and was included in the definition of ``Shareholder" as used therein.

Executed as of the _____ day of_____, 20__.

_____Company

By:_____
(Vice) President

_____{SEAL}
Shareholder

Shareholder
SCHEDULE A
Investor Shareholders:

1. _____
2. _____
3. _____

Management Shareholders:

1. _____
2. _____
3. _____

Notice to the Company: _____
Attention: _____
Notice to_____: _____
Notice to_____: _____
Notice to_____: _____

The following form creates a Company which is managed by a Manager who may be, but need not be, a Member. Under this form, the Members have given up any right to participate in the management of the company except to approve certain "major decisions". The Members in this Company, who are not also the Manager, have a status similar to the status of a limited partner in a limited partnership.

LIMITED LIABILITY COMPANY
AGREEMENT
OF
_____ LLC

This Limited Liability Company Agreement of _____ **LLC** (this "Agreement") is made and entered into as of _____, 200_ by and among _____, _____ and _____. Capitalized terms used in this Agreement and not otherwise defined in the text of this Agreement are defined in Exhibit A and shall have the meanings set forth therein;

This introductory paragraph identifies the date upon which the agreement will be effective; the effective date may be the date the last member signed the agreement or it may be a separate date upon which the parties have agreed that the agreement will be effective. §18-201(d) states that the agreement may be entered into either before or after the filing of the certificate of formation and in either case may be made effective upon the filing of the certificate of formation.

Delaware law binds the company to the agreement even though it is not a party.

If the parties had previously entered into an oral agreement or an earlier written agreement and intend for this agreement to replace such earlier version, the agreement should be styled as an "Amended and Restated Agreement." In the latter case, the effective date may be the date of the earlier agreement or the date of formation. Next this paragraph identifies the parties to the agreement, assigns abbreviated names to them for ease of use throughout the agreement.

WHEREAS, the Company (as hereinafter defined) was formed pursuant to a Certificate of Formation (the "Certificate of Formation", dated as _____, and filed with the Secretary of State of Delaware on _____; and

WHEREAS, the parties hereto desire to set forth their agreements and understandings with respect to the Company pursuant to this Agreement.

The recital paragraphs are optional, however, in a well-drafted agreement the recitals set out a factual background for the transaction and evidence the intent of the parties to enter into a company agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

5.
FORMATION AND OTHER ORGANIZATIONAL MATTERS

a. Formation and Issuance.

LLC (the "Company") is a limited liability company formed under 7 Del. C., Chapter 18 (the "Delaware Act") pursuant to this Agreement. The Members hereby set forth the rights and obligations of the Members and certain related matters. Except as expressly stated herein to the contrary, the rights and obligations of the Members and the administration and termination of the Company shall be governed by the Delaware Act. The Members approve the actions taken by _____, as the Authorized Person, in executing the Certificate of Formation under Section 18-201 of the Delaware Act. This Agreement shall be effective as of the date and time of the filing of the Certificate of Formation.

This section confirms the intent of the Members to form a limited liability company under the Delaware Act. The actions taken by the "authorized person" as defined under §18-201(a) to form a LLC, (one or more authorized persons must execute the certificate of formation) and 204 (each certificate required by this subchapter to be filed with the Secretary of State shall be executed by one or more authorized persons), and who has executed and filed the Certificate of Formation, are ratified by the Members. The authority of the authorized person, unlike the case of an "incorporator" does not cease upon the filing of the certificate, however the authorization is only to file the certificate of formation. The authorized person is generally an employee of the service firm and has no association with the Members. As subsequent actions are taken the Company will name one or more authorized persons to take such actions.

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b. Name.

The business of the Company shall be conducted under the name "_____ LLC" or such other name as the Manager may hereafter determine.

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§18-102 specifies the legal requirements for the Company's name.

The name of each limited liability company as set forth in its certificate of formation:

(1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";

(2) May contain the name of a member or manager;

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in the State of Delaware; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust or limited liability company, which written consent shall be filed with the Secretary of State; and

(4) May contain the following words:
"Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited" or "Trust" (or abbreviations of like import).

c. Term.

The term ("Term") of the Company commenced on _____, the date of the filing of the Certificate of Formation of the Company pursuant to the Delaware Act, and shall have perpetual existence until the sooner of (i) the Members holding a majority of the Percentage Interests voting affirmatively to dissolve the Company, (ii) the sale or other disposition of all or substantially all of the Property or (iii) by virtue of an order of the Delaware Court of Chancery, provided, however, that no Member shall file or pursue any partition, dissolution or liquidation petition or action in any court except as specifically provided in this Agreement. If a Member shall file or pursue any partition, dissolution or liquidation petition or action in any court, such petition or action shall, without limitation to the remedies available to the other Members, be stayed if, and for so long as, any other Member shall institute and diligently pursue the buy-sell procedures contained in Article XI.

Under §18-201(b), a company is formed at the time of the filing of the initial certificate of formation in the office of the Secretary of State or at any later date or time specified in the certificate of formation. §18-801(a)(1) provides that a company is dissolved at the time specified in the Agreement, however if no time is specified, the company shall have a perpetual existence. §18-802 provides for the power of the Delaware Court of Chancery to judicially dissolve a company.

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d. Purpose.

The Company's business and purpose shall be to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware.

--OR--

The purpose to be conducted by the Company is to engage in the following activities:

The nature of the business and of the purposes to be conducted and promoted by the Company is to engage solely in the following activities:

The ownership, operation and management of the real estate project known as _____, located in _____ County, [State] (the "Property"), pursuant to and in accordance with its Limited Liability Company Agreement.

To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge, refinance and otherwise deal with the Property.

To exercise all powers enumerated in the Act necessary or convenience to the conduct, promotion, or attainment of the business or purposes otherwise set forth herein.

Notwithstanding anything contained herein to the contrary, the Company shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the purposes of the Company.

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§18-106, Nature of business permitted; powers.

(a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.
(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

The purpose of the Company is to engage in such business or business as a Delaware Limited Liability Company may lawfully engage and shall include the doing of any and all things incident thereto or connected therewith. The Company may engage in any and all business and activities that are permitted by the Delaware Act whether or not for profit.

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e. Names and Addresses of Members.

The names and addresses of the Members are set forth on Exhibit C.

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§18-101(11) "Member" means a person who has been admitted to a limited liability company as a member as provided in §18-301 of this title or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

§18-701 Nature of limited liability company interest. A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

Under 18-301 a person is admitted as a member upon the later of 1 formation or 2 the time set forth in the LLC Agreement. After formation 1 if not an assignee, upon compliance with the terms of the LLC Agreement and unless otherwise provided in the LLC Agreement, with the consent of all members or 2 as an Assignee, upon compliance with the terms of the LLC Agreement.

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f. Defined Terms.

Certain capitalized terms used in this Agreement shall have the definitions set forth in Exhibit A.

Consistent with good drafting techniques, terms which are used consistently throughout an agreement are defined in a single location rather than having the definitions dispersed throughout the agreement. This allows for an easier understanding of the document by the reader.

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g. Registered Office and Principal Place of Business.

The registered office of the Company in the State of Delaware shall be 4406 Tennyson Road, Wilmington, New Castle County, Delaware 19802, and its registered agent for service of process on the Company at the registered office shall be Delaware Corporate Agents, Inc. The principal place of business of the Company shall be located at _____, or such other location hereafter determined by the Manager.

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§18-104 requires that each company must have a registered agent resident and registered office in the State of Delaware as its agent for service of process. (a)(1) provides that the company must have a registered office "...which may but need not be a place of its business in the State of Delaware.."

The principal place of business of a Company is the location of its principal or main office, it is generally not the address of the Company's registered office in Delaware as provided in this Section.

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h. Title to Company Property.

All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Property in its individual name or right, and each Member's interest in the Company shall be personal property for all purposes.

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§18-701 provides in part that "A member has no interest in specific limited liability company property."

6.
CERTAIN TAX AND ACCOUNTING MATTERS

The Members intend that effective upon the execution of this Agreement the Company shall be taxed as a partnership for Federal and state income tax purposes. Neither the Company nor any Member or Manager shall take any action that may result in the Company being taxed as a corporation for such purposes. Each and all of the

provisions of Exhibit B annexed hereto and made a part hereof are incorporated herein and shall constitute part of this Agreement. Exhibit B provides for, among other matters, the maintenance of Capital Accounts, the allocation of profits and losses, and the maintenance of books and records.

7.
CONTRIBUTIONS BY MEMBERS

a. Capital Accounts.

The Company shall establish and maintain a separate capital account for each Member. As of the Effective Date, the initial Capital Accounts of the Members and their Percentage Interests in the Company shall be as set forth on Exhibit C. The capital account of each Member shall consist of each Member's initial capital contribution increased by (x) the amount of any additional cash contributions made by such Member (but not including any Priority Loans, as hereafter defined), (y) the fair market value at the time contributed of any property (other than cash) contributed to the Company by such Member (net of liabilities to which the property is subject), and (z) allocations to such Member of income and gain (including income exempt from tax). The capital account of each Member shall be decreased by (i) the amount of any cash distributions made to such Member (but not including distributions with respect to Priority Loans), (ii) the fair market value at the time distributed of any property distributed to such Member (net of any liabilities to which the property is subject), (iii) allocations to such Member of loss or deductions, and (iv) any allocations to such Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code. The capital account of each Member shall be maintained and adjusted in accordance with Section 704 of the Code. A transferee of an interest in the Company shall succeed to the Capital Account attributable to the transferred interest and there shall be no adjustment to the Capital Accounts as a result of such transfer. However, if the transfer causes a termination of the Company under Section 708(b)(1)(B) of the Code, the events described in Treasury Regulation Section 1.708-1(b)(4) shall be deemed to have occurred.

Under §18-501, a capital contribution may be in the form of "cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services." §18-502 provides for liability where the member fails to make its contribution. Under (b), unless otherwise provided in the Agreement, the liability to make the contribution does not terminate upon death.

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b. Transfers.

Subject to Article VIII, to the extent that any Member is permitted to transfer the Member's Interest with the consent of the Manager, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

c. Percentage Interests.

The Members shall have Percentage Interests in the Company as set forth on Exhibit C.

The Delaware Act, in many sections refers to "percentage or other interest in the profits of the limited liability company owned by all of the members" as the default basis upon which decisions are made by the Members. §§18-503-504 provide for the allocation of profit and loss and the allocation for distributions. These two sections are default provisions which may be modified by the Agreement. The default provision is that allocations are made on the "basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned."

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d. Withdrawal or Reduction of Members' Contributions

No Member shall have the right to resign or withdraw from the Company prior to the date of its termination.

See §18-603.

A Member shall not receive out of the Company's property any part of his contributions to capital until all liabilities of the Company, except liabilities to Member(s) on account of their contributions to capital, have been paid or there remains property of the Company sufficient to pay them.

A Member shall not be entitled to demand or receive from the Company the liquidation of his interest in the Company until the Company is dissolved in accordance with the provisions hereof or other applicable provisions of the Delaware Act.

[Priority return provision alternative 1]

Section 3.4Class A Member's Priority Capital Contribution. [Requires renumbering]

(a) In addition to the contributions to the capital of the Company required under Section 3.1(a), the Class A Member has contributed or shall contribute to the capital of the Company, prior to or on the Closing Date, the sum of $_____ in cash (the "Class A Member's Priority Capital Contribution").

(b) The Class A Member shall be entitled to receive a preferred return on the Class A Member's Priority Capital Contribution (the "Class A Member's Priority Preferred Return") calculated in a manner consistent with the calculation of the Member's Preferred Return on their Unreturned Capital Contributions, except that the rate of return used to calculate the Class A Member's Priority Preferred Return (the "Priority Preferred Return Rate") shall be a rate equal to seven and one-half percent (7.5%) per annum, compounded monthly, for the period commencing on the date hereof and ending on (and including) the Priority Capital Conversion Date. The Class A Member's Priority Preferred Return shall be paid to the Class A Member out of the Net Cash Flow and Net Proceeds from a Capital Transaction of the Company prior to any other Distribution to the Members as provided in Section 5.02 and 5.03. Notwithstanding the foregoing, the Manager may pay the Class A Member's Priority Preferred Return out of a Reserve Account set aside by the Manager for that purpose.

(c) It is intended, anticipated and expected that the unpaid Class A Member's Priority Capital Contribution, together with all accrued but unpaid Class A Member's Priority Preferred Return, will be paid and satisfied in full from and out of proceeds of the First Mortgage Loan. The Manager, with full cooperation of and in consultation with the Class B Member and the Guarantors as provided for hereinafter, will have the exclusive right, power and authority (i) to identify one or more First Mortgage Lenders and (ii) to seek, apply for, secure, obtain and close, as soon as practicable following the date hereof, a First Mortgage Loan. The Manager, the Class B Member and the Guarantors will use all commercially reasonably efforts to seek, apply for, secure, obtain and close the First Mortgage Loan as soon as practicable following the date hereof (with the expectation that the First Mortgage Loan will close within 120 days following the date hereof). Each of the Class B Member and the Guarantors expressly recognize and acknowledge its and their obligations under Section 4.09 hereof in respect of the First Mortgage Loan, all with the express understanding that, except as provided for in Section 4.9, neither the Class B Member nor the Guarantors, nor any Affiliate of the Class B Member or the Guarantors,

will be obligated to provide any (1) personal guaranty, indemnity or credit enhancement of any indebtedness under, with respect to or evidenced by the First Mortgage Loan or (2) any Additional Capital Contribution with respect to the repayment of the Class A Member's Priority Capital Contribution or the accrued but unpaid Class A Member's Priority Preferred Return.

(d) On and as of the Priority Capital Conversion Date, the sum of any then accrued but unpaid Class A Member's Priority Preferred Return and any then unpaid Class A Member's Priority Capital Contribution (in each case after reflecting and taking into account Distributions of Net Proceeds from a Capital Transaction in respect thereof) (together, the "Unreturned Priority Capital Contribution") shall automatically be converted to, and shall be deemed to be and treated as, a Pro Rata Additional Capital Contribution from the Class A Member to the Company as of such date and shall thereupon be added to the Class A Member's Unreturned Capital Contribution for all purposes of this Agreement, including earning a Preferred Return. For the avoidance of doubt, it is expressly understood and acknowledged that a consequence of the foregoing provisions in this Section 3.4(d) is that the Unreturned Priority Capital Contribution will be deemed to have been satisfied and repaid in full as of the Priority Capital Conversion Date, and the full amount of such Unreturned Priority Capital Contribution shall be deemed to be a Pro Rata Additional Capital Contribution of the Class A Member to the Company (notwithstanding that the Class B Member shall not contribute a Pro Rata Share thereof) and, as such, will thereupon and thereafter be factored into the calculation of the Class A Member's IRR and all other calculations in this Agreement related to Capital Contributions, Pro Rata Additional Capital Contributions and Preferred Returns.

e. Capital Accounts.

The provisions of this Section of the Agreement are intended to deal with issues driven by the Internal Revenue Code and are not provisions required under the Delaware Act. The reader is cautioned that the provisions contained in the forms were current on the date of printing, however tax laws change constantly, therefore, the advice and assistance of an attorney or accountant is important in the drafting of a company agreement.

Separate Capital Accounts shall be maintained for each Member having an economic interest in the Company in accordance with the provisions of Exhibit B.

f. Additional Capital Contributions

[Alternative] If the Manager determines that the Initial Capital Contributions and the Loan do not provide the Company with sufficient funds to carry out the purposes of the Company, the Manager may, in his sole discretion, request that the Members make additional capital contributions ("Additional Capital Contributions") to the Company in proportion to their respective Percentage Interests on or before a date to be specified in a written notice to Members. If such Additional Capital Contributions are not made by all of the Members in proportion to their Percentage Interests then, unless otherwise agreed by all of the Members, the amount of any such contributions made by Members shall be considered Priority Loans made under Section 3.6(c), rather than as Additional Capital Contributions. No Member shall in any event have any personal obligation to make an Additional Capital Contribution or a Priority Loan.

[Alternative] Except as provided in this Section 3.6, no Member shall be required to make an additional capital contribution to the Company. If the Manager reasonably determines that the Company lacks sufficient funds to pay (i) Company Costs and Expenses, (ii) Necessary Expenses, and/or (iii) ordinary ongoing obligations, liabilities or reasonable business needs of the Company (separately and collectively, the "Ordinary Expenses") and that Additional Funds are required to pay such Ordinary Expenses in excess of funds received by the Company from operating income and capital transaction, Manager may give notice to the Members of the need for Additional Funds in a specific amount is necessary for the Company to pay such Ordinary Expenses. The Members and/or the Manager shall have the option to contribute such Additional Funds in accordance with their respective Percentage Interests as a Priority Loan, and in the case of the Manager, in an amount not otherwise contributed by the Members. Each Member electing to make such Priority Loan shall, within ten (10) Business Days after receipt of notice from Manager of the need for an Additional Funds, contribute its Percentage Interest of the total amount of such Additional Funds to the extent requested to be made by such Member under this Section. Thereafter, the Manager may elect to make a Priority Loan in all or such lesser amount than the amount of the Additional Funds which the Members do not contribute to the Company (each a "Defaulting Member"). The amount of the Priority Loans shall not be a capital contribution and shall not adjust the Capital Account of the Members making the Priority Loans.

Priority Loans shall bear interest at two hundred basis points above the Wall Street Journal Prime Rate of Interest as published in the Money Rates Section of the Wall Street Journal on the date that the Manager notified the Members of the need for the Additional Funds. The Priority Loans shall be repaid prior to the Manager making any distributions of Available Cash, Income or Capital to the Members under this Agreement.

g. Loan; Financing.

The Members acknowledge and agree that the Company will enter into a Loan Agreement with _____ (the "Lender") to be secured by the Company's

interest in the Property in the aggregate principal amount of approximately $_____ (the "Loan"). Manager currently anticipates that the Loan may be made by _____, or an Affiliate.

If the Loan, or any replacement thereof, matures or otherwise comes due during the Term of the Company, Manager may obtain a refinancing loan to replace such Loan on terms that are commercially reasonable and is authorized and empowered in the name of this Company to execute such guarantees, documents, instruments and agreements on behalf of the Company in connection with the refinancing loan.

It is contemplated under this form that the company will invest in the purchase of a parcel of real property and enter into a mortgage loan to finance that purchase. This Section is intended to describe and authorize the loan. If no loan financing is contemplated this section may be deleted.

ALTERNATIVE CAPITAL CALL PROVISIONS WITH CRAM DOWN

In the ordinary operation of a venture there are occasions which require additional capital. In this form no member is required to make any capital contribution in addition to its initial contribution. If the Manager determines that there is a need for additional capital, a notice is sent to the Members that additional funds are needed. Each member is expected to then make a loan to the Company in proportion to its percentage interest. If any Member does not make such a loan, the Manager has the right to make a loan on behalf of such Member. The loan has priority in repayment over all other distributions to the Members and is repaid with interest, in this case, 2% over *The Wall Street Journal* Prime Rate. Under this form there is no adjustment to capital accounts if a member fails to make a loan.

The following language provides for a "cram-down" option where the loan is converted into a membership interest and the percentage interests are adjusted:

3.6 Additional Contributions and Loans: Remedies for Failure to Contribute.

(a) *To the extent that the Company requires, at any time and for any reason, funds in excess of the funds heretofore provided as set forth in Article III and any*

borrowings from third parties approved by the [Members][Manager], any Member [the Manager] may give at least fifteen (15) calendar days' notice to the [other] Members specifying in reasonable detail the amount and purpose of any such required funds. To the extent such required funds constitute "Necessary Funds" (as hereafter defined in this Article III), or to the extent such funds constitute "Discretionary Funds" (as hereafter defined in this Article III) and the Members agree that such Discretionary Funds are needed by the Company and should be advanced to the Company by the Members, the Members shall advance such funds to the Company by wire transfer to the Company's bank account on or before the date specified in the notice (the "Cash Needs Date") in amounts proportionate to the Percentage Interests of the Members in the Company at the time of such notice. The total amount to be advanced by each Member shall be such Member's "Requested Amount". The amounts so advanced shall be treated as Capital Contributions (as defined in Section 3.1) and shall be credited to the Members' respective capital accounts.

(b) If a Member (the "Defaulting Member") fails to contribute to the Company such Member's Requested Amount on or before the Cash Needs Date, the other Members (the "Non-Defaulting Members") shall have the right, without obligation, as their sole and exclusive remedy, to either (x) withdraw the Requested Amount which they had contributed; (y) confirm that the amount contributed by them is a Capital Contribution and contribute to the Company as a Capital Contribution for its own capital account the amount due from the Defaulting Member (the "Deficiency"); or (z) withdraw the Requested Amount that it contributed as a Capital Contribution and advance directly to the Company both the Defaulting Member's Requested Amount and such Non-Defaulting Member's Requested Amount as a Priority Loan. These provisions shall be applicable each time that a Member shall fail to contribute capital as required in this Agreement.

Section 3.7 Effect on Percentage Interests and Capital Accounts.

In the event a Non-Defaulting Member elects to make a Capital Contribution to the Company for its own account and to contribute to the Company as an additional Capital Contribution for its own account the Deficiency as provided in Section 3.6(b)(y) then, effective from the date of the making of such contribution, the Percentage Interest of the Defaulting Member immediately prior to the creation of such Deficiency shall be reduced by the number of percentage points obtained by dividing (i) 150% of the applicable Deficiency by (ii) the aggregate amount of the Capital Contributions made by all of the Members (including the Capital Contributions made in connection with the creation of the Deficiency), and concomitantly, the Percentage Interest of the Non-Defaulting Member[s] making the Capital Contribution shall be increased by the same number of percentage points. Further, the Capital Account balances of the Members shall be adjusted so that the Capital Account balances of the Members shall equal an amount such that if all Company assets were sold for their then Book Basis (hereinafter defined), and all liabilities allocable to such assets were then satisfied according to their terms (except that if the nonrecourse liabilities secured by, or allocable to, an asset exceed the Book Basis of such asset, such calculation shall be made assuming that the asset was transferred to the lender in satisfaction thereof), and the

proceeds distributed in accordance with Article III, all Capital Accounts would equal zero after such distribution.

As used herein, "Book Basis" shall mean, with respect to any asset of the Company, the adjusted basis of such asset for federal income tax purposes; provided, however, that (a) if any asset is contributed to the Company, the initial Book Basis of such asset shall equal its fair market value on the date of contribution (as unanimously agreed to by the Members), (b) the Book Basis of all Company assets shall be adjusted to equal their respective gross fair market values at such time as the events described in Treasury Regulation Section 1.704-1(b)(2)(iv)(f) occur, or upon the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), (c) the Book Basis of any asset distributed to a Member shall be its gross fair market value on the date of distribution, and (d) the Book Basis of assets shall be increased (or decreased) to reflect any adjustments pursuant to Sections 734(b) or 743(b) of the Code but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m). The Book Basis of all assets of the Company shall be adjusted by depreciation as provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(g) and any other adjustment to the basis of such assets other than depreciation or amortization.

Section 18-502(c) permits the imposition of penalties for a failure to make a required contribution. The penalties under the Act may include a reduction or elimination of the member's limited liability company interest.

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h. Priority Loan.

If the Non-defaulting Member(s) shall elect to make a loan to the Company as provided in Section 3.6(b)(z) above, the Non-Defaulting Member(s) shall designate such loan as a Priority Loan. Priority Loans shall bear interest at the cumulative annual interest rate equal to the lesser of (i) the rate announced in the *Money Rates Section* of *The Wall Street Journal* as its "prime rate" (the "Prime Rate") plus [10]% per annum and (ii) the maximum rate of interest permitted by applicable law, compounded monthly on the average daily outstanding balance (the "Priority Loan Yield"), and shall be paid pursuant to and in accordance with Article IV of this Agreement. Interest expense incurred on any Priority Loan shall be treated as an expense of the Company. Payments on the Priority Loans shall be made pro rata in proportion to the principal amount of and any accrued interest on all such Priority Loans, and shall be applied first to accrued interest and then to principal.

i. Definitions of Necessary Funds and Discretionary Funds.

(a) For purposes of this Agreement the term "Necessary Funds" shall mean any and all funds needed by the Company which are in excess of the aggregate amount of the Company's reserves and approved borrowings from third parties for such purpose to: (1) pay or perform all the costs and expenses incurred by the Company in

performing or procuring all labor, material and services necessary for the development, management and leasing of the Property as approved by the [Members][Manager]; (2) pay and perform when due the Company's covenants and obligations under any leases, contracts, agreements, notes, mortgages, commitments or other instruments to which the Company is or shall be a party or by which it or its assets are or shall be bound (including, without limitation, any loan made to the Company by a Member in a third party capacity which is separately evidenced by a note, mortgage or other loan documentation, but excluding Priority Loans); (3) perform ordinary repairs and maintenance to the Property in order to keep the same in good condition; (4) pay when due real estate and other taxes affecting the Property and insurance premiums thereon; (5) comply with all legal requirements and insurance requirements now or hereafter in force which shall be applicable to the Property and the operation and management thereof; (6) restore the Property in the event of a fire or other casualty, to its condition immediately prior to such casualty, if a determination is made by the Members to so restore; and (7) pay when due the Company's employees and trade and other creditors.

(b) The term "Discretionary Funds" shall mean any and all funds, other than Necessary Funds, which are or may be desired by the Company for any purpose.

j. Right to Acquire Defaulting Member's Interest.

If a Defaulting Member's Percentage Interest shall be reduced to twenty percent (20%) or less, but more than zero percent (0%), then the Non-Defaulting Member shall have the right to institute the appraisal procedure set forth in Article XV and shall have the option to acquire all (but not less than all) of the then remaining Percentage Interest of the Defaulting Member pursuant to Section 11.3.

k. Acknowledgment and Agreement.

Each Member acknowledges and agrees that the other Member would not be entering into this Agreement were it not for (i) the Members agreeing to make the Capital Contributions provided for in this Article III, and (ii) the provisions of this Article III that describe the consequences of being a Defaulting Member (the "Remedy Provisions"). The Members acknowledge and agree that the Remedy Provisions could result in a Member reducing its Percentage Interest (as defined in Exhibit A) in the Company to zero. Each Member acknowledges and agrees that in the event a Member fails to make its Capital Contributions pursuant to this Agreement, the other Member will suffer substantial damages and the Remedy Provisions are fair, just and equitable in all respects and administratively superior to any other method for determining such damages. Each Member hereby agrees that in the event its Interest in the Company is reduced pursuant to any Remedy Provision, it shall execute and deliver such conveyances, agreements, instruments or other documents which may be reasonably necessary in the judgment of the [other Members] [Manager] to confirm and render fully effective the remedy provisions set forth above, including, but not limited to, an assignment of all or a portion

of its Interest in the Company and any amendments to this Agreement and to the Certificate of Formation of the Company.

8.
DISTRIBUTIONS TO MEMBERS

a. Distributions of Available Cash from Operations.

Distributions of Available Cash from Operations shall be made as and when deemed appropriate by Manager but in any event no less frequently than quarterly. At all times taking into account prior distributions made under this Article IV, distributions of Available Cash from Operations shall be made in the following order of priority:

i. First, if an Electing Member and/or the Manager have elected to make a Priority Loan, pursuant to Section 3.6(b) hereof, to each such Electing Member or Manager, pro rata, in proportion to the total amounts available to be distributed under this Section 4.1(a), until the Electing Member or Manager has received aggregate distributions under this Section 4.1(a) or Section 4.2(a) below in the amount equal to the amount of the Priority Loan together with a cumulative, non-compounding interest at the equal to 200 basis points in excess of the Wall Street Journal Prime Rate as described in Section 3.6(b) upon his unpaid Priority Loan;

ii. Second to the Members in proportion of their Percentage Interests.

[add with alternative after Section 3.4]

Distributions of Net Cash Flow. Distributions of Net Cash Flow shall be made within fifteen (15) days after the end of each calendar month and in the following order and priority, to the extent otherwise available:

First, to the Class A Member an amount equal to the Class A Member's accrued but unpaid Priority Preferred Return;

Then, to the Members an amount equal to the sum of their accrued but unpaid Additional Preferred Returns, to each Member in the proportion that its accrued Additional Preferred Return bears to the total of all Members' accrued but unpaid Additional Preferred Returns;

Then, to the Members in an amount equal to the sum of their Unreturned Non-Pro Rata Additional Capital Contributions, to each Member in the proportion that its Unreturned Non-Pro Rata Additional Capital Contribution bears to the total of all Members' Unreturned Non-Pro Rata Additional Capital Contributions;

Then, to the Members an amount equal to the sum of their accrued but unpaid Preferred Returns, to each Member in the proportion that its accrued but unpaid Preferred Return bears to the total of all Members' accrued but unpaid Preferred Returns;

Thereafter, to the Members in accordance with their First Residual Percentages.

b. Distributions of Net Capital Transaction Proceeds.

Distributions of Net Capital Transaction Proceeds shall be made at the discretion of the Manager following the Company's receipt thereof. Subject to Section 4.2 hereof and at all times taking into account prior distributions made under this Article IV, distributions of Net Capital Transaction Proceeds shall be made in the following order of priority:

i. First, if an Electing Member and/or the Manager have elected to make a Priority Loan, pursuant to Section 3.6(b) hereof, to each such Electing Member or Manager, pro rata, in proportion to the total amounts available to be distributed under this Section 4.2(a), until the Electing Member or Manager has received aggregate distributions under this Section 4.2(a) or Section 4.1(a) above in the amount equal to the amount of the Priority Loan together with a cumulative, non-compounding interest at the equal to 200 basis points in excess of the Wall Street Journal Prime Rate as described in Section 3.6(b) upon his unpaid Priority Loan;

ii. Second, to the Members in proportion to their Percentage Interests.

[Add with alternative after Section 3.4]

Distributions of Net Proceeds from a Capital Transaction. Distributions of Net Proceeds from a Capital Transaction shall be made on the date of the Capital Transaction or as soon thereafter as is reasonably practicable, in the following order and priority:

(a) First, to the Class A Member an amount equal to the Class A Member's accrued but unpaid Priority Preferred Return (calculated to the date of the Capital Transaction);

(b) Then, to the Class A Member an amount equal to the Class A Member's Unreturned Priority Capital Contribution;

(c) Then, to the Members an amount equal to the sum of their accrued but unpaid Additional Preferred Returns (calculated to the date of the Capital Transaction), to each Member in the proportion that its accrued but unpaid Additional Preferred Return bears to the total of all Members' accrued but unpaid Additional Preferred Returns;

(d) Then, to the Members in an amount equal to the sum of their Unreturned Non-Pro Rata Additional Capital Contributions, to each Member in the proportion that its Unreturned Non-Pro Rata Additional Capital Contribution bears to the total of all Members' Unreturned Non-Pro Rata Additional Capital Contributions;

(e) Then, to the Members an amount equal to the sum of their accrued but unpaid Preferred Returns (calculated to the date of the Capital Transaction), to each Member in the proportion that its accrued but unpaid Preferred Return bears to the total of all Members' accrued but unpaid Preferred Returns;

(f) Then, to the Members in an amount equal to the sum of their Unreturned Capital Contributions, to each Member in the proportion that its Unreturned Capital Contribution bears to the total of all Members' Unreturned Capital Contributions;

(g) Then, to the Members in accordance with their First Residual Percentages, until the Class A Member shall have received aggregate Distributions pursuant to Sections 5.02 and 5.03 for the current year and all prior years in an amount which will provide the Class A Member with an IRR of nine percent (9%); and

(h) Thereafter, to the Members in accordance with their Second Residual Percentages.

[Second alternative for priority return, simple form]
The Net Cash Flow of the Company and/or the Net Proceeds of a Capital Transaction, after allowance for all reasonable costs and expenses incurred by the Company and for such reasonable reserves as the Members may agree upon, shall be distributed to the Members on at least a quarterly basis (as the Managing Member determines) in the following order of priority:
first, to the Members pro rata in proportion to their Membership Interests until the Class A Members have achieved an IRR of 11%;
second, 33.33% to the Class B Members and 66.67% to the Members pro rata in proportion to their Membership Interests.

Sections 4.1 and 4.2 are intended to provide for periodic distributions to the Members.

§18-601. Interim distributions. Except as provided in this subchapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

§18-606. Right to distribution. Subject to §§18-607 and§18-804 of this title, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

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c. Reserves.

Notwithstanding anything to the contrary contained in Sections 4.1 and 4.2, the Members, by Majority Action, may defer the distribution of a portion of Available Cash Flow or Net Capital Transaction Proceeds and use such amounts to establish reserves in such amount as determined by the Manager (the "Reserves") for the payment of Company expenses, debt payments, capital improvements, contingencies and all other purposes as determined by the Manager in accordance with the Business Plan and budget adopted under Section 5.4, except, however, no reserve shall be established except as required under the terms of any loan or security instrument which establishes a reserve which does not leave sufficient available cash flow to pay state and federal income taxes on the deemed distribution to Members.

d. Distributions in Kind.

Assets of the Company may be distributed in kind if such distribution is approved by Majority Action. In such case, the fair market value of the assets distributed in kind shall be determined by an independent appraiser selected by all the Manager, and the Capital Accounts of the Members shall be adjusted to reflect the gain or loss that would have been allocated to the Members under Section 5 hereof if such assets had been sold for such fair market value.

e. Limitations on Distributions.

Notwithstanding anything to the contrary contained herein, no distributions shall be made to the members under this Section 4 if such distribution is prohibited under the Act or other provision of applicable law.

f. Restrictions on Withdrawal of Capital.

Except as expressly provided herein, (a) no Member shall receive any recoupment or payment on account of or with respect to the Capital Contributions made by it pursuant to this Agreement, (b) no Member shall be entitled to interest on or with respect to any Capital Contribution, (c) no Member shall be entitled to withdraw any part of such Member's Capital Contributions and (d) no Member shall be entitled to receive any distributions from the Company.

g. Withholding Taxes with Respect to Members.

The Company shall comply with any withholding requirements under Federal, state and local law and shall remit any amounts withheld to, and file required forms with,

the applicable jurisdictions. All amounts withheld from Company revenues or distributions by or for the Company pursuant to the Code or any provision of any Federal, state or local law, and any taxes, fees or assessments levied upon the Company, shall be treated for purposes of this Section 4.7 as having been distributed to those Members under Section 4.1 with respect to the withheld amounts, or whose identity or status caused the withholding obligations, taxes, fees or assessments to be incurred. If the amount withheld was not withheld from the affected Member's actual share of cash available for distribution, Manager on behalf of the Company may, at its option, (a) require such Member to reimburse the Company for such withholding, which amount each Member covenants to pay immediately upon request therefor by Manager, or (b) reduce any subsequent distributions to which such Member is entitled by the amount of such withholding. Each Member agrees to furnish the Company with such representations and forms as the Manager shall reasonably request to assist the Company in determining the extent of, and in fulfilling, the Company's withholding obligations, if any. As soon as practicable after becoming aware that any withholding requirements may apply to a Member, the Manager shall advise the Member of such requirements and the anticipated effects thereof. Such Member, or in the case of a withholding obligation with respect to the Manager, the Manager, shall pay or reimburse to the Company all identifiable costs or expenses of the Company caused by or resulting from withholding taxes with respect to such Member or Manager.

9.
POWERS, RIGHTS AND DUTIES OF MEMBERS

a. Management.

The management of this company shall be vested in its Manager. The Manager [shall be a member] [need not be a member]. The rights contained in this Agreement of a member shall be in addition to the rights and powers held by a member serving as the Manager. The Manager shall have the powers and authorities as set forth in this Agreement, however without the consent of members holding a majority of the Percentage Interest the Manager may not enter into any transaction which is not in the ordinary course of business of the Company or any mater designated hereunder as a Major Decision. The Manager is designated in Exhibit A.

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§18-402. Management of limited liability company. Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other

interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to §18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

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b. Major Decisions.

i. All Major Decisions with respect to the Company's business shall require the prior written approval of Members holding a majority of the Percentage Interests. The Manager shall not have the right or power to make any commitment or engage in any undertaking on behalf of the Company in respect of a Major Decision unless or until the same has been approved in writing by Members holding a majority of the Percentage Interests.

In this form the Manager has sweeping powers to manage the Company without any consent or approval from the Members, similar to the powers of a general partner of a limited partnership. Consequentially, in a effort to create a balance and to give Members holding a majority of the Company Interest a limited amount of control, certain actions by the Manager are declared to be Major Decisions. The following list is typical of many transaction, however it is not all inclusive and the parties may need to negotiate this Section by adding or deleting matters which are to be designated as "Major Decisions."

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ii. The term "<u>Major Decision</u>" as used in this Agreement means any decision with respect to the following matters:

(1) any borrowings by the Company, other than the Loan, or any refinancing or restructuring of the loan;

(2) the terms, conditions and specifications of any development, management, construction, architectural, engineering, environmental, development, brokerage, sale, leasing, vendor or any similar agreement or plans relating to any portion of any property owned by the Company, other than any agreement which is for less than [$1,000] and is terminable on not more than thirty (30) days' notice without penalty and is contemplated by the Annual Business Plan;

(3) any contract between the Company and a Member or any Affiliate of a Member for an amount in excess of [$1,000] which may not be cancelled without penalty on thirty (30) days' notice, and approval of any amendment or modification to, or waiver of a provision of, any such contract;

(4) hiring, discharging and/or appointment of architects, accountants, attorneys, consultants and other agents of the Company, except as explicitly contemplated by the Annual Business Plan;

(5) approval of the restructuring, sale or disposition of any material portion of any Company property; and the approval of the terms of any such sale, restructuring, disposition, merger or consolidation;

(6) approval of the liquidation, conversion or dissolution of the Company; approval of the merger, conversion or consolidation of the Company with any other Person; the acceptance or rejection of any offer or proposal by a third party regarding any of the foregoing transactions; and the approval of the terms of any such sale, disposition, liquidation or dissolution;

(7) filing any petition in bankruptcy or reorganization or instituting any other type of bankruptcy, reorganization or insolvency proceeding with respect to the Company, consenting to the institution of involuntary bankruptcy, reorganization or insolvency proceedings with respect to the Company, the admission in writing by the Company of its inability to pay its debts generally as they become due or the making by the Company of a general assignment for the benefit of its creditors;

(8) any material amendment or modification to, or material waiver under, any agreement, plan or other document referred to above, except as otherwise specified above;

(9) appointment of Members to the board of any association or organization associated with the Company;

(10) any easements affecting any Company property;

(11) any restrictions proposed to be recorded, or that are recorded after the date hereof, and that affect any Company property;

(12) confessing a judgment (other than in connection with the Loan) or settling a claim against the Company, other than claims that are expressly provided for in the Annual Business Plan then in effect or fully insured against;

(13) making the decision to institute any lawsuit other than any action to collect rent or evict a tenant other than an anchor tenant;

(14) taking any action that is inconsistent with the Annual Business Plan then in effect or expending any funds in a manner that is inconsistent with or would constitute a material deviation or expansion of any budget set forth in the Annual Business Plan, including, without limitation, any construction or improvement budget;

(15) taking any action outside the scope of the Annual Business Plan resulting in the Company being unable to pay Company Costs and Expenses;

(16) adopting the Annual Business Plan as defined in Exhibit C and as specified in Section 5.4(k) hereof;

(17) any material decisions affecting any Company property;

(18) other matters having a material effect on the Company of which Manager gives Members written notice from time to time; and

(19) do any act which would make it impossible to carry on the ordinary business of the Company.

c. Merger, Consolidation or Conversion.

i. Consent Required.

The Company may not merge or consolidate with any other entity, convert to any other form of business, and may not transfer to any other jurisdiction or enter into any similar transaction without the written consent of Members holding a majority of the Percentage Interests.

Merger and consolidation is governed by §18-209 and conversion to any other form of entity is governed by the laws under which the other entity into which the Company intends to convert, such as §265 of the Delaware General Corporation Laws. Section 265 provides that the conversion be approved in accordance with the governing document, i.e., this Agreement. Under Section 18-209(b) the merger or consolidation of the LLC with

another LLC or other entity, unless otherwise provided in the Agreement, must be approved by Members holding more than 50% of the Company Interests. In some cases the Members negotiate a larger percentage requirements, typically 2/3 or 3/4.

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ii. Appraisal Rights.

Any Member who votes its Percentage Interest against any merger, consolidation or transfer, or withholds its vote upon such matter, shall have the contractual right of appraisal pursuant to 18-210 of the Delaware Act.

Unlike the GCL which by default guarantees certain stockholders appraisal rights with respect to the value of their stock in certain transactions, the Delaware Act does not. §18-210 permits the inclusion in an agreement of a contractual right to appraisal.

§18-210. Contractual appraisal rights. A limited liability company agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group of members or limited liability company interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, any conversion of the limited liability company to another business form, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

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d. Manager.

i. Authority of Manager.

(1) Except to the extent provided elsewhere, the Manager shall have the sole, absolute and exclusive power and authority to manage and conduct the operations and affairs of the Company and make all decisions regarding the Company and its business and assets. Except a specifically provided in this Agreement, no Member shall have any power or authority to participate in the management of the business of the Company. The Manager shall have all the rights and powers of a manager as provided in the Delaware Act and as otherwise provided by law. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Manager as specifically set forth in this Agreement.

(2) Subject to the terms of this Agreement and the limitations imposed by law, the Manager shall have the power and authority to: (i) authorize other persons to execute and deliver such documents on behalf of the Company as the Manager may deem necessary or desirable for the Company's business, including, without limitation, guarantees and indemnities; (ii) perform, or cause to be performed, all of the Company's obligations under any agreement to which the Company is a party; (iii) enter into contracts on behalf of the Company and make expenditures as are required to operate and manage the Company and the Property; and (iv) do any act which is necessary or desirable to carry out any of the purposes of the Company. The Manager or any of its respective affiliates shall not be entitled to receive any fees or other compensation in respect of its activities as Manager but shall be reimbursed for third party out-of-pocket expenses incurred by it to the extent set forth in any Operating Budget approved by the Members.

In this form, the Members are in a position analogous to a limited partner in a limited partnership. The members are given limited rights to approve or reject certain decisions of the Manager designated in this LLC Agreement as a "Major Decision", however they do not otherwise have any rights to participate in the management of the Company.

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ii. <u>Removal of Manager</u>. The Members holding two-thirds of the Percentage Interests shall have the absolute right, power and authority to remove the Manager "for cause". If the Manager is removed for cause, the Members shall vote, by the affirmative vote of the Members holding a majority of the Percentage Interests, and select a successor Manager, who shall be a Member. The successor Manager shall have all of the duties and obligations of the Manager, and shall meet all of the requirements of any Lender.

(1) The grounds for removal "for cause" shall mean one or more of the following:

(a) any willful and material misconduct by the Manager in the day-to-day management of the Company in the discharge of its duties and obligations as the Manager of the Company;

(b) any fraud, gross negligence or willful misconduct of the Manager concerning (i) the financial condition of the Property, or (ii) the performance by the Manager of its obligations or covenants under this Agreement or under any provision of applicable law, including, without limitation, physical waste or improper disposition of any Company property by Manager;

(c) any material misrepresentation is made by the Manager;

(d) any of the following events or actions: (i) misappropriation of funds by the Manager (including distributions to members), (ii) infraction or violation of the Loan or any of the loan documents, or (ii) a voluntary filing of any petition in bankruptcy or reorganization or instituting any other type of bankruptcy, reorganization or insolvency proceeding with respect to the Manager, consenting to the institution of involuntary bankruptcy, reorganization or insolvency proceedings with respect to the Manager, the institution of involuntary bankruptcy, reorganization or insolvency proceedings with respect to the Manager which are not dismissed within ninety (90) days after such filing, the admission in writing by the Manager of its inability to pay its debts generally as they become due or the making by the Manager of a general assignment for the benefit of its creditors.

Notwithstanding the foregoing, each of the "for cause" events above, following written notice thereof, shall be subject to the following cure periods: (A) thirty (30) days if such event is monetary in nature or (B) forty-five (45) days if such event is non-monetary in nature, in either case without the benefit of any additional notice, grace or cure periods.

Upon the removal of the Manager, the Manager shall promptly deliver to the successor Manager all of the Company's records possessed by the Manager and deliver all Company property to the successor Manager. No compensation shall be paid to the outgoing Manager in connection with the turnover of Company books, records and property.

iii. <u>Maintenance of Records</u>. The Manager shall maintain current and complete records of all transactions of the Company including but not limited to a copy of the Company's certificate of formation, this Agreement and all amendments thereto and the minute and resolutions of the Company.

iv. Accrual Basis Accounting. Except with respect to allocations of taxable income and loss pursuant to Article I, which shall be made in accordance with tax accounting principles complying with Regulations under Section 704(b) of the Code, Company records and accounts shall be maintained on an accrual basis, in accordance with generally accepted accounting principles applied on a consistent basis from year to year. The fiscal year of the Company shall end on December 31st of each year.

v. Auditors. The independent auditors for the Company shall be _____ or such other [nationally] [locally] recognized firm of independent [certified] public accountants as may be approved by the Members from time to time. The independent auditors shall: (i) [audit] [review] [compile] the records and accounts of the Company; (ii) [render their opinion] [deliver a report], as of the end of each fiscal year, on the statement of financial condition of the Company, the results of its operations and the changes in its financial condition, as prepared by the accountants for the Company; and (iii) [render their opinion] [deliver a report] on the Net Cash Flow computations made by the accountants for the Company and that distributions thereof are in accordance with Article IV of this Agreement.

vi. Bank Accounts. The funds of the Company shall be maintained in a bank or money market fund approved by the Manager. Such account or accounts shall be listed in the name of the Company and shall be subject to withdrawal only upon the signature or signatures of individuals so authorized by the Manager.

vii. Accounting Decisions. All accounting decisions for the Company (other than those specifically provided for in other Sections of this Article) shall be made by the Manager and shall be in accordance with generally accepted accounting principles applied on a consistent basis from year to year.

viii. Reports. The Manager shall prepare a statement of the financial condition of the Company as of the last day of each month and monthly income and net cash flow statements. Such statements shall be certified by a member, general partner or officer of the Manager to be true and correct and in form and substance satisfactory to all Members. Copies shall be furnished to each of the Members within fifteen (15) days after the end of each month, to the extent feasible. An unaudited annual statement of the financial condition of the Company and income and net cash flow statements shall be furnished to the other Member within sixty (60) days after the close of the fiscal year and an audited annual statement of the financial condition of the Company and income and net cash flow statement shall be furnished to the other Members within one hundred twenty (120) days after the close of the fiscal year. The Manager agrees to cooperate in providing any report specifically required to be provided by the Manager in the remainder of this Agreement and

such additional reports or information as any Member may request, at the expense of the Company; provided however, if such additional report or information, in the reasonable judgment of the Manager, requires a significant effort to prepare and is not otherwise to be provided to the Members [at no additional charge pursuant to the terms of the Property Management Agreement], then the Manager shall provide the requesting Member with a reasonable estimate of the costs of obtaining such additional report or information and shall provide such additional report or information to the requesting Member if the requesting Member agrees to bear such costs.

ix. Reserves. In accordance with Section 4.3, the Manager may establish reserves for the purposes and requirements as may be required by any secured lender providing financing for the Property or as the Members may otherwise deem appropriate (the "Reserve Accounts"). The Reserve Accounts will be increased by any deposits thereto from time to time of amounts of the revenues of the Company from operations, the net proceeds from capital transactions, and contributions and other sources, before any distributions of such amounts to the Members, as determined to be reasonably necessary by the Manager. Such Reserve Accounts may be charged with any expenditure for the operation of the Company or the Property, the maintenance or repair of any item and the purchase, acquisition, repair, maintenance or construction of items at or on the Real Estate Property and any contingent, unforeseen or other liabilities or obligations of the Company, whether such items are treated as current expense deductions or as capital expenditures under generally accepted accounting principles to the extent provided for in the Operating Budget (including variances provided for in the Property Management Agreement) or agreed to by the Members. Nothing contained in this Section shall in any way limit or restrict the right of the Manager to use other assets or funds of the Company (other than deposits to the Reserve Accounts) for any such expenditures.

x. Insurance. The Company shall maintain, and pay the premiums for, casualty insurance, liability insurance, environmental insurance and any other insurances required under the Loan or any refinancing loan for the Loan or otherwise budgeted under the Annual Business Plan.

In this form the manager has very general powers to manage and the members have little control over the management and operation of the Company. In order to create balance we have included a process for the Company to adopt a budget under which the manager is required to operate. If costs go over 110% of a budgeted amount, except in the case of an emergency, the manager must obtain member consent to amend the budget.

xi. Annual Business Plans and Budgets.

(1) The initial Annual Business Plan for the period commencing on the Effective Date and ending on December 31, 20__ shall be submitted to the Members within sixty (60) days after the Effective Date (which shall include a proposed business plan for the year and a proposed annual operating budget). The Business Plan shall include the Operating Budged, Capital Budget and the Leasing Budget as hereinafter provided. *OR The Operating Budget for the calendar year 20__ is attached as Exhibit E and has been approved by the Members. Future Operating Budgets shall be in the format and detail as set forth on Exhibit E.* The Manager shall cause to be prepared at Company expense and shall submit to the other Member for their approval the Annual Business Plan including an annual budget (the "Operating Budget") prepared on an accrual basis for the Property for the ensuing fiscal year setting forth on a monthly basis the Manager's good faith estimates of (i) the estimated gross revenues, operating expenses and debt service for the Property for such year, all in detail reasonably satisfactory to the Members, including identification of non-cash charges, (ii) the recommended capital expenditures and extraordinary expenses for such year described in reasonable detail (the "Capital Budget"), (iii) the recommended leasing expenditures for such year (the "Leasing Budget"), and (iv) such other information as the Members may reasonably require. Operating Budgets shall be based on the strategic and comprehensive business plan designed to maximize the net operating income of the Company. Until such time as the Operating Budget for the Property and for the Company for any fiscal year has been approved by the Members, neither Member shall have any authority or power to expend Company funds, except as otherwise set forth in this Agreement or pursuant to a previously approved Operating Budget. A copy of each business plan or other document containing projections for the Company or Property prepared by the Administrative Member shall be delivered to each Member once completed.

(2) Current Estimates. The Manager shall prepare a reforecast of the Operating Budget ("Current Estimate") and submit such Current Estimate to the to the other Member for such Member's approval within forty-five (45) days after the end of each of the second and third quarters of each calendar year,

(3) Budget Approval. The Members shall, following the submission of the Annual Business Plan and Budget to the Members, promptly meet and agree upon a Business Plan and Budget for the year and, to the extent that Members requests changes to the proposed Annual Business Plan and Budget with respect to matters affecting or constituting Major Decisions, the Manager shall make such changes as Members shall request. Each Member commits to attend such meeting. Subject to the foregoing provisions of this Section 5.4(k), the Members shall thereafter

annually meet and cooperate in good faith to agree upon the Annual Business Plan and Budget for the next Fiscal Year.

(4) Member Approval. The Members shall approve, disapprove or comment on the proposed annual Operating Budgets and any Current Estimate within thirty (30) days after such Member's receipt thereof. The Members may approve, disapprove or request the modification of any Operating Budget or Current Estimate in whole or in part.

(5) Operation Within Budget. Provided Company funds are available therefor, the Manager shall cause the Property to be used, managed and operated in accordance with the then, current approved Operating Budget, provided that, without the Members prior approval, the Manager may incur expenses in excess of the approved Operating Budget (i) if such expenses do not exceed aggregate operating expenses by more than five percent (5%) or any particular line item of the Operating Budget by more than ten percent (10%) or (ii) in the event of an emergency requiring immediate action to avoid imminent personal injury or property damage provided that Manager promptly notifies the Members as to such emergency, the actions taken to address it and the costs of the same. If a proposed Operating Budget is disapproved by the Members in whole or in part or is not approved within the period required under Section 5.4(k)(iv), and a proposed Operating Budget for the ensuing fiscal year is not approved by the Members prior to the commencement of the ensuing fiscal year, the Manager shall continue to cause the Property to be managed and operated pursuant to the prior year's approved Operating Budget (except for non-recurring expenditures and capital expenditures) increased by five percent (5%) from such prior year's Operating Budget until the Manager and the Members can resolve their differences, provided, however, that Manager shall be authorized to pay, as a Company expense, non controlled third party costs not within the control of Manager, such as taxes and utilities.

e. Liability and Fiduciary Duties of Manager.

Neither the Manager nor any Affiliate of the Manager shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any breach of contract, breach of duties, including fiduciary duties, actions taken or failure to act on behalf of the Company within the scope of the authority conferred on such Manager by this Agreement or by law, provided that the Manager or any Affiliate of the Manager shall remain liable for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing. Except as specifically provided in this Agreement, the Manager shall not owe any duty, including fiduciary duties, to the Company or its Members. Notwithstanding the foregoing, this Agreement does not eliminate the implied contractual duty of good faith and fair dealing with respect to the Manager.

§18-1101 includes three subsections dealing with the exclusion of fiduciary duties. Subsection (c) deals with the expansion, restriction or elimination of common law duties owed by a member or manager or other party bound by the agreement to any other person bound by the agreement. Subsection (d) deals with the elimination of liability of a member, manager or other person bound by an agreement for a breach of fiduciary duty based upon a good faith reliance on the provisions of the agreement. Finally, Subsection (e) deals with the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person bound by an agreement. In (c) the agreement may not eliminate the implied contractual covenant of good faith and fair dealing and in (d) the agreement may not eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

§18-1101(c). To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

(d) Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement.

(e) A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not

limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

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f. Conflicts of Interest.

The Manager shall not knowingly enter into any contract, agreement, lease, or other arrangement for the furnishing to or by the Company of goods, services or space with any party or entity related to or affiliated with any Member or the Manager or with respect to which the Manager or any Member or party or entity related to or affiliated with the Manager or any Member has any direct or indirect ownership or control which is known by the Manager unless such contract, agreement, or arrangement has been approved by the Members holding a majority of the Percentage Interests. By way of illustration and not as a limitation on the scope of the phrase "related to or affiliated with," if the following persons or entities have any interest in persons or entities who are supplying, or will supply goods or services to the Company, the supplying person or entity shall be deemed to be "related to or affiliated with" the Manager or a Member: any partnership, association or other entity owned in whole or in substantial part by the Manager or a Member or in which any officer, director, employee, partner or shareholder (or a member of the family of any such officer, director, employee, partner or shareholder) of the Manager or a Member has a direct or indirect interest, which interest includes, but is not limited to, a partnership, employee, agent, or substantial stockholder interest or any other form of interest.

g. Officers.

The Manager may appoint Officers of the Company. The initial Officers of the Company shall be as set forth on Exhibit F. The Manager may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Manager may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by Manager. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Manager in accordance with the Annual Business Plan. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by Manager. Any vacancy occurring in any office of the Company shall be filled by the Manager.

The Manager has the power and authority to name officers and to delegate authority to the officers. The following subsections describe the powers and responsibilities of the officers.

§18-407. Delegation of rights and powers to manage

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

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h. President.

The President shall be the chief executive officer of the Company, shall preside at all meetings, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Manager are carried into effect. The President or any other Officer authorized by the President or the Manager shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed; (ii) where signing and execution thereof shall be expressly delegated by the Manager to some other Officer or agent of the Company, and (iii) as otherwise permitted in Section 5.6.

i. Vice President.

In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Manager, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

j. Secretary and Assistant Secretary.

The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings and record all the proceedings of the meetings of the Company and of the Manager in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and shall perform such other duties as may be prescribed by the Manager or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Manager (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

k. Treasurer and Assistant Treasurer.

The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Manager. The Treasurer shall disburse the funds of the Company as may be ordered by the Manager, taking proper vouchers for such disbursements, and shall render to the President and to the Manager, when the Manager so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Executive Manager (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Executive Manager may from time to time prescribe.

l. Officers as Agents.

The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Manager not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the Officers taken in accordance with such powers shall bind the Company.

This section included a fiduciary duty obligation on the officers, this is not required under the Act.

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m. Duties of Officers.

Except to the extent otherwise provided herein, each Officer shall have a *fiduciary duty* of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Exculpation for good faith reliance upon the expert opinion of third parties.

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n. Good Faith Reliance.

A member, manager or liquidating trustee of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidating trustees reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

o. Sale of Assets.

If the Company, pursuant to Section 5.2(v), determine to sell all or substantially all of the Company's assets and if any of the Members has voted against such sale, the Company shall give such dissenting Member a notice setting forth all of the details concerning the sale including the price, terms of payment and the name of the prospective purchaser. Each dissenting Member shall have a pro rata right of first refusal to purchase the assets being offered for sale by the Company in accordance with the terms and conditions set forth in the notice. The right of first refusal shall, unless the dissenting Member agrees to the contrary, be exercised in proportion to the number of shares held by each dissenting Member wishing to participate in the purchase by giving a notice of exercise, within 30 days after notice is given by the Company to the dissenting Member. If notice of exercise is not given within such time, the right of first refusal shall expire without further action on the part of the Company. If a notice of exercise is timely given, the Company and the dissenting Member participating in the purchase shall take all action which is required to close the transaction.

See §18-1101(c).

10. INDEMNIFICATION

Under §18-108 a company has the power and authority to establish standards and indemnify any member, manager or other person from any claims or demands. The following subsections set out standards and a mechanism for indemnification including the power to advance expenses.

§18-108. Indemnification. Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

Recent Delaware court decisions have, in the corporate field, permitted a corporation to limit indemnification for a former director where the claim against the director had previously arisen but no claim for indemnification had been asserted by the former director. For this reason you should consider whether it is appropriate to include a clause which precludes the company from withdrawing any indemnification rights after they are granted.

a. Actions by Third Persons.

Unless otherwise prohibited by the laws of the State of Delaware, the Company shall indemnify any person who was or is a party (other than as a plaintiff) or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, Manager, employee or agent of the Company, or is or was serving at the request of the Company or its Manager as a Member, Manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise or other entity (an "Indemnitee") against expenses (including but not limited to reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or

proceeding, if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any claim, action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

b. Actions by the Company.

Unless otherwise prohibited by the laws of the State of Delaware, the Company shall indemnify Indemnitee who was or is a party (other that a plaintiff) or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company, to procure a judgment in its favor by reason of the fact that he is or was a Member, Manager, employee or agent of the Company, or is or was serving at the request of the Company or its Manager as a Member, Manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise or entity against expenses (including but not limited to reasonable attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith an in a manner he reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

c. Determination.

Any indemnification under the provisions of Section 6.1 or 6.2 of this Article to an Indemnitee, unless ordered by a court, shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Member, Manager, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 6.1 or 6.2 of this Article. Such determination shall be made:

i. by the Manager provided that the Manager is disinterested and not a party to such action;

ii. If the Manager is not disinterested and not a party to such action, or even if the Manager is disinterested and not a party, the Manager so directs, by independent legal counsel in a written opinion.

Courts have held that there is no independent right to advancement in the absence of a provision in the LLC Agreement.

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d. Expense Advances.

Expenses incurred by an Indemnitee in defending a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorized by the provisions of this Article. Such expenses incurred by other employees and agents may be paid upon such terms and conditions, if any, as the Managers deem appropriate.

e. Insurance.

The Company may, to the full extent permitted by the laws of the State of Delaware, but only to such extent as may be determined by the Manager, purchase and maintain insurance on behalf of any Indemnitee against any liability asserted against and incurred by him in any such capacity or arising out of his status as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of this Article.

f. Continuation of Indemnification.

The indemnification and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be a Manager, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person as well as the successors of any entity.

g. Indemnification.

Any indemnification permitted under subsection (a) shall be made only out of the assets of the Company, and no Member shall be obligated to contribute to the capital of, or loan funds to, the Company to enable the Company to provide such indemnification.

i. In no event may an Indemnitee subject a Member to personal liability by reason of the indemnification provisions of this Agreement, except for the matters set forth in Section 6.4 and 7.1 hereof.

ii. The provisions of this Article VI are for the benefit of the Indemnitees and the heirs, successors, permitted assigns, administrators and personal representatives of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Persons. The indemnification obligations under this Article VI shall survive the sale of Percentage Interests by any Member, the sale of the Property or any portion thereof by the Company, or the dissolution of the Company.

This provision for the survival of the indemnification obligation beyond the dissolution of the company will require planning at the time of dissolution and potentially the set aside of funds to cover the potential obligation.

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h. Survival.

The provisions of this Article VI shall survive for a period of two (2) years from the date of dissolution of the Company, provided that if at the end of such period there are any actions, proceedings or investigations then pending, an Indemnitee may so notify the Company and the Members at such time (which notice shall include a brief description of each such action, proceeding or investigation and the liabilities asserted therein) and the provisions of this Article VI shall survive with respect to each such action, proceeding or investigation set forth in such notice (or any related action, proceeding or investigation based upon the same or similar claim) until such date that such action, proceeding or investigation is finally resolved, and the obligations of the Company under this Article VI shall be satisfied solely out of Company assets.

11.
STATUS OF MEMBERS

a. Relationship of Members.

These limitations on the members are imposed as the company is manager managed. In a member managed Company this section would be modified or deleted.

Each Member, unless that Member is also serving a the Manager, and in that case such actions shall be taken in its capacity as Manager and not as a Member, agrees that, to the fullest extent permitted by the Delaware Act and except to the extent expressly stated in this Agreement or in any other agreement to which each Member is a part:

i. No Member shall have any authority to bind or act for, or assume any obligation or responsibility on behalf of, any other Member or the Company.

ii. Any consent, approval, determination or other action by a Member shall be given or taken in the sole and absolute discretion of that Member in its own best interests and without regard to the best interests of another Member or the Company or the financial, tax or other effect on another Member or the Company.

iii. No Member is authorized to act as the agent, representative or attorney-in-fact for any other Member.

iv. Each Member shall be responsible to, and shall indemnify and hold harmless (in accordance with Article VI above), the other Members and the Company for any liabilities or expenses of any nature arising out of or resulting from breach or violation of this Section 7.1 by the breaching Member.

b. Liability of Members.

Each Member shall have no personal liability whatsoever, whether to the Company, to other Members or to the creditors of the Company, for the debts of the Company or any of its losses in excess of the amounts such Member has contributed or agreed to contribute to the Company, unless any such Member otherwise expressly consents in writing. The foregoing shall not, however, limit the personal liability of a Member for its obligations to the Company or another Member under this Agreement or

to the Company or other Members under any other agreement to which such Member may be a party. The liability of a Member for any unpaid or unperformed Capital Contribution shall not be reduced, waived or compromised without consent of Members holding two-thirds (2/3) of the Percentage Interests.

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§18-303. Liability to 3rd parties.

(a) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) Notwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

Even if the LLC Agreement permits amendments by a vote of less than 2/3 of the company interests, the Delaware courts have held that to amend a provision requiring a greater percentage, that greater percentage must vote affirmatively to approve such an amendment.

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c. Effect of Bankruptcy, Death or Incompetence

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetence of a Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Percentage Interest shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or

incompetent Member. Except as provided in Section 8.5, the assignee shall not have the right to be admitted as a substitute member.

The default provisions of §18-304 provide that upon the "bankruptcy" of a member, that member ceases to have the status of a member. §18-801b. provides that the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up. §18-705 grants to the "personal representative" (as that term is defined in §18-101(13)) all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under a limited liability company agreement of an assignee to become a member.

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d. Access to Records.

In accordance with 18-305 of the Delaware Act, the Members shall, upon reasonable notice to the Manager, be provided with access to all tax, financial and other books and records of the Company. The Manager shall have the right to under 18-305(c) to establish, from time to time, reasonable rules concerning access to such records and may refuse to allow access to trade secrets, or other information which could damage the Company or its business.

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§18-305(a) gives members, subject to the terms of the agreement, access to:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Other information regarding the affairs of the limited liability company as is just and reasonable.

Under §18-305(c) "The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential."

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e. Withdrawal of Last Remaining Member.

Upon the death, insanity, act of bankruptcy, as defined in the Delaware Act, of the last remaining Member, or the liquidation, dissolution or reorganization of the last remaining Member which is an entity, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall be obligated to, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, to agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

This provision not only protects the LLC from an unintended dissolution, but also it protects lender.

§18-801(4) deals with the situation where the last remaining member dies or otherwise ceases to be a member. To avoid dissolution the Section provides first that the company dissolves when it has no members, but then goes on with a proviso which is the model for section 7.5.

(4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member.

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f. Meetings.

This section is taken from standard form corporate bylaws.

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i. Meetings.

Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, any Member or Members holding at least a majority of the Percentage Interests, provided, however, that if at any time there are only two (2) Members, either Member shall have the power and authority to call a meeting.

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§18-302(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote. See also, §18-302(d).

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ii. Place of Meetings.

The notice of meeting shall designate the time and place of meeting, which may be any place, within or without the State of Delaware. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Company in the State of Delaware.

iii. Notice of Meetings.

Except as otherwise provided in this Agreement, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the Manager, Member or person calling the meeting, to each Member entitled to vote at such meeting.

iv. Meeting of All Members.

If all of the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken. Meetings may take place telephonically or by other form of electronic transmission where all of the Members are able to hear or see the comments made and decision reached by all other Members.

v. Record Date.

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

vi. Quorum.

Members holding a majority or greater of all Percentage Interests in the Company's capital, represented in person or by proxy, shall constitute a quorum at any meeting of Members, provided, however, if there are only two (2) Members remaining, the presence of both Members shall be necessary for a quorum to be present. In the absence of a quorum at any such meeting, a majority of the Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

At any such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Interests whose absence would cause less than a quorum to be present.

vii. Manner of Acting.

If a quorum is present, the affirmative vote of Members holding a Majority of the Percentage Interests and entitled to vote on the subject matter voting at a Meeting or acting by Written Consent shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Delaware Act, by the Certificate of Formation, or by this Agreement.

viii. Proxies.

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be provided in writing to each Member of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

g. Action By Members Without a Meeting.

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by a sufficient number of Members entitled to vote to constitute a Majority Action or such greater or lesser proportion as may be required under this Agreement, the Delaware Act or the Certificate of Formation and delivered to the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 7.7 is effective when the last Member entitled to vote to create a sufficient proportion of Percentage Interests shall have signed the consent, unless the consent specifies a different effective date.

The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

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§18-302(d) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the Delaware Action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. *Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.*

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h. Waiver of Notice.

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

i. Resignation or Withdrawal of a Member.

A Member may not resign or Withdraw. The death, insanity, act of bankruptcy, as defined in the Delaware Act, or the liquidation, dissolution or reorganization of an entity Member shall not constitute a Withdrawal. Such event shall, however, result in the termination of the continued membership of such Member in the Company. Upon such termination of membership, *the personal representative, trustee, receiver, executor, administrator, committee, guardian or conservator of such former Member shall have the status of an Assignee.*

(i.e. there is no right to participate in management.)

j. Other Activities; Affiliates.

Each Member may have other business interests and may engage in other activities in addition to those relating to the Company, including the making or management of other investments. Without limitation on the generality of the foregoing, each Member recognizes that the other Members and their Affiliates each have an interest in investing in, owning, operating, transferring, leasing and otherwise using real property and interests therein for profit, and engaging in any and all other business activities related or incidental thereto and that each will make other investments consistent with such interests and the requirements of any agreement to which they or their Affiliates are a party. Each Member acknowledges and agrees that:

(1) neither the Company nor any Member shall have any right by virtue of this Agreement or the Company relationship created hereby in or to any other ventures

or activities in which any Member or its Affiliates are involved or to the income or proceeds derived therefrom;

(2) the pursuit of other ventures and activities by each Member or its Affiliates, even if competitive with the business of the Company, is hereby consented to by all other Members and shall not be deemed wrongful or improper under this Agreement; and

(3) no Member or Affiliate of a Member shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and each Member and each Affiliate shall have the right to take for its own account, or to recommend to others, any such particular investment opportunity.

Section 7.10 is included to avoid the corporate concept of "corporate opportunity," that is, the obligation of an officer or director of a corporation to offer business opportunities within the sphere of the corporation's business to the corporation. This section recognizes that the Members will have other business opportunities and that they have no obligation to offer those opportunities to the company.

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k. Liability and Fiduciary Duties of Members.

No Member or Affiliate of a Member shall be liable, responsible or accountable in damages or otherwise to the Company or any Member or to the Manager for any breach of contract, breach of a fiduciary duty of the Member, or for any action taken or failure to act on behalf of the Company within the scope of the authority conferred on such Member by this Agreement or by law. No Member shall owe any fiduciary duty to the Company or its Members or its Manager. *Notwithstanding the foregoing, this Section shall not limit or eliminate the liability of any Member for any act or omission which shall constitute a bad faith violation of the implied contractual duty of good faith and fair dealing.*

12.
TRANSFER OF PERCENTAGE INTERESTS

a. General Limitation on Transfer.

This Agreement has been drafted so as to severely limit the power and authority of a Member to transfer its membership interest. The membership interest is actually a separate right from the right to receive distributions. A person who holds the rights of a member, but who has not been admitted as a member, has the status of an assignee. An assignee holds the right to receive distributions but not the right to participate in the management of the company. A member can transfer its rights to distributions separately from its membership rights. Agreement which permit transfers of interests will often provide that a person who no longer holds any right to distributions also ceases to be a member. See generally §§18-301 (when a person is admitted as a member) and 18-704 (right of an assignee to become a member).

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i. Notwithstanding any other provision of this Article VIII and any provision of law that otherwise so empowers the Company, no Member (nor any liquidator, receiver, trustee in bankruptcy, debtor in possession under the bankruptcy laws, or regulatory or other authority having control over a Member or its assets) shall sell, assign, hypothecate or otherwise dispose of its interest or any part thereof in the Company without the written consent of the [other Members] [Manager], except as provided in this Article VIII, and a breach of this covenant (or the covenant in the sentence next following) shall, in addition to any other remedies the non-transferring Member shall have hereunder or at law or equity, *entitle the non-transferring Member to give notice to the transferring Member that such non-transferring Member elects to institute the appraisal procedure set forth in Article XIV* and referred to in Section 13.3 or elect to terminate the Company, to be accomplished as described in Section 10.1. For the purposes of this Article VIII, no transfer of an interest in a Member (either directly or indirectly) shall be permitted (other than by testate or intestate succession and as otherwise provided in this Article VIII) without the written consent of the [other Member][Manager] if such transfer results in a transfer of control of the Member (either directly or indirectly) or if such transfer results in 50% or more of the ownership interests in the Member (either directly or indirectly) being held by a person or entity not a beneficial owner of the Member on the date of this Agreement.

(a) No right to transfer a membership interest except as permitted in this Section and a breach of this Section will give the other member the right to have the interest appraised and purchase the interest or to cause the Company to terminate.
The section also prohibits the transfer of an interest in the member itself.

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ii. Notwithstanding the consent requirements of Section 8.1 above and subject to the rights provided in this Article VIII or 11.2 buy/sell failed member to elect the appraisal procedure set forth in Article XIV or to terminate the Company, and further subject to the conclusion of any previously initiated procedures pursuant to Section 11.1(a), in the event that any Member (or any liquidator, receiver, trustee in bankruptcy, debtor-in-possession under the bankruptcy laws or similar authority having control over either Member or its assets) shall receive from a nonaffiliated third party (the "Offeror") a bona fide written offer acceptable to it for the purchase of all of such Member's interest in the Company for cash or on credit, which offer shall describe the closing adjustments that shall occur there under, including but not limited to, the allocation of documentary, transfer or similar taxes and loan assumption fees, defeasance fees or transfer fees, and shall be accompanied by a clean, unconditional letter of credit or certified check of the Offeror for a sum at least equal to ten percent (10%) of the purchase price, then such Member shall deliver a true copy of such offer with sufficient information on which a judgment may be made as to the ability of the Offeror to make such purchase and as to the desirability of permitting the Offeror to be a Member in the Company to the other Member, which shall have the right within sixty (60) days thereafter to give notice to the offering Member that it or a designee will purchase such Member's interest at the same price and upon the same terms and conditions contained in such offer.

(b) In this paragraph if there is a bona fide third party offer that a member intends to accept for the sale of its interest, the other member must be notified and giver 60 days to purchase on the same terms.

If the non-offering Member fails to give such notice within said sixty (60) day period that it will purchase the offering Member's entire interest in the Company, then the offering Member shall be free to complete the sale of its interest in the Company upon the terms and conditions contained in the offer (provided, however, if the offering Member has not made any Priority Loans to the Company which are still outstanding, then, at the non-offering Member's election, the offering Member

shall, simultaneously with the closing of the sale of its interest to a non-affiliated third party, purchase (for cash) an undivided share of any Priority Loans held by the non-offering Member (with the percentage of such share being equal to the offering Member's Percentage Interest) for a price equal to the product of (i) the offering Member's Percentage Interest and (ii) the sum of the unpaid principal balance of the Priority Loan plus all unpaid accrued interest thereon) by the later of: (i) the date set forth in the offer to close the purchase, or (ii) ninety (90) days following the expiration of said sixty-day period, provided that if the proposed sale is not completed within said period to said nonaffiliated third party upon the terms and conditions contained in the offer, then the rights of the non-offering Member under this Article shall be fully restored and reinstated as if such offer had never been made.

If the other member does not purchase under their right given in (b) above, the first member may consummate the sale.

Contemporaneously with a Member's election to buy the other Member's Interest under this Article VIII, the purchasing Member shall deposit in escrow with a nationally recognized title insurance company selected by the selling Member to act as escrowee (the "Escrow Agent") an earnest money deposit in cash in an amount equal to ten (10%) percent multiplied by amount due to the selling Member in connection with such sale, and, if such purchasing Member defaults in its obligation to close such purchase, then the selling Member, as its sole and exclusive remedy, may retain such deposit as liquidated damages. The purchasing Member shall be entitled to enforce its rights under this Section 8.1(b) by specific performance.

In the event that any Member (the "Transferor") shall purport to transfer its Company Interest pursuant to any Article of this Agreement or otherwise to any person or entity other than one of the other Members (the "Transferee"), no such transfer shall be made or shall be effective to make such Transferee a Member or entitle such Transferee to any benefits or rights hereunder unless and until: (i) such interest is transferred in compliance with the applicable provisions of this Agreement, (ii) the Transferee agrees in writing, with a duplicate original being delivered to the remaining Member, to assume and be bound by all the obligations of the Transferor and be subject to all the restrictions to which the Transferor is subject under the terms of this Agreement and any further agreement with respect to the Property to which the Transferor is then subject or is then required to be a party (including, but not limited to, the covenants, representations and warranties set forth in Article XIV); (iii) the Transferee executes and acknowledges, if required, a certificate amending the fictitious name certificate or assumed name certificate or

certificate of formation of the Company in order to reflect such change and to take any other action that may be required in connection therewith; and (iv) all required consents, if any, to such assignment, of mortgagees or other persons or entities, shall have been obtained in writing and delivered to the remaining Member. At the request of the remaining Member, each such transferee shall also cause to be delivered to the Company and the remaining Member, at the transferee's sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Company, to the effect that (i) such transferee has the legal right, power and capacity to own the Interest proposed to be transferred, (ii) such Transfer does not violate any provision of any partnership agreement or limited liability company agreement in which the Company owns an interest, or any loan document or commitment or any mortgage, deed of trust or other security instrument encumbering all or any portion of the Property, or any other lease or contract to which the Company is a party, (iii) all required consents of any lender, lease holder or contracting party to the Company (and, if applicable, any rating agency rating the debt of the Company) to such transfer shall have been obtained in writing and delivered to the remaining Member and (iv) such transfer does not result in a Member engaging in a Prohibited Transaction under the Employee Retirement Income Security Act of 1974 as now or hereafter amended ("ERISA"). As promptly as practicable after the admission of any person as a Member, the books and records of the Company shall be changed to reflect such admission. All reasonable costs and expenses incurred by the Company in connection with any transfer (or any proposed transfer) of any Interest and, if applicable, the admission of any transferee as a Member shall be paid by the transferring Member. Failure of a Transferee, whether such transfer shall have occurred by operation of law or otherwise, to fulfill the requirements set forth in the previous sentence, shall, in addition to any other remedies the nontransferring Member may have hereunder or at law or equity, including, without limitation, the remedy of injunction, entitle the nontransferring Member to give notice to the Transferee that the nontransferring Member elects to institute the appraisal procedure set forth in Article XIV and referred to in Section 11.3 or elects to terminate the Company, to be accomplished as described in Section 10.1

_____The above paragraph provides condition for compliance upon a sale and the admission of the substituted member. The paragraph gives the remaining member the right to require that the substitute member deliver an opinion of counsel in connection with the admission that certain provision have not been violated.

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b. General Intent and Purpose.

Subject to Section 8.1, no Member may sell, assign, give, hypothecate, pledge, transfer or otherwise dispose of all or any part of its Percentage Interest (a "transfer") without the consent of the Manager in its sole discretion. The Company is formed by those who know and trust one another, who will have surrendered certain rights and agreed to share certain risks based upon their relationship and trust. Capital is material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Member's interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. The restrictions in this Agreement upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. To this end, neither record title nor beneficial ownership of any Interest may be transferred except as provided in this Article. Any transfer or attempted transfer in violation of this Section will be null and void, ab initio, and the Company shall not recognize any such transfer.

c. Representations and Warranties.

Each Member hereby represents and warrants to the Member(s) and to the Company that its acquisition of its Interest is made as principal for its account for investment purposes only and not with a view to the resale or distribution of such Interest. Each Member agrees that it will not sell, assign, give, hypothecate, pledge, transfer, or otherwise dispose of any or all of its Interest to any person or entity who or which does not similarly represent and warrant and agree as provided in this Section.

d. No Withdrawal Rights.

This Agreement provides that there are no right to withdraw prior to dissolution.

Except as provided in this Agreement, prior to the dissolution and termination of the Company, no Member may withdraw from the Company or receive any return of capital or other distribution of Company assets in respect of any withdrawal or attempted withdrawal.

e. Admission of New Member.

Admissions of members must be approved by the Manager.

Except as provided in Section 8.1, no person may be admitted to the Company as a member or Manager, or acquire any interest in the Company or become a successor Member, except upon the prior written consent of the Manager, and then only upon the terms and conditions agreed to by the Manager and in accordance with this Agreement.

f. Transfer with the Consent of the Manager.

Notwithstanding anything contained herein to the contrary, if the Manager does not approve of the proposed sale or assignment of a Member's Interest, the proposed purchaser, transferee or assignee of the Member's Interest shall have only the rights of an assignee and no right to participate in the management of the business and affairs of the Company or to become a Substitute Member under Section 18-1001 or otherwise. The purchaser, transferee or assignee shall be entitled only to receive the share of Available Cash Distributions and profits and the return of contributions to which the transferor or assignor would otherwise have been entitled. No transferee shall have any right to challenge any action taken by the Manager, shall have no right to seek the appointment of a trustee or receiver for the business or assets of the Company, no right to seek liquidation or dissolution of the Company and no right to file a derivative or other legal or equitable action against the Company, the Manager, the Member(s) or the management of the Company.

g. Restrictions to be Shown on Certificate.

The parties to this Agreement shall cause the following legend to be imprinted conspicuously on the face of all of the certificates representing any Member's Company Percentage Interest:

"Notice is hereby given that the sale, assignment, transfer, pledge or other disposition of the membership interest represented by this certificate are subject to the Company's Company Agreement dated _____. A copy of the Agreement is on file in the office of the Company."

h. Waiver of Restrictions.

At any time, and from time to time, the Parties to this Agreement may, by written unanimous agreement, waive the Percentage Interest transfer restrictions imposed by this Agreement.

i. Percentage Interest to be Issued Subject to Restrictions; Continued Applicability.

(a) All Company Percentage Interest now or hereafter issued shall be subject to this Agreement and the certificates representing such Percentage Interest shall have imprinted thereon the notice contained in Section 8.7 hereof.

(b) In the event of a merger or consolidation of the Company with or into another company, the result of which is to leave the persons who were Members of the Company immediately before such merger or consolidation owning eighty percent or more of the voting Percentage Interest of the surviving or resulting company, the provisions and. restrictions of this Agreement shall apply to the Percentage Interest[s] of the surviving or resulting company received in exchange by the Members.

13.
CERTAIN REMEDIES

a. No Partition.

Each Member hereby irrevocably waives any and all rights that it may have to maintain any action for partition with respect to any Company property.

b. Litigation Without Termination.

Each Member shall be entitled to maintain, on its own behalf or on behalf of the Company, any action or proceeding against the Manager, any other Member or the Company (including, without limitation, any action for damages, specific performance or declaratory relief) for or by reason of the breach by such party of this Agreement or any other agreement entered into in connection with this Agreement, notwithstanding the fact that any or all of the parties to such proceeding may then be Members in the Company, and without dissolving the Company.

c. Attorneys' Fees.

If the Company or any Member obtains a judgment against any other Member by reason of breach of this Agreement or failure to comply with the provisions hereof, a reasonable attorneys' fee, costs and expenses as fixed by the court shall be included in such judgment.

d. Cumulative Remedies.

No remedy conferred upon the Company or any Member pursuant to this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute (subject, however, to the limitations expressly herein set forth).

e. No Waiver.

No waiver by a Member or the Company of any breach of this Agreement shall be deemed to be a waiver of any other breach of any kind or nature, and no acceptance of payment or performance by a Member or the Company after any such breach shall be deemed to be a waiver of any breach of this Agreement, whether or not such Member or the Company knows of such breach at the time it accepts such payment or performance. Subject to any applicable statutes of limitation and any provisions in this Agreement to the contrary, no failure or delay on the part of a Member or the Company to exercise any right it may have under this Agreement shall prevent the exercise thereof by such Member or the Company, and no such failure or delay shall operate as a waiver of any breach of, or default under, this Agreement.

14. DISSOLUTION OF THE COMPANY

Dissolution and winding up are governed by §§18-801 and 803, judicial dissolution is governed by §18-802. §18-804 governs distribution of assets. The following sections are intended to implement those sections. Once the company has wound up its affairs, a Certificate of Cancellation is filed with the Secretary of State. Once a Certificate of Cancellation is filed, the company is wholly without power or authority to take any action.

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a. Dissolution.

Subject to the limitations in Section 1.3, the Company shall be dissolved and its affairs wound up if all of the Member(s) holding a majority of the Percentage Interests agree in writing to dissolve the Company or as a result of the Company selling or otherwise dispose of all or substantially all of its interest in the Property. A full accounting of the assets and liabilities of the Company shall be taken and the assets liquidated as promptly as possible by selling the Company assets and distributing the net proceeds therefrom (after payment or providing for the payment of all Company liabilities) to the Members in accordance with Section 10.4 below. To the extent possible, the Company shall be completely liquidated in the same calendar year in which substantially all of its assets are sold or otherwise disposed of. At no time during the term of the Company, nor upon the dissolution and liquidation of the Company, shall a Member with a negative balance in its Capital Account have any obligation to the Company or to any other Member to restore such negative balance, except as may be required by law or in respect of any negative balance resulting from a withdrawal of capital or a distribution in contravention of this Agreement or of law.

b. Judicial Dissolution.

The Company shall be dissolved and its affairs shall be wound up upon the entry of a decree of judicial dissolution by the Delaware court of Chancery under the Delaware Act.

c. Trustee.

Upon dissolution of the Company, the Manager shall act as "Liquidating Trustee," provided that if the Manager fails for any reason to act as Liquidating Trustee, Members holding a majority of the Percentage Interests shall designate a Person to serve as Liquidating Trustee.

d. Liquidation.

As soon as possible after a dissolution of the Company becomes effective, the Liquidating Trustee shall wind up the Company's business and affairs. In this regard:

i. to the extent the Liquidating Trustee deems appropriate, all material, equipment and real and personal property of the Company of any kind or nature shall be sold for cash;

ii. the Liquidating Trustee shall obtain and furnish an accounting with respect to all Company accounts and the Capital Account of each Member and with respect to the Company's assets and liabilities and its operations from the date of the last financial statements of the Company to the date of its liquidation;

iii. the Liquidating Trustee shall make payments in accordance with Section 18-804(b) of the Delaware Act.

iv. The Liquidating Trustee shall pay all expenses incurred in connection with the dissolution and liquidation of the Company and distribution of its assets as herein provided;

v. the Liquidating Trustee shall ascertain the fair market value by appraisal or other reasonable means of all assets of the Company remaining unsold, and each Member's Capital Account shall be charged or credited, as the case may be, as if

such property had been sold at such fair market value and the gain or loss realized thereby had been allocated to and among the Member(s);

vi. on or as soon as practicable after the effective date of the dissolution, all remaining cash and all other assets of the Company not sold pursuant to the preceding subsections of this Section shall be distributed to the Member(s) in the order of priority set forth in Section 4.2 above;

[Add with alternative after Section 3.4]
In winding up the Company, the assets of the Company shall be used and/or distributed in the following order and priority:

(a) First, to pay liabilities to creditors of the Company, in the order of priority as provided by law, except liabilities to Members on account of their Capital Contributions, and the costs and expenses of winding up and terminating the Company; and

(b) Second, after allocations of Profits and Losses have been made pursuant to Article 4, to pay to the Members the amounts of the remaining positive balances in their Capital Accounts (determined as of the date of such distribution).

and

vii. Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate and the Liquidating Trustee shall have the authority to execute and file a Certificate of Cancellation of the Company, as well as any and all other documents required to effectuate the dissolution and termination of the Company.

e. Management During Liquidation.

During the period of the winding up of the affairs of the Company, the rights and obligations of the Members set forth in this Agreement with respect to the Company shall continue.

f. No Retirement or Withdrawal.

No Member shall retire or withdraw from the Company except in connection with a transfer of one hundred (100%) percent of its Interest as expressly permitted under this Agreement or voluntarily cause or suffer to occur the dissolution of the Company. Except as a result of a merger or consolidation of entities, each Member shall maintain its existence as a legal entity throughout the term of this Agreement and shall not terminate or dissolve without being reconstituted or reincorporated.

g. Termination of Agreement.

The provisions of this Agreement, the membership of the Members and the responsibilities of the Manager shall terminate upon the filing of a Certificate of Cancellation.

h. Disposition of Documents and Records.

All documents and records of the Company including, but without limitation, all financial records, vouchers, canceled checks and bank statements shall be delivered to _____ upon termination of the Company unless _____ is no longer a Member at that time, in which event such materials shall be delivered to _____. Copies of such records shall be delivered to each other Member at the expense of the Company. In the event a Member (the "Withdrawing Member") ceases to be a Member at any time prior to termination of the Company, and the Company is continued without the Withdrawing Member, the other Members (the "Surviving Member") agrees that such documents and records of the Company, up to the date of the termination of the Withdrawing Member's Interest, shall be maintained by the Company for a period of not less than the later of (i) seven (7) years thereafter, and (ii) the expiration of any applicable statute of limitations, as the same may have been extended. Such documents and records shall be available for inspection and examination by the Withdrawing Member in the same manner as provided in Section 7.4 during such time period, and the Withdrawing Member shall be entitled, at its cost, to make photocopies of all such records.

At any time after the end of any such preservation period, prior to disposing of any such records the Member or Manager possessing the same (the "Possessing Member") shall first give 30 days written notice of its intent to dispose of such records to each other Member and Withdrawing Member. Within such 30 day period any Member or Withdrawing Member may instruct the Manager or Member to transfer such records to it at its reasonable expense, and such Manager or Member shall do so; in the absence of such instructions, the Manager or Member may dispose of such records as it sees fit.

15. BUY-SELL; PURCHASE PROCEDURE

This Article gives a member the right to initiate a buy/sell in the event of a deadlock. (this form also gives a party the right to trigger a buy/sell on the third anniversary of the formation.)
The Initiator commences the process by giving a notice to the other member which contains a price at which the Initiator will buy the other's entire interest. The Recipient then determines whether it will be a buyer or a seller.

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a. Buy-Sell.

i. Subject to the rights (which when exercised shall govern and abort any buy/sell procedure theretofore initiated pursuant to Sections 11.1(b) and (c) hereof and not yet consummated in accordance with Article XII) provided in Sections 8.1 or 11.2 to elect the appraisal procedure set forth in Article XV or to terminate the

Company (such rights shall collectively be hereinafter called the "Superseding Rights"), and further subject to the conclusion of any previously initiated procedures pursuant to Sections 10.1(c) or 10.1(f), any Member shall at any time following the earlier to occur of (i) a Deadlock or (ii) the ___ anniversary of the date of this Agreement (the earlier to occur of clause (i) and (ii) being hereinafter called a "Trigger Date") have the right to invoke the procedures set forth in this Article XI by which the Members shall purchase or sell their respective interests in the Company each to the other in the manner set forth in this Article XI. The rights of a Member to invoke the procedures set forth in this Article XI shall not be terminated or otherwise adversely affected by the reduction in such Member's Percentage Interest to 20% or less.

ii. Any Member, (the "Initiator") so long as such Member has not acted so as to entitle the other Member to have an outstanding, exercised or unexercised, Superseding Right, may, following the Trigger Date, serve upon any other Member (the "Recipient") a notice (the "Offering Notice") which shall contain the following terms:

(1) a statement of intent to rely on this Article XI.

(2) the aggregate dollar cash purchase price (the "Specified Amount") which the Initiator as a third party would be willing to pay for all assets of the Company as of that date free and clear of all liabilities (whether actual or accrued), but subject to all existing indebtedness secured by the Real Estate Property as of the applicable "Closing", as defined below (the "Secured Debt"), and subject to existing leases and other matters affecting title to the Real Estate Property.

iii. The Recipient shall have the option either:

(1) to sell its full Interest in the Company to the Initiator for an amount equal to the amount (the "Recipient Value") the Recipient would have been entitled to receive (including, but not limited to, on account of any Priority Loans made by the Recipient to the Company) if the Company had sold all assets of the Company for the Specified Amount on the date of Closing and the Company had immediately paid all its liabilities (other than Secured Debt) and distributed the net proceeds and any other Company assets to each Member in accordance with Section 4.1; or

(2) to purchase the full Interest in the Company of the Initiator for an amount equal to the amount (the "Initiator Value") the Initiator would have been entitled to receive (including, but not limited to, on account of any Priority Loans made by the Initiator to the Company) if the Company had sold all Company assets for the Specified Amount on the date of Closing and the Company had immediately paid all its liabilities (other than Secured Debt) and distributed the net proceeds to each Member in accordance with Section 4.1.

The Recipient shall have sixty (60) days from the date of the Initiator's offering Notice to notify the Initiator of its election hereunder. If the Recipient shall not notify the Initiator of its election within said sixty (60) days, then, as of the day following the expiration of such period, the Recipient shall be conclusively deemed to have elected to sell its full interest in the Company to the Initiator at the Recipient Value.

iv. Deposit. **Contemporaneously with the Recipient's election or deemed election to sell its Interest or to buy the Initiator's Interest, the purchasing Member shall deposit in escrow with the Escrow Agent an earnest money deposit in cash in an amount equal to ten (10%) percent multiplied by the Recipient Value or Initiator Value, as applicable, and, if such purchasing Member defaults in its obligation to close such purchase, then the selling Member, as its sole and exclusive remedy, may retain such deposit as liquidated damages. The purchasing Member shall be entitled to enforce its rights under this Section 11.1 by specific performance.**

b. Failed Member.

A "Failed Member" is a person who is bankrupt or insolvent. This Section gives the other members the right to initiate an appraisal and then purchase the Failed Member's interest.

If any Member (the "Failed Member") shall at any time commit an "Act of Insolvency" as hereinafter defined, thereupon any other Member shall be entitled to give notice to the Failed Member that it elects to institute the procedure set forth in Article XIV and referred to in Section 11.3 or elects to terminate the Company, to be accomplished as described in Section 10.1. As used in the Agreement, an "Act of Insolvency" shall occur with respect to any Member upon the occurrence of any of the following events:

(1) the making by it of an assignment by it for the benefit of its creditors; or

(2) the filing by it of a voluntary petition in bankruptcy; or

(3) an adjudication that it is bankrupt or insolvent unless such adjudication is stayed or dismissed within sixty (60) days, or the entry against it of an order for relief in any bankruptcy or insolvency proceeding unless such order is stayed or dismissed within ninety (90) days; or

(4) the filing by it of a petition or an answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; or

(5) the filing by it of an answer or other pleading admitting or failing to contest the material allegations of the petition filed against it in any proceeding of the nature described in the preceding clause (iv); or

(6) its seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of it or of all or any substantial part of its properties; or

(7) ninety (90) days after the commencement of any proceeding against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been stayed or dismissed, or if within ninety (90) days after the appointment without its consent or acquiescence of a trustee, receiver or liquidator of it or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated; or

(8) upon the happening of any other event described in Section 18-304 of the Delaware Act.

c. Fair Market Value Purchase Procedure.

Without limiting any of the provisions of this Agreement, in the event a Non-Defaulting Member under Subsections 3.6 [Optional Term] or 3.10 [Optional Term], a non-transferring Member under Section 8.1 or a Member which is not a Failed Member under Section 11.2 gives notice of its election to institute the appraisal procedure set forth in Article XIV (a "Failed Member Notice"), such Non-Defaulting, non-transferring or non-Failed Member shall have the right, without obligation, to notify the Defaulting, transferring or Failed Member, within forty-five (45) days of the determination of the Fair Market Value of the Company pursuant to Article XIV, of its election either to (i) acquire such interest of the Defaulting, transferring or Failed Member for an amount equal to the amount that the Defaulting, transferring or Failed Member would have been entitled to receive if the assets of the Company had been sold for an amount equal to the Fair Market Value of the Company and the net proceeds distributed to the Company and thereafter to each Member in accordance with Section 4.2 (and assuming, for the purposes of calculating the net proceeds which would be distributed to each Member in accordance with Section 4.2, (y) that any Third Party Unsecured Debt (as defined in Section 15.1 below) has already been paid in full and (z) that any Secured Debt will remain outstanding and will not be paid in connection with such distribution), or (ii) terminate the Company, to be accomplished as described in Section 9.2. If (i) above is elected, the closing of the purchase shall take place as provided in Article XII. If at the time the appraisal procedure is instituted the Fair Market Value of the Company is determined to be zero, the Defaulting, transferring or Failed Member shall have no further right, title or interest in or to the Company or the Property and shall, upon request of such Non-Defaulting, nontransferring or non-Failed Member, execute and deliver to the other Member such documents of transfer and assignment, and such other instruments as shall be reasonably requested to confirm that

the Defaulting, transferring or Failed Member has no further right, title or interest in the Company.

d. Assignment.

Any transferee party under this Article XI may freely assign its rights and obligations pursuant to this Article XI by delivering notice of such assignment to the transferor party; provided, however, that such assigning party and its assignee shall be jointly and severally liable under this Agreement following such assignment.

e. Failed Member Ceases to be a Member.

From and after the date of any validly issued Failed Member Notice (or earlier with respect an event described in Section 18-304 of the Act to the extent provided by the Act), the applicable Failed Member shall cease to be a Member under this Agreement, shall have the status of an unadmitted assignee, and shall cease to have any right to participate in the management or control of the Company.

f. Legal Proceedings Involving A Member. [Optional]

(a) Upon the happening of any of the legal proceedings involving a Member set forth below in Section 11.6(b), the Member, or its personal representative, as the case may be, shall be deemed to have offered for sale, on the date such legal proceeding is initiated, all Percentage Interests in the Company owned by the Member or his revocable trust, as the case may be, and the Company shall have a sixty (60) day period from receipt of written notice of the proceeding to determine whether or not the Company will purchase such Percentage Interest. The purchase price and the method of payment for Percentage Interest of Percentage Interest purchased pursuant to this Section shall be determined in accordance with Article XIV and purchased in accordance with Article XII.

(b) Section 11.6 (a) shall apply to the following legal proceedings:

(i) If any Member makes an assignment of any of his Percentage Interest for the benefit of creditors;

(ii) If any Member voluntarily initiates any bankruptcy;

(iii) If any Member involuntarily has any bankruptcy filed against him;

(iv) If any Member has any of his Percentage Interest attached or if such Percentage Interest becomes subject to an order by a domestic relations court directing the transfer of all or any portion of the Percentage Interest, as a part of the division of marital property, to the spouse of a

Member;

(v) If any Member has an execution process issued against him or his membership interest; or

(vi) If a court of competent jurisdiction orders the transfer of a Member's membership interest or income interest be transferred to a non-member.

g. Death of Member. [Optional]

i. At the death of a Member the Company shall be obligated to purchase, and the Member's personal representative (or the trustee of the deceased Member's revocable trust, if applicable) shall be obligated to sell, the entire Percentage Interest owned by the Member at the time of his death. The purchase price of the Percentage Interest shall be determined in accordance with Article XIV of this Agreement and the payment terms shall be determined in accordance with Article XII of this Agreement.

ii. If at a time when there are only two Members who are parties to this Agreement with the Company and the employment of one of the Members terminates, the remaining Member may decide to sell the Company's assets or 100% of its Percentage Interest, and the terminated Member or his estate will vote for such sale, in lieu of the Company's purchase of the terminated Member's Percentage Interest or fully participate in any Percentage Interest sale, irrespective of any provision in this Agreement to the contrary.

iii. Notwithstanding the foregoing, at the time of the death of any Member holding at least thirty percent (30%) of the Percentage Interests, the Manager may elect to dissolve the Company in lieu of redeeming such Member's Percentage Interest. Upon such determination, the Company shall be dissolved pursuant to Article X hereof.

h. Member Disability. [Optional]

i. The Company and the Members contemplate that the Company may (but need not) secure disability buy-out insurance which will provide funds to the Company to effect a buy-out of a Member's Percentage Interest in the event of such Member's long term disability.

ii. In the event that a Member suffers a disability continuously for a period of six (6) months, the Company shall be obligated to purchase and the Member (or the trustee of the Member's revocable trust, if applicable) shall be obligated to sell, the

entire Percentage Interest owned by the Member at the end of the six (6) month term of continuous disability. The purchase price of the Percentage Interest shall be determined in accordance with Article XIV of this Agreement and the payment terms shall be determined in accordance with Article XII of this Agreement.

iii. Notwithstanding the foregoing, at the time of the disability of any Member holding at least thirty percent (30%) of the Percentage Interests, the Members holding a majority of the Percentage Interests, with the consent of the Manger, may elect to dissolve the Company in lieu of redeeming such Member's Percentage Interest. Upon such determination, the Company shall be dissolved pursuant to Article X hereof.

16.
CLOSINGS

a. Location; Time.

The closing of any sale of an interest in the Company by one Member to the other pursuant to Sections 8.1(c), 81(d), 11.1 or 11.3 (the "Closing") shall be held at the _____ offices of _____ LLP or elsewhere as the Members shall agree and, unless a different time period for closing is stated elsewhere in the Agreement therefore, not more than sixty (60) days after: (i) receipt by the offering Member of the notice of election from the non-offering Member as provided in Section 8.1(c); (ii) receipt by the Selling Member of the non-Selling Member's notice of election as provided in Section 8.1(d), (iii) receipt by the Initiator of the notice of election from the Recipient, or after the expiration of time within which the Recipient must so elect, as provided in Section 11.1(b); or (iv) receipt by the Defaulting, transferring or Failed Member, or Transferor, of the notice of election as provided in Section 11.3; provided, however, that such Closing may be extended for a period up to an additional thirty (30) days if the purchasing Member deposits in escrow (in addition to any other amounts which have been previously deposited in escrow pursuant to the provisions of this Agreement with the Escrow Agent an earnest money deposit in cash in an amount equal to five percent (5%) multiplied by the applicable purchase price, and, if such purchasing Member defaults in its obligation to close such purchase, then the selling Member, as its sole and exclusive remedy, may retain such deposit as liquidated damages along with any other deposit previously made by the purchasing Member.

b. Adjustments.

At the Closing, documentary, transfer or similar taxes and other prepayment, loan assumption or transfer fees or premiums arising out of or in connection with the sale and transfer of an interest in the Company and any other closing adjustments which are then usual and customary where the Real Estate Property is located ("Adjustment Items") shall be adjusted as follows:

(1) in a sale pursuant to Section 8.1(c), the Members shall each pay a pro rata share of the Adjustment Items based on the respective Percentage Interests of the buying and selling Member;

(2) in a transfer pursuant to Subsection 3.10 [optional section], Sections 8.1(b) or (f), Section 11.2, the Defaulting Member (in the case of Section 3.10), the transferring Member (in the case of Sections 8.1(b) or (f)) or the Failed Member (in the case of Section 11.3), as appropriate, shall pay the full amount of such Adjustment Items;

(3) in a transfer pursuant to Section 8.1(c), the Adjustment Items shall be allocated as provided in the third party offer; and

(4) in a transfer pursuant to Section 8.1(d), the Members shall each pay a pro rata share of the Adjusted Items based on the respective Percentage Interest, but in no event shall the net amount received by the Selling Member after deductions for the payment of the Adjusted Items ("Actual Distribution Amount") cause the Seller to receive less than the amount the Selling Member would have received if the Real Estate Property had been sold to a third party pursuant to the terms of the relevant Property Sale Offer Notice ("Third Party Distribution Amount"). In the event that the allocation of the Adjusted Items would cause the Actual Distribution Amount to be less than the Third Party Distribution Amount, the non-Selling Member shall pay that portion of the Adjusted Items necessary to cause the Actual Distribution Amount to be the same as the Third Party Distribution Amount.

In no event shall the purchasing Member be deemed responsible to pay any income or capital gains taxes of the selling Member. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, as applicable, matured or unmatured, absolute or contingent. Any Member transferring its interest in the Company shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required fully to transfer good and clear title to such interest in the Company to the acquiring Member, including, but not limited to, any documents necessary to evidence such transfer, and all documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's interest in the Company. Such conveyance instrument (or a separate document that survives closing) shall contain the representations and warranties set forth in Section 8.3. If the selling Member fails to do so promptly, the selling Member hereby irrevocably constitutes and appoints the purchasing Member its attorney-in-fact to execute, acknowledge and deliver such instruments as may be necessary or appropriate to carry out and enforce the provisions of this Section 13.1 if the selling Member fails to do so promptly.

c. Effect of Transfer of Company Interest.

As of the effective date of any transfer not prohibited under this Agreement by a Member of its Interest, (i) the Transferor's rights and obligations hereunder shall terminate except as to items accrued as of such date and except as to any indemnity obligations of such Member attributable to acts or events occurring prior to such date and (ii) if the Interest is transferred to a Member, the Member to whom such Interest is transferred shall indemnify, defend and hold harmless the Transferor so transferring its Interest from and against any and all claims, demands, losses, liabilities, damages, actions, lawsuits, and other proceedings, judgments, awards, and costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in or arising directly or indirectly, out of the obligations of such transferee hereunder, to the extent attributable to the period on and after the date of such transfer. Thereupon, except as limited by the preceding sentence, this Agreement shall terminate as to the transferring Member but shall remain in effect as to the other Member.

d. Secured Debt Indemnities.

In connection with the purchase by any Member of the Interest of any other Member under the Buy/Sell procedures described in Section 11.1, the right of first refusal procedures described in Section 8.1(c) or the right of first offer procedure described in Section 8.1(d), in the event at the time of the closing there exist any liabilities (contingent or otherwise) to any holder of Secured Debt that are recourse to the transferor party or their affiliates, the transferee party and those of its affiliates which have recourse liability for all or a portion of the Secured Debt shall indemnify and hold harmless the transferor party from and against such liabilities to the extent such liabilities arise from actions or events accruing from and after the date of the applicable transfer, in form and substance reasonably satisfactory to both parties.

e. Payment Terms. [Optional]

i. In the case of Percentage Interests purchased at the death or as a result of the long term disability of a Member, the purchase price shall be paid at Closing (as hereafter defined) in cash to the extent of the insurance proceeds payable to or received by the Company (or the surviving or non-disabled Members) from any policy of insurance owned by the Company, in a lump sum by reason of the Member's death or disability, net of any income taxes paid or payable by the Company or such purchasing Members on account of the receipt of such insurance proceeds. The balance of the purchase price, if any, shall be paid by the delivery of the Company's promissory note ("NOTE") for the balance (if any) of the purchase price, such note having a repayment term determined by the Company but not exceeding ten years subject to Section 9.10(i). Where disability insurance proceeds are payable to the Company or the other Members over a longer term, the purchaser may elect the same term for repayment of the note.

ii. In the case of Percentage Interests purchased as a result of the termination of a Member's employment, the purchase price shall be paid at Closing by delivery of the Company's NOTE having a repayment term of up to ten years commencing as of Closing, as further described in Sections 12.5(b)(i), (c), (d) and (e). Any NOTE issued pursuant to this Section 9.10 will provide that the obligor's monthly payment of principal and interest will not exceed $10,000.00 and if the Company has issued two notes pursuant to this Section 12.5, the second NOTE will provide that the Company may defer the payment of principal until it pays the first NOTE in full.

iii. A NOTE delivered pursuant to this Agreement shall bear interest on the unpaid principal balance at a fixed annual rate of six percent (6%), compounded monthly, and shall be amortized in equal monthly installments of principal and interest, over the term specified commencing on the first thirty day anniversary of Closing. The Company reserves the right of prepayment without penalty. Interest shall be computed based on a 365day year and the actual number of days elapsed.

iv. A NOTE delivered pursuant to this Agreement shall be a confession of judgment note which shall provide for the acceleration of maturity upon default at the option of the holder, shall contain a fifteen day grace period, after written notice, within which to cure any default and shall provide that no judgment may be entered thereon unless a default continues after the expiration of the grace period. The NOTE shall be secured from time to time by a pledge of the "applicable percentage" of the Percentage Interest being purchased hereunder, which shall be retained by the Company as authorized but unissued shares and which shall serve as collateral. If the holder of the NOTE is entitled to foreclose on the collateral, the Company and the Manager shall take all company action required in order for the Company to issue the collateral to the holder. If the collateral is foreclosed upon, the holder may, subject to the limitations of the Delaware Uniform Commercial Code, the Securities Act of 1933, as amended, and state securities laws, (1) retain the collateral-in full satisfaction of the then unpaid balance of principal and interest of the NOTE, or (2) cause the collateral to be sold at public or private sale, but before any public or private sale the holder of the NOTE shall be required to offer the Percentage Interest to the other Members for a period of thirty days for an amount equal to the unpaid balance of principal and interest. If the other Members do not elect to purchase the Percentage Interest, the holder may proceed with public or private sale as provided herein. If the proceeds of such sale are less than such unpaid balance, the holder may enforce immediate payment of such deficiency by the Company as maker of such NOTE. Any holder of the NOTE shall be entitled to be a purchaser of any part or all of the collateral being sold at such sale, but if the holder desires to purchase such collateral at a private sale, such holder shall notify the Company at least thirty days prior to such sale setting forth the time, place, minimum price to be paid and terms of payment and if the Company fails to purchase or obtain a third party to purchase prior to such sale, such sale shall be binding and the Company waives any right to set aside such sale on the grounds that

it was not conducted in a commercially reasonable manner. The parties acknowledge that the price that may be obtained for the Percentage Interest of the Company sold pursuant to this Agreement at a time when such shares are not registered under the Securities Act of 1933 may be substantially less than that which might prevail if such shares were so registered, and that such lesser price shall not indicate that the sale was not conducted in a commercially reasonable manner. For purposes of this Section 7(d), the term "Applicable Percentage" shall equal a fraction (1) the numerator which is the unpaid principal payment of the NOTE as of the default date, and (2) the denominator of which is the purchase price for the Percentage Interest. The purchaser of such Percentage Interests shall not have the right to be admitted as a substitute member of the Company.

f. Non-Competition, and Confidentiality Agreements. [Optional]

The Parties acknowledge that the value of Company Percentage Interest, while determined on a look back basis, is substantially dependent on Company profitability in the future. The Parties therefore agree to execute a non-competition, non-solicitation and confidentiality agreement in the form attached hereto and made a part hereof as Exhibit _.

g. Effect of Legal Disability to Redeem.

If for any reason the Company is incapable of legally purchasing its own Percentage Interest as contemplated by the terms of this Agreement, the Members agree to consider any steps necessary to enable the Company to make such a purchase, including without limitation: (1) reorganizing the capital structure of the Company; (2) causing the Members of the Company to revalue assets; (3) contributing funds to the capital of the Company; or (4) lending funds to the Company on a subordinated basis if necessary or desirable.

h. Application of Proceeds Upon Sale. [Optional]

If the Company sells substantially all of its assets or if the Members sell substantially all of the Percentage Interest of the Company in a single or unified transaction or if there is a merger, consolidation, conversion or liquidation of the Company and there is then outstanding any Note owing to any former Member of the Company, then the Company and the Members agree as follows:

(a) Sale of Assets (Company Obligated under Note). In the case of a sale of substantially all of the assets of the Company, all proceeds received for such sale shall be applied, first, to pay in full all remaining obligations of the Company to persons other than Members or former Members of the Company and, second, to pay in full all remaining

(b) obligations of the Company under the note.

(c) Sale of Percentage Interest, Merger, Consolidation, Conversion or Liquidation (Company Obligated under Note). In the case of a sale of substantially all of the Percentage Interest of the Company or the merger, consolidation, conversion or liquidation of the Company, all assets of the Company shall be applied to pay in full all remaining obligations of the Company under the Note before such sale.

(d) Insufficient Corporate Assets or Members As Primary Obligors. If the assets of the Company are not sufficient to pay in full all remaining obligations under the Note or if the Members are the primary obligors under the note, then all proceeds to be received by the Members upon the sale of substantially all of the Percentage Interest, merger, consolidation, or liquidation of the Company shall be applied, first, to pay in full all remaining obligations of the Company to persons other than Members or former Members of the Company and, second, to pay in full all remaining obligations of the Company under the Note. The payments by the Members under this Subsection shall be made according to the following rules:

(i) If a Member is the primary obligor under a note, then such Member shall make all payments due under such note.

(ii) If the Company is the primary obligor under a note, each Member shall pay an amount to the payee of such note which is equal to the then total amount of remaining obligations under such note multiplied by such Member's then percentage ownership of the issued and outstanding Percentage Interests of the Company.

(d) Multiple Notes. If there is a note then owing to more than one former Member, then the payments provided for in this Section shall be applied to all such outstanding notes on a pro rata basis based on the then outstanding amount of obligations owed under the particular note over the aggregate outstanding amounts of obligations owed under all such outstanding notes.

i. Enforcement.

The parties agree that this Agreement may be enforced in equity, and that specific performance or other equitable relief would be an appropriate remedy in any such action, in addition to any monetary or other damages which may be proved. Irrespective of any provision in this Agreement to the contrary, the Parties agree that if a Member does not own Percentage Interest in the Company, such Member will be deemed to be a nonparty to this Agreement.

17.
REPRESENTATIONS, WARRANTIES AND COVENANTS

The following sections represent representations and warranties which the parties make to each other regarding their investment in the Company. These sections are not based upon the Delaware Act, but represent good drafting technique.

a. Formation and Existence of Members; Other Matters.

Each Member represents and warrants to the other Members as follows:

i. It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to conduct the business of the Company.

ii. This Agreement constitutes the legal, valid and binding obligation of the Member enforceable in accordance with its terms.

iii. No consents or approvals are required from any governmental authority or other person or entity for the Member to enter into this Agreement and the Company. All limited liability company, corporate or partnership action on the part of the Member necessary for the authorization, execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly taken.

iv. The execution and delivery of this Agreement by the Member, and the consummation of the transactions contemplated hereby, do not conflict with or contravene the provisions of its organizational documents or any agreement or instrument by which it or its Property are bound or any law, rule, regulation, order or decree to which it or its Property are subject.

v. It has not retained any broker, finder or other commission or fee agent, and no such person has acted on its behalf in connection with the acquisition of the Property or the execution and delivery of this Agreement.

vi. It understands that (1) an investment in the Company involves substantial and a high degree of risk, (2) it must bear the economic risk of such Person's investment in the Company for an indefinite period of time, since such Person's Percentage Interest in the Company has not been registered for sale under the Securities Act of 1933 and, therefore, cannot be sold or otherwise transferred unless subsequently registered under the Securities Act of 1933 or an exemption from such

registration is available, and the Percentage Interest in the Company of such Person cannot be sold or otherwise transferred unless registered under applicable state securities or blue sky laws or an exemption from such registration is available, (3) there is no established market for the Percentage Interest of such Person in the Company and no public market will develop and (4) such Person's principals have such knowledge and experience in real estate and, other financial and business matters that they are capable of evaluating the merits and risks of an investment in the Company.

vii. Such Member is a "United States person" within the meaning of § 7701(a)(30) of the Code, and shall notify the Company immediately if the representation in this Section 10.1(g) becomes untrue as of any subsequent date.

b. USA Patriot Act and Other Law Compliance.

Manager and each Member each hereby represents and warrants to the others as follows:

i. No Qualified Organization has or will have a direct or indirect ownership interest in itself.

ii. The issuance of all ownership interests in itself was accomplished in accordance with all laws, including, without limitation, all securities laws.

iii. It is in compliance with all applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance, including the reporting, record keeping and compliance requirements of the Bank Secrecy Act ("BSA"), as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Title III of the USA PATRIOT Act (the "Patriot Act"), and other authorizing statutes, executive orders and regulations administered by OFAC, and related Securities and Exchange Commission, SRO or other agency rules and regulations, and has policies, procedures, internal controls and systems that are reasonably designed to ensure such compliance.

iv. neither: (i) it, any of its Affiliates or any Person Controlled by it; nor (ii) to its best knowledge, after making due inquiry, any Person who owns a Controlling interest in or otherwise Controls it; nor (iii) to its best knowledge, after making due inquiry, if it is a privately held entity, any Person otherwise having a direct or indirect beneficial interest (other than with respect to any interest in a publicly traded entity) in it; nor (iv) any Person for whom it is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

v. unless disclosed in writing to the other Member on the date hereof, it is not a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure, that it is not Controlled by a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure, and that, to its best knowledge, after making due inquiry, none of its direct or indirect owners (other than any owner(s) of any interest(s) in a publicly-traded entity) is a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure.

vi. it agrees that, upon receiving a request from the other Member, it shall provide information reasonably required by the other Member to confirm that the representations, warranties and covenants in this Section 13.2 continue to be true, and it shall continue to comply with all applicable anti-money laundering and anti-terrorist laws, regulations and executive orders. It consents to the disclosure to United States regulators and law enforcement authorities by the other Member and its Affiliates of such information about it that the other Member reasonably seems necessary or appropriate to comply with applicable anti-money laundering and anti-terrorist laws, regulations, and executive orders.

vii. It agrees that as a condition of any Transfer of any of its direct or indirect interest in the Company, the other Member has the right to require full compliance with these representations, warranties and covenants, to the satisfaction of the other Member, with respect to any transferee and any Person who owns or otherwise Controls the transferee.

viii. It agrees that any breach of these representations, warranties and covenants that cause a breach or violation or failed condition under any documents by which the Company is bound (such as loan documents) shall result in no liability to the other Member.

ix. It acknowledges and agrees that if, following its investment in the Company, the other Member reasonably believes that it (the representing, warranting and covenanting Member) has breached its representations, warranties or covenants set forth herein, or that action is otherwise required by law or regulation, the other Member has the right or may be obligated to freeze or block the investment, to prohibit additional investments, to segregate the assets constituting the investment in accordance with applicable OFAC laws and regulations, to decline any redemption or Transfer requests, to redeem its (the representing, warranting and covenanting Member's) investment, and/or to report such action to government authorities. It further acknowledges that it will have no claim against the Company and/or the other Member or such other Member's Affiliates for any form of damages as a result of any of the foregoing actions.

x. It agrees to notify the other Member promptly if there is any change with respect to the representations provided herein.

xi. For purposes of these representations, warranties and covenants, the term "best knowledge" includes, without limitation, the knowledge of Vinton and the directors, officers or members of Manager and any other Person who owns or Controls Manager.

xii. Manager is a "United States person" for United States federal income tax purposes.

c. Confidentiality.

No Member shall disclose the terms of this Agreement without the consent of the other Members except (a) to its attorneys, accountants and other advisors, (b) to the extent required by law, (c) to prospective assignees of Percentage Interests who agree to maintain the confidentiality of the provisions of this Agreement or (d) to any lender.

18.

APPRAISAL PROCEDURE; FAIR MARKET VALUE

a. Fair Market Value.

In the event that the fair market value (the "Fair Market Value") of the Company or any property of the Company is required to be determined for any purpose, the same, if not otherwise agreed upon by the Members, shall be determined by three independent appraisers who shall be members of the American Appraisal Institute and MAI certified, one appointed by the Member which is selling and the other one appointed by the Member which is purchasing (such appraisers to be appointed within ten (10) days after a request by any Member). The third appraiser shall be selected by the appointed appraisers. If any Member shall fail to timely appoint an appraiser, the appointed appraiser shall select the second appraiser within ten (10) days after such Member's failure to appoint. If the two appraisers so determined shall be unable to agree within thirty (30) days of their being appointed on the selection of a third appraiser, then either appraiser, on behalf of both, may request the chapter of the American Appraisal Institute located nearest to the Real Estate Property to make such appointment. The Fair Market Value shall be the average of the valuations of such Real Estate Property as determined by such appraisers; provided, however, if any such valuation deviates more than ten percent (10%) from the median of such valuations, the Fair Market Value shall be the average of the two closest such valuations. The Fair Market Value of the Company is herein defined to be the price which a knowledgeable purchaser would pay for the assets of the Company (with no financing being provided by the Company), including real estate, chattels and intangibles (provided, however, that no value shall be attributable to "good will"), assuming that the Real Estate Property will be conveyed under and subject to any Secured Debt but free and clear of any other monetary encumbrances (other than real estate taxes not yet due and payable and other governmental assessments not yet due

and payable), less the sum of: (i) all due and unpaid Company operating expenses, (ii) the unpaid principal balances of all outstanding loans of the Company (excluding Priority Loans and Secured Debt) and accrued interest on all outstanding loans of the Company (excluding Priority Loans and Secured Debt), and (iii) any other valid liabilities and obligations of the Company (excluding Priority Loans and Secured Debt) [the liabilities and other obligations described in preceding clauses (i) through (iii) are hereinafter collectively called "Third Party Unsecured Debt"]. Any such appraisal shall be at the sole expense of the Company, and shall be submitted to the Members within thirty (30) days after the panel of three appraisers is constituted.

{[Baseball Style Arbitration]
14.1 The Member and Manager [Company] shall negotiate in good faith to place a value upon the Percentage Interest held by the Member. The Fair Value shall be equal to the Member's Percentage Interest of the Fair Market Value of the Property increased by the Member's Percentage of any undistributed Excess Cash. If the Member and Manager [Company] cannot reach agreement within 15 days following the event which gave rise to the need to determine the Fair Market Value, (the "Negotiation Period") the parties shall determine the fair value of the Percentage Interest pursuant to the following Section.

14.2 Determination of the Fair Value of the Percentage Interest
(a) In the event that the fair value of the Percentage Interests held by a Member or its Personal Representative (for the purposes of this Section the term "Member" shall include the Personal Representative of a Members) is required to be determined for any purpose, and if the Member and the Manager [Company] shall have failed within the Negotiation Period to agree upon the Fair Value, the Fair Market Value of the Property shall be determined by an appraiser selected jointly by the Member and the Manager [Company]. However if the Member and the Manager [Company] are unable to agree upon a single appraiser within 15 days after the termination of the Negotiation Period, then Fair Market Value shall be determined by three independent appraisers who shall each be Members of the Appraisal Institute who shall hold the professional designation MAI, each of whom shall practice in [designate the geographic area where the Property is located], one shall be appointed by the Member whose Percentage Interest is being purchased and one appointed by the Manager [Company] which is purchasing (such appraisers to be appointed within ten (10) days after the expiration of the Member and Manager [Company] failing to reach an agreement upon naming a single appraiser). The third appraiser, who shall serve as the Arbitrator, shall be selected by the two appointed appraisers within ten (10) days of their appointment. If any party shall fail to timely appoint his or its designated appraiser, the appointed appraiser, appointed by either the Member or Manager [Company] which did appoint is appraiser, shall select the second appraiser within ten (10) days after the expiration of such defaulting party's obligation to appoint its appraiser. If the two appraisers so determined shall be unable to agree, within ten (10) days of their being appointed, on the selection of a third appraiser, then either appraiser, on behalf of both, may request the Court of Chancery of the State of Delaware, in and for New Castle County, to make such appointment. The arbitration process shall be "baseball style arbitration" with the each party submitting to

the Arbitrator their opinion of value and the Arbitrator selecting one opinion as the Fair Market Value. The appraiser appointed by the Member and the Manager [Company] shall each prepare a complete fully self contained appraisal of the Property, as hereinafter provided, as of the valuation date which shall be the date which gave rise to the need for the determination. Each appraiser shall submit two (2) signed copies of the appraisal to the other appraiser and one (1) copy to the Arbitrator. From the two appraisals the Arbitrator shall select the one appraisal which the Arbitrator determines to be in his or her opinion to be the closest to the Fair Market Value of the Property as of the valuation date. The Arbitrator shall only have the power to select an appraisal and may not enter an award in an amount which is not equal to the opinion of value expressed in one of the two appraisals. The Fair Market Value of the Property is herein defined to be the price which a knowledgeable purchaser, under no pressure to purchase, would pay to a willing seller, under no pressure to sell, for the Property with its then current use, current zoning, current tenant mix and subject to all matters of record at the date that gave rise to the proceedings (with no financing being provided by the seller), including real estate, chattels and intangibles (provided, however, that no value shall be attributable to "good will"), assuming that the Property will be conveyed under and subject to any Secured Debt but free and clear of any other monetary encumbrances (other than real estate taxes not yet due and payable and other governmental assessments not yet due and payable), less the sum of: (i) all due and unpaid Company operating expenses, (ii) the unpaid principal balances of all outstanding loans of the Company (excluding Priority Loans and Secured Debt) and accrued interest on all outstanding loans of the Company (excluding Priority Loans and Secured Debt), and (iii) any other valid liabilities and obligations of the Company (excluding Priority Loans and Secured Debt) (the liabilities and other obligations described in preceding clauses (i) through (iii) are hereinafter collectively called "Third Party Unsecured Debt"). It shall be assumed that the Seller shall pay any defeasance costs, prepayment penalties, yield maintenance or other fees payable upon the sale of the Property on the Closing Date. Each party shall bear the cost of their own appraiser and the cost of the third appraiser shall be divided equally between the parties. If the Manager and the Member select a single appraiser, the fee paid to such appraiser shall be shared equally. The Fair Market Vale as determined by the third appraiser shall be multiplied by the Member's Percentage Interest and then increased by the Member's Percentage of any undistributed Excess Cash to determine the Fair Value of the Interest.}

b. Guarantee Release.

Notwithstanding anything contained in this Agreement to the contrary, it shall be precondition to any closing in Article XIII that the purchasing Member obtain from any party holding any guarantee of the Company's obligations or environmental indemnity executed by the selling Member, any Affiliate thereof, and any direct or indirect principals, shareholders or members of such Persons a full release of such guarantee or environmental indemnity, which release shall be effective upon such closing and in the case of a guarantee of non-recourse carve-outs or environmental indemnity, such release need only relate to periods on or after the closing of the sale.

c. Member Appraisal.

No provision of this Article XIV shall be considered as prohibiting any Member from having the Real Estate Property appraised at its own cost for purposes other than calculating a Fair Market Value price under Article XV, it being understood that such appraisals shall have no bearing on the appraisal price described in this Article XV.

19.
MISCELLANEOUS

a. Notices.

All notices, consents or waivers shall be in writing and shall be deemed to have been duly given:

i. when delivered personally; or

ii. three (3) days after being mailed, registered mail, return receipt requested, postage prepaid, to the respective addresses set forth below; or

iii. one Business Day after being delivered to a nationally recognized overnight courier service, such as Federal Express or UPS, shipping costs prepaid or paid by shipper, marked for early next day delivery, addressed to the addressee at its address set forth below; or

iv. on the first Business Day after receipt, if delivered by facsimile transmission to the fax number (if any) of the receiving party listed below, if receipt is confirmed in writing by the sending facsimile machine and a copy is send as provided in (c) above.

v. The addresses for notice are:

If to the Company, to its address set forth in Section 1.6 hereof:

If to Manager:

Telephone:
Facsimile:
Attention:
with a copy to:
Telephone:
Facsimile:

If to any Member, at the address specified on Exhibit C.

b. Entire Agreement.

This Agreement is the final, entire and exclusive agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, commitments, discussions, summaries, brochures, projections and other information, whether oral or written, including, without limitation. No representation, promise, inducement or statement of intention has been made by any of the parties not embodied in this Agreement or in the documents referred to herein, and no party shall be bound by or liable for any alleged representation, promise, inducement or statements of intention not set forth or referred to in this Agreement. No amendments or modifications to this Agreement may be made without a writing signed by the party to be bound.

c. Governing Law.

This Section deals with choice of law and venue. Delaware courts have enforced choice of law provision which have provided that the LLC Agreement would be governed by the laws of a state other than Delaware or that it would be interpreted under the Delaware General Corporation Law.

This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware, without regard to its conflict of law provisions. Each Member agrees that all claims arising under this Agreement shall be heard and determined by a State or Federal court sitting in New Castle County, Delaware. Furthermore, each Member hereby irrevocably waives any objection which it now or hereafter may have to the laying of venue in any court in New Castle County, Delaware, or any objection it may have based on such court being an inconvenient forum.

d. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and permitted assigns.

e. Captions.

Captions contained in this Agreement in no way define, limit or extend the scope or intent of this Agreement.

f. Severability.

If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to other Persons or circumstances, shall not be affected thereby.

g. Remedies Not Exclusive.

The rights and remedies of either of the Members hereunder shall not be mutually exclusive (i.e., the exercise of one or more of the provisions hereof, unless specifically stated to the contrary, shall not preclude the exercise of any other provisions hereof). Each of the Members confirms that damages at law will be an inadequate remedy for a breach or threatened breach of this Agreement and agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other for a breach or threatened breach of any provision hereof, it being the intention by this Section to make clear the agreement of the Members that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

h. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

i. Partial Invalidity.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any payments required to be made under this Agreement shall be in excess of the amounts allowed by law, the amounts of such payments shall be reduced to the maximum amounts allowed by law.

j. Construction of Certain Terms.

The terms "hereof," "herein," "hereunder" and "hereinafter" and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular paragraph or provision, unless expressly so stated.

k. Number and Gender.

All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

l. No Third Party Beneficiary.

The provisions of this Agreement are not intended to be, nor shall they be construed to be, for the benefit of any third party.

m. Limitation of Liability of Members.

Except as otherwise expressly provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company. Each Member's liability under this Agreement to the other Member is expressly limited to such Member's Interest in the Company. No Member shall have any recourse against (a) any other property or assets of another Member, (b) any assets of an affiliate of another Member, or (c) any past, present, or future officers, agents, shareholders, trustees, incorporators, directors, principals (direct or indirect), affiliates, or representatives of another Member or of any of the assets or property of any of the foregoing for the payment or collection of any amount, judgment, judicial process, fee or costs or for any other obligation or claim arising out of or based upon this Agreement and requiring the payment of money by another Member. The provisions of this Section 15.13 shall survive the termination of this Agreement.

n. Member Loans.

The relationship under any existing or future loans (other than pursuant to Article III) between a Member as lender and the Company as borrower shall always be governed by the terms and conditions contained in the loan commitments, notes, mortgages and other documentation evidencing and securing such loans. The Company and the non-lending Member hereby expressly and knowingly waive any claim or defense to any acceleration of indebtedness, foreclosure or other exercise by a lending Member of a right or remedy under such loan documentation that such action is precluded by or inconsistent with this Agreement or the lending Member's status as a former or then existing Member, or that the lending Member by reason of its status as a Member is deemed to have and fiduciary or other duty to the Company or to the other Member in connection with such exercise by the lending Member of its rights or remedies under such loan documentation.

o. Deficit Restoration.

Notwithstanding any other provision of this Agreement to the contrary, upon liquidation of a Member's Percentage Interest (whether or not in connection with a liquidation of the Company), no Member shall have any liability to restore any deficit in its Capital Account. In addition, no allocation to any Member of any loss, whether attributable to depreciation or otherwise, shall create any asset of or obligation to the Company, even if such allocation reduces a Member's Capital Account or creates or increases a deficit in such Member's Capital Account; it is also the intent of the Members

that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company.

p. Amendments.

This Agreement may not be amended at any time except upon the affirmative vote of the Members holding [two thirds] of the Percentage Interests and a written counterpart to such Amendment is executed and delivered to the Manager signed by Members holding [two thirds] of the Percentage Interests. This Agreement may not be amended by merger, consolidation, conversion, operation of law or any similar manner unless consented to as provided in the previous sentence.

q. Trial by Jury.

EACH MEMBER, TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO, HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY ANY PARTY HERETO WITH RESPECT TO THIS AGREEMENT OR ANY OF THE TERMS, CONDITION OR OBLIGATIONS ARISING UNDER THIS AGREEMENT.

Alternative to 15.17

Notwithstanding any provision of this Agreement to the contrary, in the event of any dispute or other claims arising between the Members, a Member and the Company or the Member under this Agreement, the parties agree that they shall first meet and attempt to settle the dispute or other claim among themselves or with the assistance of a mediator. If they are not able to resolve the dispute or other claim to their mutual satisfaction, the Members irrevocably agree that all disputes or other claims arising between the Members, a Member and the Company or the Member under this Agreement, or any party lawfully claiming thereunder, including whether the claim is subject to arbitration, shall be resolved, unless otherwise agreed unanimously by the Members, by binding arbitration under the auspices of the American Arbitration Association and conducted under its Commercial Arbitration Rules then in effect, using expedited procedures, in Wilmington, Delaware [modified such that each party shall submit its position in writing to the Arbitrator so named and the Arbitrator shall have the power only to select with out modification the written submission of one of the parties as its final order without modification of its terms other than to correct a computational error.] The American Arbitration Association shall appoint a single arbitrator. The arbitrator shall include in the award the arbitration fee, all costs of the arbitration incurred by the prevailing party, and the prevailing party's reasonable attorneys' fees and such enforcement shall be borne and promptly paid by the losing party. If each party prevails in part and neither party prevails entirely, the party which substantially prevails (as determined by the arbitrator) shall be deemed to be the prevailing party. The arbitrator appointed to hear and decide any matter, including whether the claim is subject to arbitration, shall be an attorney admitted to practice before the Supreme Court of the State of Delaware, actively practicing law in New Castle County, Delaware, having at least ten (10) years experience with a practice

primarily in the area of business law, and who is a partner or shareholder in a law firm having not less than ten (10) partners or shareholders. The award entered by the arbitrator shall be limited to equitable relief and/or a money judgment for actual compensatory damages and the arbitrator shall be wholly without power to enter an award exemplary, punitive, incidental, consequential or other speculative damages. The decision of the arbitrator may be entered as a final and unappealable judgment in a Court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

_____ _____

_____(Seal)
Witness Member

_____(Seal)
Member

_____(Seal)
Member

_____(Seal)
Member

_____(Seal)
Member

EXHIBIT A
DEFINITIONS

"Accountants" means _____ or such other accountants designated by Manager and reasonably acceptable to the Members.

"Loan" has the meaning set forth in Section 3.7 of this Agreement.

"Additional Capital Contribution" means any Capital Contribution made other than the Initial Capital Contribution.

"Additional Reserves" means commercially reasonable reserves in excess of the Working Capital Reserve that are established by Manager and Manager under the Annual Business Plan from time to time for future Company Costs and Expenses, including but not limited to capital expenditures, tenant improvements and leasing commissions.

"Affiliate" shall mean in the case of any Person, any person or entity (i) which owns beneficially, directly or indirectly, any outstanding shares of the Person's stock or any membership interest in the Person, or (ii) which controls or is under common control with the Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"Agreement" means this Limited Liability Company Agreement of _____LLC.

"Available Cash from Operations" means all cash funds of the Company (other than Net Capital Transaction Proceeds) on hand from time to time whether from the lease of space, or otherwise after: (a) payment of all Company Costs and Expenses that are due and payable as of such date; (b) provision for Working Capital Reserve; and (c) provision for Additional Reserves.

"Bankruptcy Action" means:

(a) Taking any action that might cause the Company to become insolvent;

(b) Commencing any case, proceeding or other action on behalf of the Company under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;

(c) Instituting proceedings to have the Company adjudicated as bankrupt or insolvent;

(d) Consenting to the institution of bankruptcy or insolvency proceedings against the Company;

(e) Filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Company of its debts under any federal or state law relating to bankruptcy;

(f) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company or a substantial portion of its properties;

(g) Making any assignment for the benefit of creditors of the Company; or

(h) Taking any action or causing the Company to take any action in furtherance of any of the foregoing.

"Business Day" means Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States or the State of Delaware shall not be regarded as a Business Day.

"Capital Account" has the meaning set forth in Exhibit B hereto.

"Capital Contribution" means all of the Initial Capital Contributions and Additional Capital Contributions made by the Members pursuant to this Agreement.

"Close Associate" is a person who is widely and publicly known to maintain an unusually close relationship with a Senior Foreign Political Figure, and includes a Person who is in a position to conduct substantial United States and non-United States financial transactions on behalf of the Senior Foreign Political Figure.

"Code" means the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

"Property" has the meaning set forth in Section 1.4 of this Agreement.

"Company" means _____ LLC, a Delaware limited liability company, formed pursuant to its Certificate of Formation and this Agreement.

"Company Costs and Expenses" means all of the expenditures of any kind made or to be made with respect to the operations of the Company and permitted by the Annual Business Plan then in effect or otherwise permitted under the terms of this Agreement, which shall include, without limitation, any reasonable Company purpose relating to the Property, including, without limitation, costs associated with due diligence, carry costs related to the Property, acquisition and leasing costs related to the Property, any fees payable to the Property Manager, startup costs, all required debt service payments under any loan or financing agreements, all amounts payable pursuant to any management agreement relating to the Property, costs of improvements to be made with respect to the Property, real estate taxes, ad valorem taxes, federal, state and local taxes, assessment and

school fees, insurance premiums, repair and maintenance costs, engineering fees, advertising and other marketing expenses, professional fees, utilities costs, overhead costs (of the Company only), general and administrative costs, and all other types of costs, expenses, charges, liabilities and obligations of the Company, except as may be restricted in the Annual Business Plan.

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

"Delaware Act" means the Delaware Limited Liability Company Law, as it may be amended from time to time, and any successor to such Act.

"Effective Date" means the date hereof.

"Family Member" shall mean an individual's immediate family members (spouse, brothers and sisters (whether by the whole or half blood), and ancestors or lineal descendants by birth or adoption) and/or any (i) trusts for the benefit of any immediate family member, (ii) partnership in which an immediate family member is a general partner, (iii) limited liability partnership in which an immediate family member is a general partner, (iv) limited liability company in which an immediate family member is a Manager, or (v) corporation in which an immediate family member is an officer, director, or controlling (as defined below) shareholder.

"Fiscal Year" means the twelve (12)-month period ending December 31 of each year; provided that the initial Fiscal Year shall be the period beginning on the Effective Date and ending December 31, 200_, and the last Fiscal Year shall be the period beginning on January 1 of the calendar year in which the final liquidation and termination of the Company is completed and ending on the date such final liquidation and termination is completed. To the extent any computation or other provision hereof provides for an action to be taken on a Fiscal Year basis, an appropriate proration or other adjustment shall be made in respect of the initial and final Fiscal Years to reflect that such periods are less than full calendar year periods.

"Governmental Authority" means any national or federal government, any state, regional, local or other political subdivision thereof with jurisdiction and any Person with jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Immediate Family Member" includes the parents, siblings, spouse, children and in-laws of a Senior Foreign Political Figure.

"Indemnitee" has the meaning set forth in Section 6.1 of this Agreement.

"Indemnitor" has the meaning set forth in Section 6.1 of this Agreement.

"Initial Capital Contributions" means those capital contributions required pursuant to Section 3.1 of this Agreement, the amounts, sources and uses of which are set forth in Schedule 3.1, attached hereto.

"Losses" has the meaning set forth in Exhibit B to this Agreement.

"Majority Action" means an action or decision reached or approved by those Members holding a majority of the Percentage Interests.

"Manager" means _____, and its successors and assigns in its capacity as Manager of the Company.

"Management Agreement" means the Management Agreement attached hereto as Schedule A.

"Members" means _____ and those persons named on Exhibit C, together with their permitted successors and assigns in their respective capacities as Members in the Company.

"Necessary Expenses" means any expense of the Company that the Company must pay in order to avoid a material default under any material agreement by which the Company is bound.

"Net Capital Transaction Proceeds" means the proceeds from (a) any financing or refinancing of the Property or any part thereof, and (b) any sale, disposition, taking or loss (including, but not limited to, the proceeds from any eminent domain proceeding or conveyance in lieu thereof or from title insurance or casualty insurance, other than rental income insurance) of the Property or any part thereof (other than the sale of condominium units), less payment of all costs and other expenses related thereto, any amounts expended to repair or replace any part of the Property taken or destroyed and any other obligations of the Company.

"Net Profit" and "Net Loss" have the meaning set forth in Exhibit B hereto.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"OFAC List" is a list or prohibited countries, individuals, organizations and entities that is administered or maintained by OFAC, including: (i) Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), any related enabling legislation or any other similar executive orders, (ii) the List of Specially Designated Nations and Blocked Persons (the SDN List maintained by OFAC), and/or on any other similar list ("Other Lists") maintained by OFAC pursuant to any authorizing statute, executive order or regulation, or (iii) a "Designated National" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

"Ordinary Expenses" has the meaning given such term in Section 3.6 of this Agreement.

"Other List" shall have the meaning given to such term in the definition of "OFAC List."

"Patriot Act" has the meaning given such term in Section 14.2 of this Agreement.

"Percentage Interest" means the interest of a Member in the Company and its rights in the capital, profits, losses, gains, distributions or other economic interests of any type in or from the Company including, without limitation, such Member's right: (a) to allocations of items of income, gain, loss, deduction, and credit of the Company as set forth in Exhibit C hereto; (b) to a distributive share of the assets of the Company as set forth in Article IV and Article X; (c) to inspect the books and records of the Company as provided in Section 7.4; and (d) if a Member, to participate in the management and operation of the Company in accordance with the terms set forth in Article V.

"Person" means an individual, corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other legally recognized entity.

"Property" has the meaning of such term in Section 1.4.

"Qualified Organization" shall have the meaning set forth in Section 514(c)(9)(C) of the Code or any successor provision of similar import.

"SDN List" shall have the meaning given to such term in the definition of "OFAC List."

"Senior Foreign Political Figure" means a senior official of a major non-United States political party or a senior executive of a government-owned corporation not organized within the United States. In addition, a "Senior Foreign Political Figure" includes any corporation, business or other entity that has been formed by or for the benefit of a Senior Foreign Political Figure.

"SRO" means a self-regulatory organization.

"Term" has the meaning set forth in Section 1.3 of this Agreement.

"Transfer" has the meaning set forth in Section 8.1 of this Agreement.

[Add with the First priority return provision:
"Class A Member's Priority Capital Contribution" shall have the meaning set forth in Section 3.4(a).

"Class A Member's Priority Preferred Return" shall have the meaning set forth in Section 3.4(b).

"IRR" shall mean the annual internal rate of return and shall be that interest rate which, when used as a discount rate, causes (a) the net present value of the cumulative Distributions made to the Class A Member by the Company pursuant to Sections 5.2 and 5.3, from the date of the Class A Member's Capital Contributions through the computation date, to equal (b) the net present value of the Class A Member's Capital Contributions from the date such Capital Contributions are

contributed to the Company. For purposes of this definition, net present value shall be determined using monthly compounding periods. For the avoidance of doubt, the parties intend that the Class A Member's IRR be calculated only on the Capital Contributions made by the Class A Member pursuant to Sections 3.1 and 3.3 or upon the conversion of the Class A Member's Priority Capital Contribution to an Additional Capital Contribution pursuant to Section 3.4(d).

"Priority Capital Conversion Date" shall mean the first to occur of (i) the date of closing and funding of the First Mortgage Loan and (ii) the six month anniversary of the Closing Date.

"Priority Preferred Return Rate" shall have the meaning set forth in Section 3.04(b).

"Required Expenditure" shall mean amounts needed to make capital improvements to the Project or to fund cash flow deficits of the Project to the extent such amounts cannot be funded from Reserves, operating surpluses or a Refinancing on commercially reasonable terms the debt service for which can be funded from cash flow projected for the Project (but shall specifically exclude funds required to pay the Class A Member's Unreturned Priority Capital Contribution).

"Unreturned Priority Capital Contribution" have the meaning set forth in Section 3.4(d).

"Preferred Return" shall mean, in the case of any Member, an amount equal to such Member's Unreturned Capital Contribution (computed as a weighted daily average during the period for which the Preferred Return is being determined), *multiplied by* the Preferred Return Rate. For the avoidance of doubt, it is intended that the Preferred Return be earned only on the Initial Capital Contribution and Pro Rata Additional Capital Contribution actually contributed by a Member to the Company (and not on any Initial Capital Contribution or Pro Rata Additional Capital Contribution which a Member has committed to contribute to the Company until such time as such Initial Capital Contribution or Pro Rata Additional Capital Contribution is actually contributed to the Company). The Preferred Return shall not be earned on any Non-Pro Rata Additional Capital Contributions.

"Preferred Return Rate" shall mean a rate equal to nine percent (9%) per annum compounded monthly.]

EXHIBIT B
CERTAIN TAX AND ACCOUNTING MATTERS

ARTICLE I
ALLOCATION OF INCOME AND LOSSES

Section 1.1 Certain Definitions. As used herein, the following terms have the following meanings, and capitalized terms not defined in this Exhibit B have the meanings ascribed to such terms in this Agreement of which this exhibit is a part:

"Adjusted Capital Account Deficit" means, with respect to any Member for any taxable year or other period, the deficit balance, if any, in such Member's Capital Account as of the end of such year or other period, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts that such Member is obligated to restore or is deemed obligated to restore as described in the penultimate sentence of Treasury Regulation Section 1.704-2(g)(1) and in Treasury Regulation Section 1.704-2(i); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"Book Basis" means, with respect to any asset of the Company, the adjusted basis of such asset for federal income tax purposes; provided, however, that (a) if any asset is contributed to the Company, the initial Book Basis of such asset shall equal its fair market value on the date of contribution, and (b) the Book Basis of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by Manager, as of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for a Membership Interest; and (iii) in connection with the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. The Book Basis of all assets of the Company shall be adjusted thereafter by depreciation as provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(g) and any other adjustment to the basis of such assets other than depreciation or amortization.

"Capital Account" means the separate account maintained for each Member under Section 1.2 of this Exhibit B.

"Company Minimum Gain" means "partnership minimum gain" as defined in Treasury Regulation Section 1.704-2(d).

"Loss" means, for each taxable year or other period, an amount equal to the Company's items of taxable deduction and loss for such year or other period, determined in accordance with Section 703(a) of the Code (including all items of loss or deduction required to be stated separately under Section 703(a)(1) of the Code), with the following adjustments:

(a) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures under Treasury Regulation Section 1.704-1(b)(2)(iv)(*i*) , and not otherwise taken into account in computing Loss, will be considered an item of Loss;

(b) Loss resulting from any disposition of the Property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Book Basis of such property, notwithstanding that the adjusted tax basis of such property may differ from its Book Basis;

(c) In lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account depreciation for the taxable year or other period as determined in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(*g*);

(d) Any items of deduction and loss specially allocated pursuant to Section 1.4(a)-(g) of this Exhibit B shall not be considered in determining Loss; and

(e) Any decrease to Capital Accounts as a result of any adjustment to the Book Basis of Company assets pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(*f*) or (*g*) or clauses (i) through (iii) if the definition of Book Basis shall constitute an item of Loss.

"Member Minimum Gain" means the Company's "partner nonrecourse debt minimum gain" as defined in Treasury Regulation Section 1.704-2(i)(2).

"Member Nonrecourse Debt" means "partner nonrecourse debt" as defined in Treasury Regulation Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as defined in Treasury Regulation Section 1.704-2(i)(2).

"Net Loss" means, for any period, the excess of Losses over Profits, if applicable, for such period.

"Net Profit" means, for any period, the excess of Profits over Losses, if applicable, for such period.

"Nonrecourse Deductions" has the meaning set forth in Treasury Regulation Section 1.704-2(b)(1).

"Partially Adjusted Capital Account" means, with respect to any Member for any taxable year or other period of the Company, the Capital Account balance of such Member at the beginning of such year or period, adjusted for all contributions and distributions during such year or period and all special allocations pursuant to Section 1.4 of this Exhibit B with respect to such year or period but before giving effect to any allocations of Net Profit or Net Loss pursuant to Section 1.3 of this Exhibit B for such period.

"Profit" means, for each taxable year or other period, an amount equal to the Company's items of taxable income and gain for such year or other period, determined in accordance with Section 703(a) of the Code (including all items of income and gain required to be stated separately under Section 703(a)(1) of the Code), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit will be added to Profit;

(b) Gain resulting from any disposition of the Property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Book Basis of such property, notwithstanding that the adjusted tax basis of such property may differ from its Book Basis;

(c) Any items specially allocated pursuant to Section 1.4(a)-(g) of this Exhibit B shall not be considered in determining Profit; and

(d) Any increase to Capital Accounts as a result of any adjustment to the Book Basis of Company assets pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(*f*) or (*g*) or clauses (i) through (iii) if the definition of Book Basis shall constitute an item of Profit.

"Regulatory Allocations" has the meaning set forth in Section 1.4(g) of this Exhibit B.

"Target Account" means, with respect to any Member for any taxable year of the Company or other period, the excess of (a) an amount equal to the hypothetical distribution such Member would receive if all assets of the Company, including cash, were sold for cash equal to their Book Basis (taking into account any adjustments to Book Basis for such year or other period), all liabilities allocable to such assets were then due and were satisfied according to their terms (limited, with respect to each nonrecourse liability, to the Book Basis of the assets securing such liability) and all remaining proceeds from such sale were distributed pursuant to Section 4.1 (or, if then applicable, Section 4.2), over (b) the amount of Company Minimum Gain and Member Minimum Gain that would be charged back to such Member as determined pursuant to Treasury Regulation Section 1.704-2 in connection with such sale.

"Tax Decision" has the meaning set forth in Section 2.1(b) of this Exhibit B.

"Treasury Regulation" or "Regulation" means, with respect to any referenced provision, such provision of the regulations of the United States Department of the Treasury or any successor provision.

Section 1.2 Maintenance of Capital Accounts. A separate Capital Account will be maintained for each Member in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). Consistent therewith, the Capital Account of each Member will be determined and adjusted as follows.

(a) Each Member's Capital Account will be credited with:

(i) Any contributions of cash made by such Member to the capital of the Company plus the fair market value of the Property contributed by such Member to the capital of the Company (net of any liabilities to which such property is subject or which are assumed by the Company);

(ii) The Member's distributive share of Net Profit and any items in the nature of income or gain specially allocated to such Member pursuant to Section 1.4 of this Exhibit B; and

(iii) Any other increases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(b) Each Member's Capital Account will be debited with:

(i) Any distributions of cash made from the Company to such Member plus the fair market value of the Property distributed in kind to such Member (net of any liabilities to which such property is subject or which are assumed by such Member);

(ii) The Member's distributive share of Net Loss and any items in the nature of expenses or losses specially allocated to such Member pursuant to Section 1.4 of this Exhibit B; and

(iii) Any other decreases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(c) The initial Capital Account balance of each Member, assuming all Initial Capital Contributions have been made, is set forth in Exhibit C, which balances have been determined in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(*f*).

(d) Notwithstanding the foregoing, (i) Capital Accounts shall be maintained in a manner that results in liquidating distributions causing all Capital Accounts to equal zero, and (ii) Capital Accounts shall not govern distributions by the Company, but rather shall be used solely for the purpose of assisting the Company in allocating items of income, gain, loss, deduction and credit for applicable income tax purposes.

Section 1.3 Allocations of Net Profit and Net Loss. For each taxable year or portion thereof, Net Profit and Net Loss shall be allocated (after all allocations pursuant to Section 1.4 of this Exhibit B have been made) as follows:

(a) Net Loss shall be allocated among the Members so as to reduce, proportionately, the differences between their respective Partially Adjusted Capital Accounts and Target Accounts for such year; provided, however, that no portion of the Net Loss for any taxable year shall be allocated to a Member whose Target Account is greater than or equal to its Partially Adjusted Capital Account for such taxable year.

(b) Net Profit shall be allocated among the Members so as to reduce, proportionately, the differences between their respective Target Accounts and Partially Adjusted Capital Accounts for such year; provided, however, that no portion of the Net Profit for any taxable year shall be allocated to a Member whose Target Account is less than or equal to his Partially Adjusted Capital Account for such taxable year.

Section 1.4 Other Allocation Provisions. The following special allocations shall, except as otherwise provided, be made in the following order:

(a) If there is a net decrease in Company Minimum Gain or in any Member Minimum Gain during any taxable year or other period, prior to any other allocation pursuant hereto, such Member shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount and manner required by Treasury Regulation Sections 1.704-2(f) or 1.704-2(i)(4). The items to be so allocated shall be determined in accordance with Treasury Regulation Section 1.704-2.

(b) Nonrecourse Deductions for any taxable year or other period shall be allocated (as nearly as possible) under Treasury Regulation Section 1.704-2 to the Members, pro rata in proportion to their respective Percentage Interests.

(c) Any Member Nonrecourse Deductions for any taxable year or other period shall be allocated to the Member that made or guaranteed or is otherwise liable with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with principles under Treasury Regulation Section 1.704-2(i).

(d) Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*) which causes or increases a negative balance in his or its Capital Account shall be allocated items of Profit sufficient to eliminate such increase or negative balance caused thereby, as quickly as possible, to the extent required by such Treasury Regulation.

(e) No allocation or loss or deduction shall be made to any Member if, as a result of such allocation, such Member would have a deficit Adjusted Capital Account. Any such disallowed allocation shall be made to the Members entitled to receive such allocation under Treasury Regulation Section 1.704 in proportion to their respective Percentage Interests. If losses or deductions are reallocated under this Section 1.4(e) of this Exhibit B, subsequent allocations of income and losses (and items thereof) shall be made so that, to the extent possible, the net amount allocated under this Section 1.4(e) of this Exhibit B equals the amount that would have been allocated to each Member if no reallocation had occurred under this Section 1.4(e) of this Exhibit B.

(f) For purposes of Section 752 of the Code and the Treasury Regulations thereunder, excess nonrecourse liabilities (within the meaning of Treasury Regulations Section 1.752-3(a)(3)) shall be allocated to the Members pro rata in proportion to their respective Percentage Interests.

(g) The allocations contained in Sections 1.4(a), (b), (c), (d) and (e) of this Exhibit B (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1 and 1.704-2. ***[use with the priority return provision: Accordingly, notwithstanding any other provision of this Agreement, items of gross income shall be allocated to the Members on a priority basis to the extent and in the manner required by such provisions.]*** **The Regulatory Allocations shall be taken into account in allocating Profits, Losses, Net Profit and Net Loss and other items of income, gain, loss and deduction among the Members so that to the extent possible, the aggregate of (i) the allocations made to each Member under this Agreement other than the Regulatory Allocations and (ii) the Regulatory Allocations made to each Member shall equal the net amount that would have been allocated to each Member had the Regulatory Allocations not occurred. Manager shall take account of the fact that certain of the Regulatory Allocations will occur at a period in the future for purposes of applying this Section 1.4(g) of this Exhibit B.**

(h) Transfer of Membership Interest. Except to the extent otherwise required by the Code and Regulations, if a Membership Interest or part thereof is transferred in any Fiscal Year, the items of income, gain, loss, deduction and credit allocable to such Membership Interest for such Fiscal Year shall be apportioned between the transferor and the transferee in proportion to the number of days in such Fiscal Year the Membership Interest is held by each of them, except that, if they agree between themselves and so notify the Company within thirty days after the transfer, then at their option, (i) all items or (ii) extraordinary items, including capital gains and losses, may be allocated to the person who held the interest on the date such items were realized or incurred by the Company. At the request of the transferee, the Company shall make the election provided for in Code Section 754; provided, that the transferee reimburses the Company for the reasonably anticipated cost of such election, as determined by the Company.

Section 1.5 Allocations for Income Tax Purposes. The income, gains, losses, deductions and credits of the Company for federal, state and local income tax purposes shall be allocated in the same manner as the corresponding items entering into the computation of Net Profit and Net Losses were allocated pursuant to Sections 1.3 and 1.4; provided that solely for federal, local and state income and franchise tax purposes and not for book or Capital Account purposes, income, gain, loss and deduction shall be allocated, other than with respect to the tax basis of property, as follows: (i) in the case of property contributed in kind, in accordance with the requirements of Code Section 704(c) and such Regulations as may be promulgated thereunder from time to time, and (ii) in the case of other property, in accordance with the principles of Code Section 704(c) and the Regulations thereunder as incorporated among the requirements of the relevant provisions of the Regulations under Code Section 704(b).

ARTICLE II
MISCELLANEOUS MATTERS

Section 2.1 Preparation of Records and Returns; Tax Matters Partner.

All financial and accounting books and records of the Company shall be prepared under the direction of Manager. All federal, state and local income tax returns, and all tax audits and litigation shall be conducted under the direction of Manager. The determination of whether the Company shall make available elections for accounting or federal, state or local income tax purposes shall be made by the Manager. _____ is hereby designated as the "tax matters partner" for the Company (as such term is defined in Section 6231(a)(7) of the Code). The tax matters partner shall promptly notify Members who do not qualify as "notice partners" within the meaning of Code Section 6231(a)(8) and all other Members at the beginning and completion of an administrative proceeding at the Company level promptly upon such notice being received by the tax matters partner.

Section 2.2 Method of Making Contributions. References to contributions of property appearing in this Agreement or in Article I hereof are included for the purpose of conforming to the requirements set forth in the Regulations and shall not give rise to an inference that contributions may be made in a form other than cash except as set forth in this Agreement or any other written agreement of the Members.

EXHIBIT C

Capital Accounts and Percentage Interests of the Members

Member	**Capital Contribution/ Initial Capital Account**	**Percentage Interest**
[Name & Address]	**$**	**%**

[Add with the first priority return provision]

Schedule of Capital.

1. The Initial Capital Contributions herein set forth for the Class A Member (a) shall be contributed and funded by the Class A Member prior to and following the Closing Date as provided for in Section 4.1(a) of the within Agreement, and (b) do not include the Class A Member's Priority Capital Contributions of $_____ as set forth in Section 4.4 of the within Agreement.

2. The Initial Capital Contributions herein set forth for the Class B Member shall be contributed and funded by the Class B Member prior to and following Closing as set forth in Section 4.1(b) of the within Agreement.

EXHIBIT D

Specimen Membership Certificate

Certificate No. __ ____ Percentage Interest

_____ LLC
A Delaware Limited Liability Company

Limited Liability Company Membership Certificate

THIS IS TO CERTIFY that _____, is a Member and the Registered Holder of ___% of the Percentage Interests in _____LLC, a Delaware Limited Liability Company, transferable only on the books of the said Limited Liability Company by the Holder hereof in person or by duly authorized attorney pursuant to the Limited Liability Company Agreement of the Company. The said Agreement contains restrictions on transfer of the Interests. Reference is made to the said Limited Liability Company Agreement for the terms of those restrictions.

WITNESS the said Limited Liability Company has duly executed this Certificate by its Manager.

_____ LLC

By:_____(Seal)
_____ Its

Manager

Dated:

EXHIBIT E

PRO-FORMA BUDGET

EXHIBIT F

OFFICERS

President:

Vice President:

Secretary:

Treasurer:

EXHIBITS AND SCHEDULES

EXHIBIT A	DEFINITIONS
EXHIBIT B	CERTAIN TAX AND ACCOUNTING MATTERS
EXHIBIT C	CAPITAL ACCOUNTS AND CAPITAL CONTRIBUTIONS
EXHIBIT D	MEMBERSHIP CERTIFICATE SPECIMEN
EXHIBIT E	PRO-FORMA BUDGET
EXHIBIT F	OFFICERS
SCHEDULE A	MANAGEMENT AGREEMENT SCHEDULE A

Management Agreement

_____, 20__

To:

Re: Management Agreement – _____ LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned has been designated as Manager of _____ a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of _____, 200__, as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. The undersigned accepts such Person's rights, responsibilities, duties and authority as a Manager under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as a Manager under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as a Manager is designated or until such Person's resignation or removal as a Manager in accordance with the LLC Agreement. The undersigned agrees and acknowledges that it has been designated as a "Manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement. This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

_____ LLC

By: _____(SEAL)