

OPERATING AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 FORMATION 5

 1.1 Organization 5

 1.2 Agreement 5

 1.3 Name 6

 1.4 Effective Date 6

 1.5 Term 6

 1.6 Registered Agent and Registered Office 6

ARTICLE 2 NATURE OF BUSINESS 6

ARTICLE 3 ACCOUNTING AAN RECORDS 6

 3.1 Records to be Maintained 6

 3.2 Reports to Members 7

ARTICLE 4 MEMBERSHIP INTERESTS AND THEIR TRANSFER 7

 4.1 Membership Roster 7

 4.2 General Restriction on Transfers 7

 4.3 Termination of Membership Interest 7

 4.4 Dissociation Provision 7

 4.5 Purchase Price and Payment Terms 8

 4.6 Securities Law Restrictions 9

ARTICLE 5 RIGHTS AND DUTIES OF MEMBERS 10

 5.1 Meetings 10

 5.2 Membership 10

 5.3 Notice of Meeting 11

 5.4 Quorum 12

 5.5 Proxies 12

 5.6 Voting by Certain Members 12

 5.7 Manner of Acting 12

 5.8 Telephonic Meetings 12

 5.9 Action by Consent 13

 5.10 Voting Rights of Members 13

 5.11 Other Rights of Members 13

 5.12 Major Decisions 14

 5.13 Conflicts of Interest 14

 5.14 Building Financing 15

 5.15 Loans by Members 15

 5.16 Indemnification of Personal Guaranty of Member 15

ARTICLE 6 MANAGMENT 16

 6.1 Appointment and Authority 16

 6.2 Number and Designation of the Managers 16

 6.3 Term of Office 16

 6.4 Authority of the Manager to Bind the Company 16

 6.5 Limitations on the Actions of the Members 17

 6.6 Compensation of the Manager 17

 6.7 Manager’s Standard of Care 17

 6.8 Officers 18

 6.9 Resignations and Removal 18

ARTICLE 7 CONTRIBUTIONS, MEMBERSHIP INTERESTS AND CAPITAL ACCOUNTS	18
7.1 Initial Contributions	18
7.2 Additional Contributions.....	18
7.3 Enforcement of Commitments	19
7.4 Maintenance of Capital Accounts	19
7.5 Distribution of Assets	20
7.6 Sale or Exchange of Interest	20
7.7 Compliance with Section 704(b) of the Code	20
7.8 Compliance with Section 704(c) of the Code	20
7.9 Terms of Buy-In	20
ARTICLE 8 ALLOCATIONS AND DISTRIBUTIONS	20
8.1 Allocations of Net Profits and Net Losses from Operations	20
8.2 Special Items	21
8.3 Distributions	21
8.4 Tax Distribution	21
8.5 Limitations on Distributions	21
ARTICLE 9 TAXES	21
9.1 Elections	21
9.2 Tax Matters Member	21
9.3 Method of Accounting	21
ARTICLE 10 BUILDING APPRASIAL	22
ARTICLE 11 DISSOLUTION AND WINDING UP	22
11.1 Dissolution	22
11.2 Effect of Dissolution	22
11.3 Distribution of Assets on Dissolution	23
11.4 Winding Up and Articles of Dissolution	23
ARTICLE 12 PURCHASE AND LEASE OF THE BUILDING	23
12.1 Purchase of the Building	23
12.2 Construction of Improvements; Lease of the Building	23
ARTICLE 13 AMENDMENT	23
ARTICLE 14 ARBITRATION	24
ARTICLE 15 MISCELLANEOUS PROVISIONS	24
15.1 Entire Agreement	24
15.2 No Partnership Intended for Nontax Purposes	24
15.3 Rights of Creditors and Third Parties under Operating Agreement	25
15.4 Indemnification by Company	25
15.5 Gender and Number	25
15.6 Articles and Other Headings	26
15.7 Counterparts	26
15.8 Successors	26
15.9 Governing Law	26
ARTICLE 16 DEFINITIONS	26
16.1 Act	26
16.2 Additional Member	26
16.3 Adjusted Capital Contributions	26

16.4 Articles	26
16.5 Building.....	26
16.6 RESERVED	26
16.7 Capital Account	27
16.8 Capital Contribution	27
16.9 Capitalization Rate	27
16.10 Code	27
16.11 Commitment	27
16.12 Company	27
16.13 Company Liability	27
16.14 Company Minimum Gain	27
16.15 Company Nonrecourse Liability	28
16.16 Company Property	28
16.17 Contributing Members	28
16.18 Debt	28
16.19 Default Interest Rate	28
16.20 Delinquent Member	28
16.21 Distribution	28
16.22 Disposition (Dispose)	28
16.23 Dissolution Event	28
16.24 Effective Date	28
16.25 RESERVED.....	28
16.26 Initial Capital Contribution	28
16.27 Major Decisions	28
16.28 Majority	28
16.29 Management Rights	28
16.30 Managers	28
16.31 Member	29
16.32 Member Minimum Gain	29
16.33 Member Nonrecourse Liability	29
16.34 Membership Interest	29
16.35 Minimum Gain Chargeback	29
16.36 Net Book Value	29
16.37 Net Losses	29
16.38 Net Operating Income	30
16.39 Net Profits	30
16.40 Nonrecourse Liabilities	30
16.41 Notice	30
16.42 Operating Agreement or Agreement	30
16.43 Person	30
16.44 Prime Rate	30
16.45 Building	30
16.46 RESERVED.....	30
16.47 Property	31
16.48 Records Office	31
16.49 Regulations	31

16.50 Related Person	31
16.51 Resignation	31
16.52 Qualified Income Offset	31
16.53 Substitute Member	31
16.54 Taxable Year	31
16.55 Value of the Building	31

OPERATING AGREEMENT
of

The undersigned., all the Members of _____ (“Company”) hereby adopt this Operating Agreement of Company with reference to the following facts:

I

RECITALS

- A. Company is a limited liability company organized pursuant to the filing of Articles of Organization with the _____.
- B. The Members desire to adopt this Operating Agreement to document their agreement regarding the management, ownership, and governance of Company pursuant to this Operating Agreement.

Based upon the above, and for good and valuable consideration, the Members hereby adopt this Operating Agreement on behalf of Company to read as follows:

II

AGREEMENT

**ARTICLE 1
FORMATION**

- 1.1 **Organization.** The Members hereby organize the Company as a _____ pursuant to the provisions of the Act.
- 1.2 **Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this Operating Agreement hereby agree to the terms and conditions of this Operating Agreement, as it may from time to time be amended according to its terms. It is the express intention of the Members that this Operating Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Operating Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Operating Agreement shall govern, even when inconsistent with, or different from, the provisions of the Act or any other law or rule. To the extent any provision of this Operating Agreement is prohibited or ineffective under the Act, this Operating Agreement shall be considered amended to the smallest degree possible in order to make this this Operating Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any

provision of this Operating Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

- 1.3 **Name.** The name of the Company is _____, and all business of the Company shall be conducted under that name or under any other name approved by the Members, but in any case, only to the extent permitted by applicable law.
- 1.4 **Effective Date.** The Operating Agreement is adopted effective as of _____, 20____
- 1.5 **Term.** The Company shall have perpetual existence, unless the Company shall be sooner dissolved, and its affairs wound up in accordance with the Act or this Operating Agreement.
- 1.6 **Registered Agent and Registered Office.** The registered agent and the registered office shall be _____. The Manager may, from time to time, change the registered agent and registered office through appropriate filings with the _____ Secretary of State. In the event the resident agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement resident agent or file a notice of change of address as the case may be.

ARTICLE 2 NATURE OF BUSINESS

The Company is formed for the purpose of acquiring, owning, improving and leasing the real property _____ (the "Building"). The Company shall be authorized to do any lawful act now and hereafter permitted by the laws of the State of _____ in furtherance of, or convenient to, accomplishing its stated purpose or any other business the Company may be authorized to engage in. In connection with the foregoing, the Company shall be authorized to conduct any authorized business of the Company in any of the states of the United States of America, the District of Columbia, the territories of the United States and any foreign country, to the extent permitted by the laws of such jurisdictions.

ARTICLE 3 ACCOUNTING AND RECORDS

- 3.1 **Records to be Maintained.** Pursuant to section 86.241 of the Act, the Company shall maintain the following records at the Records Office:
- 3.1.1 A current list, in alphabetical order, of the full name and last known business address of each Member and Manager, if any;
- 3.1.2 A copy of the filed Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any Articles have been executed; and

3.1.3 A copy of this Operating Agreement, including all amendments thereto.

3.2 **Reports to Members.**

3.2.1 The Manager shall provide reports to the Members at such time and in such manner as the Manager may determine to be reasonable.

3.2.2 The Manager shall provide all Members with those information returns by the Code or the Act.

3.2.3 The Manager shall maintain a record of the Capital account for each Member in accordance with Article 7.

ARTICLE 4 MEMBERSHIP INTERESTS AND THEIR TRANSFER

4.1 **Membership Roster.** The Company shall maintain a membership roster of the Company containing (in alphabetical order) the name and last known address of each Member, and the Member's respective Membership Interest.

4.2 **General Restriction on Transfers.** The Members do not want any Membership Interest to be made generally available to persons other than the present Members, except for those designated as Additional Members. Accordingly, no Member may dispose of all or any part of his Membership Interest except as provided for in this agreement. Dispositions in violation of this Section 4.2 shall be null and void and neither the Company nor any other Member shall have any obligation whatsoever to recognize such Dispositions. After the consummation of any Disposition of any part of a Membership Interest, the Membership Interest so Disposed of shall continue to be subject to the provisions of this Operating Agreement and any further Dispositions shall be required to comply with all the provisions of this Agreement. Each Member acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members.

4.3 **Reserved.**

4.4 **Dissociation Provision.** In the event of a Triggering Event (as hereinafter defined), the Company shall purchase the entire Membership Interest of the Dissociated Member (as hereinafter defined), on the terms set forth herein. A "**Triggering Event**" means, with respect to any Member, the occurrence of any of the following events: (i) the death or disability (as the term is defined in Article 8(b)(1) of the form _____ (Operating Company) Employment Agreement for Stockholders ("Disability"), as the same may be amended from time to time, or such successor provision included in an applicable employment agreement) of such Member, and in the case of a Disability, the Member does not exercise the Election Notice as defined in Section 5.2.1 below, (ii) the bankruptcy or the assignment for the benefit of creditors of such Member; (iii) the execution of any property settlement agreement between any Member and his/her spouse, or the entry of any decree of divorce or separate maintenance by a court of

competent jurisdiction, wherein spouse is awarded any Membership Interest or a trust is imposed on said Membership Interest for the benefit of said spouse, then to the extent said Membership Interest is transferred or to the extent said Membership Interest is subject to the imposition of any such trust or lien, there shall be deemed a Triggering Event as to the Membership Interest so affected; (iv) a Member, at any time, enters into an arrangement to provide orthopaedic or related medical services, either directly or indirectly, which may be considered to be competitive with the Medical Practice; (v) a Member terminates his ownership interest in the Medical Practice and does not exercise the Election Notice as defined in Section 5.2.1 below; (vi) in the case of a Member that is an entity other than a corporation, the dissolution and commencement of winding up of such Member; (vii) in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, or the revocation of the charter of such Member; or (viii) in the case of a Member who is a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee), or the bankruptcy or insolvency of such Member. The Member with respect to whom a Triggering Event occurs is sometimes referred to herein as a "**Dissociated Member**". A Dissociated Member shall have no rights to vote on, or participate in the management of, any Company matters pending the purchase of the Dissociated Member's Membership Interest in Company.

4.5 **Purchase Price and Payment Terms.**

4.5.1 If a Member becomes a Dissociated Member due to the occurrence of a Triggering Event, the purchase price (the "Purchase Price") of the Membership Interest of such Member shall be determined as follows:

4.5.1.1 The Members may agree, from time to time, upon a price and upon terms for the purchase by Company of the Dissociated Member's Membership Interest. Such an agreement shall be binding upon Company and all of the Members only if (1) the agreement is in writing, executed by all of the Members, and (2) the agreement specifies the time during which the agreement is to be in full force and effect. In the absence of such an agreement, the purchase price shall be determined pursuant to Section 4.5.1.2. or 4.1.5.3, as applicable, below.

4.5.1.2 In absence of an agreement specified in section 4.5.1.1 above, and subject to Section 4.5.1.3 below, the Purchase Price for a Dissociated Member's Membership Interest shall be equal to such Member's pro rata share of the Company times the Net Book Value of the Company calculated using the Value of the Building as determined pursuant to Article 10 of this Agreement, minus any outstanding debt owing to the Company by such Member (for clarity, the Net Book Value shall be net of any applicable Debt).

4.5.1.3 Notwithstanding the above, if the Triggering Event is due to the Member engaging in competitive services as described in Section 4.4(iv), or within one (1) year following the Member's termination of employment with the Medical Practice, a Member engages in any competitive services as described in Section 4.4(iv) above, then the amount to be paid to the Member as a Purchase Price shall be the lesser of (i) the amount determined pursuant to either Section 4.5.1.1 or 4.5.1.2 above, or (ii) an amount

equal to the Capital Account Balance of such Member as of the date of the Triggering Event less (1) all amounts previously paid to the Member for the purchase price, and (2) any outstanding debt owing to Company by such Member, and no further amount shall be due or paid to the Member beyond the amount specified in this Section 4.5.1.3. For clarity, if a Membership Interest is held in trust or other form of legal entity, then for purposes of determining whether a Member engages in competitive services under this Agreement, the services or activities of the physician who is the direct or indirect beneficial owner of the Member, shall be deemed to be the activities of the Member.

4.5.2 Upon the purchase of any Membership Interest by the Company, the Company, at its sole and exclusive option, shall tender payment of the Purchase Price to the Member in the form of: (i) cash; or (ii) a variable rate promissory note with a eight (8) year term which shall accrue interest at a rate equal to the average interest rate being paid by the Company on all outstanding indebtedness of the Company to any bank or financial institution (excluding any interest paid on account of revolving credit); or (iii) any combination of (i) and (ii) (such arrangement as to any Member shall be referred to as a "Buy-Out Agreement"). If, at any time, the Company has no outstanding indebtedness owed to any bank or financial institution (other than revolving credit), the interest rate paid by the Company pursuant to a Buy-Out Agreement shall be equal to one percent (1%) over the then Prime Rate.

4.5.3 In no event will the combined amount of installment payments under all outstanding Buy-Out Agreements exceed eighty percent (80%) of the Net Profits (adjusted to add back depreciation deductions) of the Company in any given year. In the event, as determined by the Manager, the obligations of the Company in regards to such outstanding Buy-Out Agreements will exceed eighty percent (80%) of the Net Profits (adjusted to add back depreciation deductions) of the Company in any given year, the Manager shall have the right to amend the terms and provisions of the outstanding Buy-Out Agreements in such year, in a pari passu fashion, to provide for a reduction in the total payments made under such Buy-Out Agreements. However, in no event shall the company pay less than the interest payments required pursuant to any promissory notes related to the Buy-Out Agreements, nor shall the term of any such promissory note be extended.

4.5.4 In the event Company purchases a Membership Interest as provided above as a result of a Triggering Event, Company and the Disassociated Member shall cooperate, in good faith, to effectuate the purchase of the Membership Interest as soon as reasonably practicable after the Triggering Event, and in no event more than ninety (90) days following the Triggering Event. For clarity, the Members acknowledge and agree that the value of the Membership Interest shall be determined effective as of December 31st of the calendar year preceding the year in which the Triggering Event occurs, notwithstanding the date of the actual closing for the sale of the Membership Interest. Upon the closing of the purchase of the Membership Interest, the Terminating or Disassociated Member shall execute and deliver to Company an assignment transferring his entire Membership Interest in Company back to Company, and Company shall deliver to the Disassociated Member cash and/or a Promissory Note in accordance with the above, as applicable.

4.6 **Securities Law Restrictions.** In addition to any restriction on the transferability of any Membership Interest, each of the Members expressly acknowledges that the Membership Interests have not been registered under the Securities Act of 1933 (**the "1933 Act"**), or applicable state securities laws. Each Member understands that the Membership Interests have been issued in reliance on an applicable exemption from registration under the 1933 Act. Each Member represents and warrants that (i) his, her, or its Membership Interest is being acquired solely for his, her or its own account, for investment purposes only, and is not for distribution, subdivision or fractionalization thereof; and (ii) other than as disclosed herein, he, she or it has no agreement or other arrangement, formal or informal, with any person to sell, transfer or pledge any part of the Membership Interest, or which would guarantee to it any profit, or protect it against any loss, with respect to the Membership Interest and he, she or it has no plans to enter into any such agreement or arrangement. Each Member further understands that he, she or it must bear the economic risk of the investment in the Membership Interest for an indefinite period of time.

ARTICLE 5 RIGHTS AND DUTIES OF MEMBERS

5.1 **Meetings.** Meetings of the Members, for any purpose or purposes, may be called by the Manager or by any Member or Members who own, collectively or individually, more than thirty percent (30%) of the total Membership Interests in the Company.

5.2 Membership.

5.2.1. There shall be one class of Membership; provided, however, that neither a (i) Dissociated Member (as defined in section 4.4 above) nor (ii) Retired Members (as defined immediately below) shall have the right to vote or participate in the Management of Company. Except as provided for below, all Members must have an ownership interest in _____ (Operating Company) a professional corporation (**the "Medical Practice"**). Provided that if a Member has been employed by the Medical Practice for a total of no less than ten (10) years, at such time as the Member terminates his ownership interest in the Medical Practice or suffers a Disability (hereafter "Retired Member"), upon written notice to the Company (the "Election Notice"), the Retired Member may remain a Member of the Company for a period of time equal to one year for every two full years the Member was employed by the Company, for a maximum of ten (10) additional years (the "Additional Period"). For the purposes of determining the length of the Additional Period for which a particular Retired Member is eligible, Members shall earn credit for each two full years such member is employed by the Medical Practice. No credit shall be given for any portion of a two (2) year period. Upon delivery of the Election Notice, the Retired Member shall remain a Member for the entire Additional Period, provided that at no time either prior or subsequent to the Election Notice does such Retired Member enter into any agreement to provide orthopaedic or related medical services, either directly or indirectly, which may be considered to be competitive with the Medical Practice (an "Agreement to Compete"). In the event the Retired Member enters into an Agreement to Compete, the Company shall have the right, but not the obligation, to purchase such Retired Member's Interest as set forth below, at any time during the Additional Period. Once a Retired Member delivers such Retired Member's Election Notice, the Retired Member

may not voluntarily terminate his interest in the Company prior to the expiration of such Additional Period. However, upon the subsequent occurrence of another Triggering Event (other than a Disability or the entering of an Agreement to Compete), the Retired Member shall be deemed a Dissociated Member pursuant to the terms of Section 4.4. Upon the expiration of the Additional Period, the Retired Member's Membership Interest in Company shall be purchased pursuant to Section 4.5 above. In addition, immediately following a the Retired Member's delivery of the Election Notice, and during the entire remaining Additional Period, the Retired Member's Membership Interest shall be converted to a non-voting Membership Interest, and the Retired Member shall have no right to vote on any matter Members of Company may vote. Specifically, Retired Members shall have the right to share in one or more of the profits, losses, or similar items of, and receive distributions from Company pursuant to this Agreement and the Act, but shall not possess any other rights of a Member, including, without limitation, the right to vote or consent or participate in management, or, except as required by applicable law notwithstanding this Agreement, any right to information concerning Company or its business affairs.

For the purpose of determining the number of years that a Member has been employed by the Medical Practice, all years shall be on the basis of a calendar year. As such, solely for the purposes of this section, a Member shall not be considered employed by the Medical Practice until January 1 of the year immediately following the date the Member begins employment by the Medical Practice. Such time shall be measured in full years only, no Member shall be afforded any credit for a partial year.

The names and addresses of the initial Members are set forth on Exhibit "A" attached hereto and incorporated herein by reference. Exhibit A may be updated by the Manager to reflect changes in the Members of Company without need for amendment to this Agreement; provided, however that any new Member must execute a joinder, or similar document, reflecting the new Member's agreement to be bound by the terms and conditions of this Agreement.

5.2.2 Except as otherwise provided herein, the designations, preferences, and relative, participating, optional or other special rights, or qualifications, limitations or restrictions of the Member(s) are as set forth in this Agreement. Subject to the rights which may rest in the Member(s) under the provisions of this Agreement or as maybe required by the laws of the State of _____, the Member(s) shall be entitled to vote on all matters, including matters in relation to the management of the business and affairs of the Company, and shall be entitled to vote in an amount equal to the Membership Interest percentage held by such Member.

5.3 **Notice of Meeting.** Written notice, by mail or by telecopy, stating the place, day and hour of the meeting, and the purposes for which the meeting is called, shall be delivered not less than five (5) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager, to each Member of record on the membership roster as of the date the notice is prepared for delivery entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the membership roster, with postage thereon prepaid. When all the Members of the Company are present at any meeting, or if those not present sign a written waiver of notice of such meeting, or subsequently ratify all the proceedings thereof, the transactions of such meeting are as valid as if a meeting were formally called and notice had been given.

5.4 **Quorum.** At any meeting of the Members, a Majority, represented in person or by proxy, shall constitute a quorum for the transaction of business. If less than a Majority of Members are represented at a meeting, a Majority of the Members so represented may adjourn the meeting from time to time without further notice. At a reconvening of any 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 of enough Members to leave less than a quorum.

5.5 **Proxies.** At all meetings of Members, a Member may vote by proxy executed in writing by the Member of the same class or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Manager of the Company before or at the time of the meeting. No proxy shall be valid after six (6) months from date of execution, unless otherwise provided in the proxy.

5.6 **Voting by Certain Members.** Membership interests standing in the name of a corporation, partnership, limited liability company or other entity may be voted by such officer, partner, manager, member, agent or proxy as the bylaws or other governing document of such entity may prescribe or, in the absence of such provision, as the board of directors or other authorized representative of such entity may determine. Membership interests held by a trustee, personal representative, administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such interests into his name.

5.7 **Manner of Acting.**

5.7.1 Unless the affirmative vote of a greater proportion is required by the laws of Nevada or this Operating Agreement for any action by the Members, the act of a Majority shall be the act of the Members.

5.7.2 The Manager of the Company shall preside at meetings of the Members, and if also a Member, may move or second any item of business. A record shall be maintained of the meetings of the Members. The Members may adopt their own rules of procedure which shall not be inconsistent with the laws of Nevada or this Operating Agreement.

5.7.3 A Member who is present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken, unless the Member's dissent shall be entered in the minutes of the meeting or unless the Member shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail to the secretary of the meeting within five (5) days following the adjournment of the meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

5.8 **Telephonic Meetings.** Members may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon.

Participating in a meeting pursuant to this section shall constitute presence in person at such meeting.

5.9 Action by Consent. Unless otherwise provided by the laws of Nevada, any action required or permitted to be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the required number of Members entitled to vote as set forth in Section 5.7.1 with respect to the subject matter thereof. Whenever a consent, approval, waiver, or affirmative vote of a Member is required under this Agreement or is desirable regarding any transaction, the Members shall be given notice requesting the consent, approval, waiver, or affirmative vote. If the Member does not respond within ten (10) days after receipt of the notice by delivery of a notice to the Managers specifically withholding or indicating an inability at that time to give the Members consent, approval, waiver, or affirmative vote, or requesting additional pertinent documentation or information, then the Member will be deemed conclusively to have given his consent, approval, waiver or affirmative vote.

5.10 Voting Rights of Members. Members, other than Retired Members who have no voting rights as further described in section 5.2.1 above, have the right to vote on the following matters, which matters must be presented to and approved by the Members in order for the Manager to have authority to act on behalf of the Company with regard to such decisions:

5.10.1 Designation and removal of Managers, all as set forth in Article 6;

5.10.2 Major Decisions, all as set forth in Section 5.12;

5.10.3 The admission of Additional Members; and

5.10.4 The determination of the amount of compensation to be paid to the Manager pursuant to Section 6.6.

With respect to the Members, the term voting rights, or vote shall mean the Member's percentage of the total voting power and authority of all the Members. That percentage is the Member's Membership Interest as reflected on Exhibit A, as the same may be amended/updated from time to time to reflect changes in the Members of Company. However, a Retired Member's voting rights shall be considered to be zero. For voting purposes, each remaining Member's voting rights shall then be considered to be that percentage determined by dividing the Member's Membership Interest as reflected on Exhibit A by the total Membership Interests of all of the remaining Members excluding all Retired Members.

Until otherwise modified or repealed by the Members, the authority to act, except for the matters set forth above or otherwise reserved to the Members pursuant to the Act or as otherwise set forth herein, on all matters on behalf of the Company shall be vested in the Manager.

5.11 Other Rights of Members. By way of illustration, and not limitation, Members may:

5.11.1 Review the books and records of the Company;

5.11.2 Receive notice of resignation of Managers and officers; and

5.11.3 Receive distributions pursuant to Article 8.

5.12 **Major Decisions.** No action shall be taken, major sum expended, decision made or obligation incurred by any Manager on behalf of the Company with respect to any matter within the scope of any of the Major Decisions enumerated below, unless approved by at least a Majority of the Members. A "**Major Decision**" shall mean and consist of any decision which might reasonably be considered to materially affect the financial condition or prospects of the Building, including, without limitation, the following:

5.12.1 Enter into, execute, or deliver, or otherwise amend, revise, terminate, renew, extend or continue any material contract, agreement, understanding or agreement which, even in the ordinary course of business, commits Company to expend or incur liabilities in excess of One Hundred Thousand Dollars (\$100,000);

5.12.2 the occurrence of any indebtedness for borrowed money by, or the refinancing of any indebtedness of, the Company, or the granting of any mortgage, lien or other encumbrance on any of the Company's Property in excess of One Hundred Thousand Dollars (\$100,000);

5.12.3 Sale of the Building;

5.12.4 The entry into or amendment of, and all decisions respecting any arrangements of any nature with any Member or any person not acting at arm's length with all Members;

5.12.5 Amendments to the Articles of Organizations or the Operating Agreement;

5.12.6 The dissolution of the business of the Company;

5.12.7 The election and/or removal of a Manager, and

5.12.8 The cessation of the business of the Company.

In addition, any action by the Company to amend, modify, or supplement any document issued in a transaction or other matter described above as a Major Decision shall require the approval of the Members if the same as so amended, modified or supplemented, would be inconsistent with the terms previously approved with respect thereto by the Members. Notwithstanding the above, a Manager shall have the right and authority to take such actions as it, in its reasonable judgment, deems necessary for the protection or the preservation of Company assets if under the circumstances, in the good faith estimation of the Manager, there is insufficient time to allow the Manager to obtain the approval of the Members to such action and any delay would materially increase the risk to preservation of such Company asset. The Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter. Such authority shall lapse and terminate upon reduction of such risk or upon receipt by the Manager of telephone, facsimile, or written notice from any Member of its disapproval of any or all of the proposed actions.

5.13 Conflicts of Interest.

5.13.1 A Member shall be entitled to enter into transactions that may be considered to be competitive with (except as set forth in Article 4.4), or a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member, without the consent of the other Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company Property including information developed exclusively for the Company and opportunities expressly offered to the Company.

5.13.2 A Member, including a Manager, does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the disinterested Manager or disinterested Members, in either case knowing the material facts of the transaction and the Member's interest, authorize, approve, or ratify the transaction.

5.14 **Building Financing.** The Manager shall use his reasonable best efforts to procure and maintain financing, or re-financing, as applicable, for the Building. If required by the lender, the Member(s) shall guaranty such financing. In the event the Manager is unable to obtain financing for the Building, the Company shall be dissolved in accordance with Article 11 below. In the event the Manager is able to obtain financing or re-financing for the Building, the resulting debt (the "Debt") shall be apportioned among the Members in accordance with their Membership Interests such that each Member shall be responsible and personally guarantee the payment of the Debt if such guarantee is required by the lender; provided, however, that in the event any Member wishes to pay his pro rata share of the Debt in full at any time, such Member may do so in accordance with the following procedure: (1) the Member shall make a loan to the Company in the amount of his pro rata share of the Debt, and the amount of such loan shall not be treated as a contribution to the capital of the Company but shall be a debt due from the Company; (2) the Company shall immediately pay such amount to the lender; and (3) the Company shall pay interest on the loan from the Member pursuant to the terms of Section 5.15 of this Agreement.

5.15 **Loans by Members.** Any Member may, with the approval of the Manager, lend or advance money to the Company. If any Member shall make any loan or loans to the Company, the amount of any such loan or advance shall not be treated as a contribution to the capital of the Company but shall be a debt due from the Company and shall bear interest at a rate equal to the lowest of the Company's then current borrowing rate on any loans secured by real property. Except as otherwise provided herein, no Member shall be obligated to make any loan or advance to the Company.

5.16 **Indemnification of Personal Guaranty of Member.** In the event a Member is required, for the benefit of the Company, to personally guaranty any debt or obligation of the Company,

upon the termination of such Member's interest in the Company, the Company shall pay, protect, defend and save Member harmless and indemnify Member from and against, any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements), causes of action, suits, claims, demands and judgments paid, imposed upon Member or to which Member may be subject, as a result of any claim arising out of the Guaranty.

ARTICLE 6 MANAGEMENT

6.1 **Appointment and Authority.** The company shall have at all times not less than one (1) Manager, and the number of Manager(s) may be increased or decreased by the vote of a Majority of the Members. In the event of any vacancy in the office of the Manager, a new Manager shall be designated (and may thereafter be removed pursuant to the provision of Section 6.9) by vote of a Majority of the Members. The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Manager. The Manager shall have the authority to act for, and on behalf of, the Company for all matters not otherwise expressly reserved to the Members pursuant to Article 5 above or otherwise reserved to the Members pursuant to the Act or as otherwise set forth herein. Each Manager shall have one (1) vote, and all decisions of the Manager(s) shall be determined by majority vote of the then serving Managers.

6.2 **Number and Designation of the Managers.** The Manager shall be designated by the Members. The Company shall have five (5) Managers unless the number of Managers is increased or decreased by the Members.

6.3 **Terms of Office.** No manager shall have any contractual right to such position. Each Manager shall serve until the earliest of

6.3.1 The dissociation of such Manager; or

6.3.2 Resignation or removal of such Manager pursuant to Section 6.9 below.

6.4 **Authority of the Manager to Bind the Company.** The Members hereby agree that only the Manager and officers of the Company authorized by this Agreement or by the Manager shall have the authority to bind the Company and no person dealing with the Company shall have any obligation to inquire into the power or authority of such Manager or authorized officer acting on behalf of the Company. The Manager or any authorized officer shall have the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company (except as otherwise limited pursuant to Article 5 above, or otherwise reserved to the Members pursuant to the ACT or as otherwise set forth herein), including without limitation:

6.4.1 The institution, prosecution, and defense of any proceeding in the Company's name;

6.4.2 The purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with, Company Property, wherever located;

6.4.3 The lease of the Company Property;

6.4.4 The entering into contracts and guarantees incurring of liabilities; borrowing mortgage or pledge of any Company Property or income;

6.4.5 The lending of money, investment and reinvestment of the Company's funds, and receipt and holding of Property as security for repayment, including, without limitation, loaning money to and otherwise helping Members, officers, employees, and agents;

6.4.6 The conduct of the company's business, the establishment of Company offices, and the exercise of the powers of the Company within or without_____;

6.4.7 The appointment of employees and agents of the Company, the defining of their duties, the establishment of their compensation.

6.4.8 Any other act that furthers the business and affairs of the Company;

6.4.9 The payment of compensation, or additional compensation to any or all Members and employees on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered; and

6.4.10 The purchase of insurance on the life of any its Members, or employees for the benefit of the Company

6.5 **Limitations on the Actions of the Members.** No Member unless acting in the capacity of a Manager or authorized officer shall take any action as a Member to bind the Company, and shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

6.6 **Compensation of the Manager.** The Manager shall be reimbursed all reasonable expenses incurred in managing the Company and shall be entitled to reasonable compensation as determined annually by the Members. Said compensation shall constitute a guaranteed payment pursuant to Code 707(c).

6.7 **Manager's Standard of Care.** The Manager's duty of care in the discharge of the Manager's duties to the Company and the other Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. In discharging its duties, the Manager shall be fully protected in relying in good faith upon the records required to be maintained under Article 3 and upon such information, opinions, reports or statements by any of the Members, or agents, or by any other person, as to matters the Manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

6.8 **Officers.** The Manager may designate from time to time officers of the Company including, without limitation, one or more vice-managers, a secretary and one or more assistant secretaries, and a treasurer and one or more assistant treasurers. The Managers or officers need not be selected from among the Members. One person may hold two or more offices.

6.9 **Resignations and Removal.** Any Manager may resign at any time by giving written notice to all of the Members and any officer may resign at any time by giving written notice to the Manager, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise provided in Section 6.1, any Manager designated by the Members may be removed at any time by the Members and any officer appointed by the Manager may be removed at any time by the Manager, with or without cause.

ARTICLE 7 CONTRIBUTIONS, MEMBERSHIP INTERESTS AND CAPITAL ACCOUNTS

7.1 **Initial Contributions.** The Members of Company have made initial Capital Contributions as are reflected in the records of Company. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in the Act or this Operating Agreement.

Upon the approval of a Majority of the Members, Additional Members may be admitted to the Company subject to the contribution set forth in this Section 7.1 and the execution of an agreement that such Additional Member agrees to be bound by the terms of this Operating Agreement. At any given time, all Members shall have an equal ownership interest in the Company. Each Member's ownership interest in the company shall be expressed as a fraction, the numerator of which is one (1) and the denominator of which is the then number of Members in the Company. Such fraction shall be adjusted as Members depart the Company or Additional Members are added.

As and for the Capital Contribution of Additional Members, each Additional Member, shall make a Capital Contribution in an amount equal to either (i) the amount specified in the valuation agreement referenced in section 4.5.1.1 above, if then in effect, or (ii) a fraction, the numerator of which is one (1) and the denominator of which is equal to the number of Members then in the Company, not including the Additional Member, times the Net Book Value of the Company calculated using the Value of the Building as determined by Article 10 of the Agreement. 2 For all purposes under the Act, the Articles and this Operating Agreement, the Membership Interests of the Members shall be as set forth on Exhibit "A"

7.2 **Additional Contributions.** In addition to the Initial Capital Contributions, the Manager may determine from time to time that additional contributions are needed to enable the Company to conduct its business. Upon making such a determination and approval by at least a Majority of the Members, the Manager shall give Notice to all Members in writing at least thirty (30) days prior to the date on which such contribution is due. Such Notice shall set forth the amount of the additional contribution needed, the purpose for which the contribution is needed, and the date by

which the Members must contribute. Each Member shall be required to contribute a share of such additional contribution, in proportion to their respective Membership Interest, as a Commitment hereunder.

7.3 Enforcement of Commitments. In the event any Member falls to perform the Member's Commitment, such Member shall become a Delinquent Member and the Manager shall give the Delinquent Member a Notice of the failure to meet the Commitment. If the Delinquent Member fails to perform the Commitment (including any costs associated with the failure to comply with the Commitment and interest on such obligation at the Default Interest Rate) within ten (10) business days of the giving of Notice, the Manager may take such action as necessary to enforce the Commitment, including but not limited to enforcing the Commitment in the court of appropriate jurisdiction in the state in which the principal place of business is located or the state of the Delinquent Member's address as reflected in the membership roster. Each Member expressly agrees to the jurisdiction of such courts. The Manager may elect to allow the other Members to contribute the amount of the Commitment in proportion to such Members' Membership Interests, with those Members who contribute (the "Contributing Members") to contribute additional amounts equal to any amount of the Commitment not contributed. The Contributing Members shall be entitled to treat the amounts contributed pursuant to this section as a loan from the Contributing Members to the Company bearing interest at the Default Interest Rate secured by the Delinquent Member's interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been entitled, to offset and be applied against the unpaid balance of the required Delinquent Member's Commitment and the interest incurred thereon. Notwithstanding the foregoing, no Commitment or other obligation to make an additional contribution may be enforced by a creditor of the Company unless the Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

7.4 Maintenance of Capital Accounts. The Company shall establish and maintain Capital Accounts for each Member and Assignee. Each Member's Capital Account shall be initially credited with the amount of the Member's initial Capital Contribution, and increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any Property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the company takes such Property, within the meaning of § 752 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain (including any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). Each Member's Capital Account shall be decreased by (1) the amount of any money actually distributed to the Member from the capital of the Company, (2) the fair market value of any Property distributed to the Member, as determined by the Company and the contributing Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of §752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

7.5 **Distribution of Assets.** If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article 8 below) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

7.6 **Sale or Exchange of Interest.** In the event of a sale or exchange of some or all of a Membership Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the transferee, to the extent it relates to the portion of the interest transferred.

7.7 **Compliance with Section 704(b) of the Code.** The provisions of this Article 7 as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Article 8 to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Articles 8 and 11 and the Capital Contributions made pursuant to this Article 7. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the contributions required under this Article 7.

7.8 **Compliance with Section 704(c) of the Code.** If §704(c) of the Code applies to Property contributed by a Member to the Company, then the Members' Capital Accounts shall be adjusted in accordance with §1.704-1(b)(2)(iv)(g) of the Regulations.

7.9 **Terms of Buy-In.** Upon the admittance of an Additional Member, such Additional Member's Capital Contribution shall be in the form of: (i) cash or other readily available funds or(ii) a minimum of five percent (5%) of the Capital Contribution in cash or other readily available funds due on the date on which such transfer of the interest in the Company becomes effective, the balance of such Capital Contribution due pursuant to a promissory note with a eight (8) year term which shall accrue interest at a rate equal to the average interest rate being paid by the Company on all outstanding indebtedness of the Company to any bank or financial institution (excluding any interest paid on account of revolving credit), adjusted on the first (1st) day of each calendar year. If, at any time, the Company has no outstanding indebtedness owed to any bank or financial institution (other than revolving credit), the interest rate paid by such Additional Member on the promissory note shall be equal to one percent (1 %) over the then Prime Rate, adjusted on the first (1st) day of each calendar year.

ARTICLE 8 ALLOCATIONS AND DISTRIBUTIONS

8.1 **Allocations of Net Profits and Net Losses from Operations.** Except as may be required by §704(c) of the Code, all Net Profits shall be allocated pro rata among the Members in the same ratio as cash distributions are made to such Members pursuant to Section 8.3. In the event no cash distributions are made to the Members in any taxable year, such Net Profits shall be allocated among the Members in accordance with their Membership Interests. Net Losses, and

other items of income, gain, loss, deduction, and credit shall be apportioned among the Members in accordance with their Membership Interests.

8.2 **Special Items.** There shall be a Company Minimum Gain Chargeback, Member Minimum Gain Chargeback and Qualified Income Offset if and to the extent required by the Code and Regulations.

8.3 **Distributions.** From time to time, the Manager shall determine in its reasonable judgment to what extent, if any, the Company's cash on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Company shall make distribution to the Members in accordance with their Membership Interests.

8.4 **Tax Distribution.** Notwithstanding the provisions of Section 8.3, and to the extent that sufficient funds exist, the Company shall distribute to each Member not later than ninety (90) days after close of each Taxable Year, and in accordance with Section 8.1 hereof, no less than the Tax Distribution Amount (as defined below). The "Tax Distribution Amount" shall be determined for each Taxable Year by: (A) multiplying the Marginal Tax Rate (as defined below) for that Taxable Year by the taxable income of the Company (as determined under Code § 703(a)) which is allocable to such Member for that Taxable Year, and subtracting (B) the sum of all other distributions made to such Member with respect to such Taxable Year. The "Marginal Tax Rate" for any particular Taxable Year shall be the highest tax rate that would be imposed on any Member under either § 1 or § 11 of the Code, whichever is higher, for that Taxable Year.

8.5 **Limitations on Distributions.** Notwithstanding the provisions of Section 8.4, no distribution shall be declared and paid unless, after the distribution is made, the fair market value of the assets of the Company (as reasonably determined by the Manager) are in excess of all liabilities of the Company, except liabilities to Members on account of their Capital Accounts.

ARTICLE 9 TAXES

9.1 **Elections.** The Manager may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

9.2 **Tax Matters Member.** The Manager shall designate one Member to act in a capacity similar to a tax matters partnership pursuant to §623 (s)(7) of the Code. Such Member shall be designated as the tax matters Member and shall take such action as may be necessary to cause each other Member to become a notice member within the meaning of §6223 of the Code. Any Member who is designated tax Member may not take any action contemplated by §6222 through §6232 of the Code without the consent of the Managers. The initial tax matters Member shall be the Manager.

9.3 **Method of Accounting.** The records of the Company shall be maintained in accordance with the accounting method elected to be followed by the Company for federal income tax purposes under the Code.

ARTICLE 10 BUILDING APPRAISAL

Company intends to have the Building appraised effective as of December 31 of every other calendar year (including via a letter update to prior appraisal(s)). If the Building has been appraised by a qualified third-party appraiser at any time in the twenty-four (24) months immediately preceding a Triggering Event, then the Value of the Building for purposes of determining the purchase price of the Membership Interest shall be an amount equal to the appraised fair market value of the Building as specified in the most recently obtained appraisal. If the Building has not been appraised in the twenty-four (24) months preceding a Triggering Event, Company shall cause the Building to be valued (including via letter update to a prior appraisal) as soon as reasonably practicable following the Triggering Event and that appraisal shall be used to determining the Value of the Building.

Notwithstanding the above, if either the Dissociated Member or Company disagree on the Value of the Building as determined in the immediately preceding paragraph, then the Value of the Building shall be determined by an appraisal process. The Dissociated Member and the Company shall each select their own respective appraiser. The selected appraisers shall each appraise the Building, and if the value established by each appraiser is within ten percent (10%), then the Value of the Building shall be the average of the two appraisals. If the appraisals differ by more than ten percent (10%) in value, then the two (2) selected appraisers shall select a third (3rd) appraiser by mutual agreement. The Value of the Building shall be the average of the three (3) appraisals.

Each appraiser selected shall have substantial experience in the appraisal of buildings similar to the building owned by Company. Company shall pay the costs for its appraiser, the Dissociated Member shall pay the costs for its appraiser, and the Dissociated Member and Company shall split equally the cost for the third appraiser. Each party covenants and agrees to move expeditiously so that the appraisals can be completed as soon as reasonably practicable.

ARTICLE 11 DISSOLUTION AND WINDING UP

11.1 **Dissolution.** The Company shall be dissolved, and its affairs wound up, upon the first to occur of the following events:

11.1.1 the written consent of a majority of the Members; or

11.1.2 the sale or other disposition of all or substantially all of the Company

Property.

11.2 **Effect of Dissolution.** Upon dissolution, the Company shall cease carrying on its business as distinguished from the winding up of the Company business. The Company will not

be terminated but will continue until the winding up of the affairs of the Company is completed and the Articles of Dissolution have been filed with the _____ Secretary of State.

11.3 Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company Property shall be distributed:

11.3.1 First, to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of Company Liabilities and for all reasonable costs of the sale of the Building, including but not limited to escrow fees, title expenses and normal closing costs;

11.3.2 Second, to the return of capital to the Members in amounts equal to their respective Adjusted Capital Contributions; and

11.3.3 Finally, to the Members in amounts equal to their respective positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within thirty (30) days of the end of the Company's taxable year or, if later, within sixty (60) days after the date of liquidation. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by the Manager.

11.4 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of the winding up of the Company, articles of dissolution shall be delivered to the _____ Secretary of State for filing. The Articles of Dissolution shall set forth the information required by, the Act.

ARTICLE 12 PURCHASE AND LEASE OF THE BUILDING

12.1 Purchase of the Building. The Company entered into an Agreement for Sale and Purchase of Real Property dated _____ to acquire the Building ("Building Purchase Agreement"). The Members hereby authorize, ratify and approve the Building Purchase Agreement, and authorize the Manager(s) to negotiate, execute, deliver and perform, on behalf of Company, under all documents, and take such further action, as is reasonably necessary to effectuate the acquisition of the Building.

12.2 Construction of Improvements and Lease of the Building. The Company shall construct such improvements and enter into an agreement for the lease of the Building upon terms and conditions to be determined by the Manager(s) as approved by the Members, as otherwise provided for herein.

ARTICLE 13 AMENDMENT

This Operating Agreement may be amended or modified from time to time only by the vote of a Majority of the Members. Once the amendment is approved all Members agree to negotiate, execute, deliver and perform under a written instrument reflecting the Amendment approved by the Majority of the Members.

ARTICLE 14 ARBITRATION

All disputes arising under the terms of this Operating Agreement shall be determined in accordance with the rules for arbitration in effect under Chapter 38 of the _____ Revised Statutes on the date of the dispute. The Company and the Member(s) or party involved in the dispute, shall select one person as arbitrator who is experienced in the area of the disputed issue. If the parties cannot agree within thirty (30) days following the written request of another party for the appointment of a person to arbitrate the dispute then any one or all of the parties shall apply to any court of competent jurisdiction located in _____ County, _____. The arbitrator shall have all of the powers and responsibilities provided for under Chapter 38 of the _____ Revised Statutes law, including, but not limited to, the right to compel discovery to the extent permitted in civil litigation. Each party shall have the right to formal discovery pursuant to and in accordance with the laws pertaining to civil cases which are then in effect. The arbitration shall be binding, and a judgment may be entered in any court of competent jurisdiction based upon the decision of the arbitrator, or arbitrators. Notwithstanding the foregoing, any disputes which cannot properly be resolved by arbitration under _____ law, shall be resolved by a court of competent jurisdiction. In no event shall a party be awarded punitive damages in any dispute pertaining to this Operating Agreement.

Each party hereby specifically acknowledges and agrees that they are granting the specific authorization required pursuant to NRS Section 597 .995 and affirmatively acknowledges, consents to, and agrees to the inclusion of the arbitration provision provided for in this AR TI CLE 14, and agrees to execute any other documentation necessary or appropriate to evidence their intent to be bound by this arbitration provision as may, now or in the future, be required pursuant to NRS Section 597.995.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 **Entire Agreement.** This Operating Agreement represents the entire agreement among all the Members and between the Members and the Company.

15.2 **No Partnership Intended for Nontax Purposes.** The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under any of the _____ Limited Liability Partnership Act, the _____ Uniform Partnership Act, the - _____ Uniform Limited Partnership Act or the United States Bankruptcy Code. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or

that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

15.3 Rights of Creditors and Third Parties under Operating Agreement. This Operating Agreement is entered into among the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

15.4 Indemnification by Company.

15.4.1 The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that the person is or was a Manager or Member, or is or was serving at the request of the Company as a manager, member, officer, employee or agent of another limited liability company, partnership, joint venture, trust or other enterprise, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person acted in good faith and in a manner which the person 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 no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company and that, with respect to any criminal action or proceeding, the person had reasonable cause to believe that the person's conduct was unlawful.

15.4.2 Indemnification shall not be made to or on behalf of any person (as defined in _____ Revised Statutes) if a final adjudication establishes that the person's acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and were material to the cause of action.

15.4.3 The expenses of Members and Managers incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Manager or Member to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the Company.

15.5 Gender and Number. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof.

15.6 **Articles and Other Headings.** The Articles and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation.

15.7 **Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all of the Members, notwithstanding that all of the Members are not signatory to the original or the same counterpart.

15.8 **Successors.** This Agreement shall be binding upon the successors and assigns of the Members and shall inure to the benefit of the permitted successors and assigns of the Members.

15.9 **Governing Law.** This Agreement shall be construed under the laws of the State of _____ as if this Agreement were executed in and to be performed entirely within _____ and all Members resident in _____. Any suit or action of a Manager or a Member as plaintiff to which the Company is named a party shall be instituted in a court of competent jurisdiction in _____.

ARTICLE 16 DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

16.1 **Act.** The _____ Limited Liability Company Act (Chapter 86 of the _____ Revised Statutes) and all amendments thereto.

16.2 **Additional Member.** A Member other than an Initial Member or a Substitute Member who has acquired a Membership Interest from the Company, with the consent of a Majority.

16.3 **Adjusted Capital Contributions.** As of any day, a Member's Capital Contributions, reduced by the amount of cash and the gross asset value of any Company Property distributed to such Member pursuant to Subsection 8. 3 hereof. In the event any Member transfers all or any portion of his interest in accordance with the terms of this Agreement, his transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred interest.

16.4 **Articles.** The Articles of Organization of the Company as filed with the _____ Secretary of State together with all amendments thereto, and restatements thereof, properly adopted in accordance with this Operating Agreement and filed with the _____ Secretary of State.

16.5 **Building.** That certain property located at _____ associated parking areas, as the same may be developed, improved, and maintained, from time to time.

16.6 **Reserved.**

16.7 **Capital Account.** The account maintained for a Member or Assignee determined in accordance with Article 7.

16.8 **Capital Contribution.** Any contribution to the Company of Property, services or the obligation to contribute Property or services to the Company made by or on behalf of a Member or Assignee.

16.9 **Capitalization Rate.** The rate of interest used to convert a series of future payments into a single present value.

16.10 **Code.** The Internal Revenue Code of 1986, as amended from time to time.

16.11 **Commitment.** The Capital Contributions that a Member is obligated to make.

16.12 **Company.** _____ Property, LLC, a _____ limited liability company formed under the laws of _____ and the terms of this Operating Agreement, and any successor limited liability company.

16.13 **Company Liability.** Any enforceable debt or obligation for which the Company is liable, or which is secured by any Company Property.

16.14 **Company Minimum Gain.** An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions (as defined in '1.704-2(b)(1) of the Regulations) allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors' in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

16.15 **Company Nonrecourse Liability.** A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in §1.752-2 of the Regulations) with respect to the liability.

16.16 **Company Property.** The Building and any other Property owned by the Company

16.17 **Contributing Members.** Those Members making additional contributions to the Company or contributions as a result of the failure of a Delinquent Member to make the contributions required by the Commitment as described in Article 7.

16.18 **Debt.** "Debt" shall have the meaning set forth in Section 5.14 of this Agreement.

16.19 **Default Interest Rate.** The Prime Rate plus four percent (4%) per annum.

16.20 **Delinquent Member.** A Member who has failed to meet the Commitment required to be contributed by that Member as described in Article 7.

16.21 **Distribution.** A transfer of Property to a Member on account of a Membership Interest as described in Article 8.

16.22 **Disposition (Dispose).** Any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

16.23 **Dissolution Event.** An event, the occurrence of which will result in the dissolution of the Company under Article 11 unless the Members agree to the contrary.

16.24 **Effective Date.** The date on which the Articles were filed with the _____ Secretary of State.

16.25 **Reserved.**

16.26 **Initial Capital Contribution.** The Capital Contribution agreed to be made by the Initial Members as described in Article 7.

16.27 **Major Decisions.** "Major Decisions" shall have the meaning set forth in Section 5.12 of this Agreement.

16.28 **Majority.** The affirmative vote or consent of a majority of the Membership Interests, except as otherwise provided herein.

16.29 **Management Rights.** The rights of a Member to participate in the management of the Company, including the rights to information and to consent or approve actions of the Company.

16.30 **Managers.** That person set forth as the Manager of the Company in the Articles and its successor designated in accordance with the terms of Article 6 above. All references in this

Operating Agreement to Manager or Managers shall be read in the singular or plural as the context requires, based on the number of Managers at the time of such reading.

16.31 **Member.** Any Person who is an Initial Member or an Additional Member.

16.32 **Member Minimum Gain.** An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent that Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Member Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code and the Regulations issued thereunder, as the same may be amended and interpreted from time to time.

16.33 **Member Nonrecourse Liability.** Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under § 1.752-2 of the Regulations because, for example, the Member or Related Person is the creditor or a guarantor.

16.34 **Membership Interest.** The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions, and credits of the Company.

16.35 **Minimum Gain Chargeback.** Allocations of gain attributable to a decrease in Company Minimum Gain or Member Minimum Gain to the extent required under § 1.704-2 of the Regulations.

16.36 **Net Book Value.** The value of the Company as used for federal income tax reporting purposes adjusted using the Value of the Building as determined by Article 10, plus cash and other assets of Company, less all liabilities of Company, determined as of the December 31st for the year immediately preceding the year the Triggering Event occurs; provided, however that if the Triggering Event occurs in the last quarter of a calendar year (i.e. October, November or December), then solely for purposes of valuing the Membership Interest, Net Book Value (and Value of the Building) shall be determined as of December 31st of the year the Triggering Event occurs, and the timing of the closing for the actual purchase of the Membership Interest shall be extended for such reasonable period of time as is necessary to allow for the determination of the value of the Membership Interest, notwithstanding any other provision of this Agreement.

16.37 **Net Losses.** The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of

accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

16.38 **Net Operating Income.** Net Operating Income is the total Company rental income less all Company operating expenses (e.g. including, but not limited to, maintenance, insurance, property taxes, janitorial, legal, accounting, utilities, and all similar expenses). Net Operating Income shall be calculated on an annual basis.

16.39 **Net Profits.** The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes, for the preceding calendar year.

16.40 **Nonrecourse Liabilities.** Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

16.41 **Notice.** Notices shall be in writing. Notices to the Company shall be considered given when mailed by first class mail postage prepaid addressed by any Member to the Company at the address of the Company's principal place of business. Notices to a Member shall be considered given when mailed by first class mail postage prepaid addressed to the Member at the address reflected in this Operating Agreement unless the Member has given the Company a Notice of a different address. Whenever any Notice is required to be given pursuant to the provisions of _____ law, the Articles, or this Operating Agreement, a waiver thereof, in writing, signed by the persons entitled to such Notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such Notice.

16.42 **Operating Agreement or Agreement.** Unless the context otherwise applies, the term Operating Agreement refers to this Eighth Amendment, and includes all future amendments adopted in accordance with this Operating Agreement and the Act.

16.43 **Person.** Any individual, partnership, limited liability company, corporation, trust, or other entity.

16.44 **Prime Rate.** The rate of interest most recently published in The Wall Street Journal "Money Rates" section as the "Prime" rate. Changes in the Prime Rate shall be effective as of publication thereof. In the event of a discontinuance of the publication of such a rate by The Wall Street Journal, the Prime Rate shall be that reasonably comparable rate which is established as the Prime Rate by the Manager of the Company.

16.45 **Reserved.**

16.46 **Reserved.**

16.47 **Property.** Any property real or personal, tangible, or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

16.48 **Records Office.** The records office of the Company shall be established to maintain the records of the Company pursuant to the Act and Article 3 and may, but need not be, the principal place of business of the Company.

16.49 **Regulations.** Except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

16.50 **Related Person.** A person having a relationship to a Member that is described in § 1.752-4(b) of the Regulations

16.51 **Resignation.** The act, by written statement, by a Manager that he or she is electing to cease to be a Manager pursuant to Section 6.9.

16.52 **Qualified Income Offset.** Qualified Income Offset shall have the meaning set forth in §1.704-1(b)(2) of the Regulations.

16.53 **Substitute Member.** An Assignee who has been admitted to all of the rights of the Member who assigned the Membership Interest, including Management Rights, by a Majority of the Members, pursuant to the terms of this Operating Agreement.

16.54 **Taxable Year.** The taxable year of the Company as determined pursuant to §706 of the Code.

16.55 **Value of the Building.** The Value of the Building shall be the amount determined pursuant Article 10 above.

[Signatures on following page]

EXHIBIT "A"

MEMBERS' NAMES, MEMBERSHIP INTEREST AND ADDRESSES

Member's Names & Addresses	Membership Interest
----------------------------	---------------------