

2003-2004 Homeward Bound Series:
Real Estate Practitioner's Guide to Essential Concepts
Concerning LLC's Operating Agreements and Other Related
Real Estate Ownership Vehicles

Thursday, April 22, 2004
MSU Management Education Center, Troy

Seminar Handbook

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by

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I. Fact Pattern	1-1
Exhibits	
Operating Agreement	1-3
Operating Agreement	1-35
Dilution Formulas for Additional Capital Contributions	1-43

I. Fact Pattern

Joe Jones and John Smith want to work together on the development of a large parcel for condominiums and single-family homes. They have not “partnered” before and only met each other in the context of this deal. Smith’s company, XYZ, L.L.C. owns the land, subject to several mortgages, and has made progress toward getting necessary zoning and environmental permits but he still has a long way to go in the development process. Smith is short of cash and the actual building process would be far exceed his financial capability and experience. Smith’s guaranties would be of questionable value. Jones has a deep pocket investor and expertise in the building area but he has only limited knowledge of the development area. Each person may want to take lots to build single-family homes on his own and they may also sell lots to third-party builders. They intend to build the condos together.

Operating Agreement

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BIGTIME DEVELOPMENT, L.L.C.

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") dated as of January 1, 2004, of Bigtime Development, L.L.C., a Michigan limited liability company (the "Company"), by and between ABC, Inc., a Michigan corporation ("ABC") and XYZ, L.L.C., a Michigan limited liability company ("XYZ").

BACKGROUND STATEMENT

A. The parties hereto have formed Bigtime Development, L.L.C. as a limited liability company under the laws of the State of Michigan, pursuant to Articles of Organization dated December 29, 2003.

B. The parties desire to state the understanding between them in accordance with the terms and conditions of this Operating Agreement.

THEREFORE, the parties agree that the Operating Agreement of Bigtime Development, L.L.C. shall be as follows:

AGREEMENT

ARTICLE I

DEFINITIONS

The following defined terms shall have the meanings assigned to them in this Article unless the context clearly requires a different meaning:

"Act" means the Michigan Limited Liability Company Act, being Act No. 23 of the Public Acts of 1993, as amended by Act No. 52, Public Acts of 1997.

"Additional Capital Contribution" means Capital Contributions contributed by the Members pursuant to Section 6.2 below.

"Affiliate" means (a) any Person directly or indirectly controlling, controlled by or under common control with another Person, (b) any Person owning or controlling ten (10%) percent or more of the outstanding voting securities of such Affiliate, (c) any officer, director, or partner of such Affiliate or (d) if such other Affiliate is an officer, director or partner, any entity for which such Affiliate acts in any such capacity. For purposes of this definition, "control" means ownership of,

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directly or indirectly, more than fifty (50%) percent of the total combined voting power of all classes of stock of a corporate entity, of the capital and income interests of a partnership or other unincorporated entity, or a familial relationship among individuals, including parents, spouse, or lineal descendants.

"Agreement" means this Operating Agreement of Bigtime Development, L.L.C., as may be amended from time to time.

"Articles" mean the Articles of Organization filed under the Act, and any restatement or amendment thereof.

"Bankruptcy" when used in reference to a Member, means the occurrence of an act of bankruptcy as defined in federal bankruptcy law then in effect, the filing of a petition in bankruptcy, the making of a general assignment for the benefit of creditors, voluntarily seeking the protection of any bankruptcy or insolvency laws, or adjudication as a bankrupt. If a petition is filed proposing the adjudication of a Member as a bankrupt, Bankruptcy means consent to the filing thereof or failure to have such petition discharged or denied within 60 days after the filing thereof.

"Capital Account" means the bookkeeping account maintained by the Company for each Member, adjusted as provided in Section 6.4.

"Capital Contribution" means the money and/or property invested as equity by a Member in the Company in accordance with Article VI.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Bigtime Development, L.L.C., a Michigan limited liability company.

"Company Minimum Gain" shall mean the amount determined by computing, with respect to each Company Nonrecourse Liability, the amount of gain (of whatever character), if any, that would be realized by the Company if (in a taxable transaction) it disposed of the property subject to such liability in full satisfaction of such liability, and by then aggregating the amounts so computed. Company Minimum Gain shall be determined in a manner consistent with requirements of Regulations 1.704-2(d) and (g).

"Company Nonrecourse Liability" shall mean any Company liability (or portion of such liability) for which no Member or Related Person bears the economic risk of loss as defined in Regulation 1.704-2(b)(3).

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"Company Property" means the real property, fixtures, contract rights and other items of personal property owned by the Company.

"Deemed Capital Account" shall mean a Member's Capital Account, as calculated from time to time, adjusted by adding to amounts in such account the sum of (a) the Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, as determined under Regulations 1.704-2(g)(1) and 1.704-2(i)(5), plus (b) the amount of any deficit in such Member's Capital Account that such Member is deemed obligated to restore as determined under Regulation 1.704-1(b)(2)(ii) (c); and by subtracting from such amounts the sum of (A) allocations of loss and deduction that, as of the end of the Company's taxable year, reasonably are expected to be made to such Member pursuant to Code Sections 704(e)(2) and 706(d) and Regulation 1.751-1(b)(2)(ii), plus (B) distributions that, as of the end of the Company's taxable year, reasonably are expected to be made to such Member to the extent they exceed offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the Company taxable years in which such distributions reasonably are expected to be made, such expected distributions and Capital Account increases to be determined in a manner consistent with Regulation 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"Land" means the real property located in the Township of _____, _____ County, Michigan, as more particularly described on Exhibit "B" attached hereto.

"Losses" has the meaning set forth under the definition of "Profits" as defined herein.

"Major Business Decision" has the meaning set forth in Section 9.3.

"Majority of the Members" means Members entitled to vote owning more than fifty (50%) percent of the Percentage Interests owned by all Members entitled to vote. Each Member shall be allocated votes based upon its Percentage Interest in the Company.

"Managers" means Joe Jones ("Jones") and John Smith ("Smith"), who shall have all of the powers of a manager under the Act, except as modified herein and except as either of them may be replaced in accordance with this Agreement. "Manager" means either one of them.

"Membership Interest" or "Interest" means the interest of a Member or the assignee of a Member in the capital, Profits, Losses, and distributions of the Company and the right to vote or participate in management of the Company and all other rights of a Member under the Act.

"Member Loan" means a loan made by a Member to the Company which shall bear interest at the rate of two (2%) percentage points more than the Bank One prime rate of interest (or other

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generally recognized prime interest rate in the Detroit Metropolitan area if there ceases to be a Bank One prime rate).

"Member Nonrecourse Debt" shall mean any Company liability (i) that is considered nonrecourse under Regulation 1.1001-2; and (ii) for which any Member or Related Person bears the economic risk of loss.

"Member Nonrecourse Debt Minimum Gain" shall mean, with respect to each Member Nonrecourse Debt, an amount equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Company Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

"Members" means all of the persons who are parties to this Agreement and their respective successors pursuant to this Agreement, excluding the Managers. "Member" shall mean any one of them.

"Net Cash Flow" means that sum computed in accordance with generally accepted accounting principles, consistently applied, and determined in each case on an accrual basis and shall mean the total "gross receipts" of the Company less (a) "operating expenses", (b) accounts receivable to the extent included in the computation of "gross receipts", (c) the amount of any payments of prepaid items, (d) all debt service (except Contribution Loans and Member Loans), (e) deposits made into the reserve account as provided under Section 8.7, or into any escrow account (f) capital expenditures (including make-ready expenses) and (g) Capital Contributions. For purposes hereof, the term "gross receipts" shall mean proceeds from (a) sale of real estate, (b) other miscellaneous operating sources, (c) financing, refinancing of the Company Property or sale of less than all of the Company Property, if any, and shall not include (1) deposits until the same are forfeited by the persons making such deposits, (2) advance rentals and other payments until such time as they are earned by the Company, and (3) insurance loss proceeds (except for any proceeds from rental interruption insurance). For purposes hereof, the term "operating expenses" shall mean all expenses of the Property which are incurred by the Company in connection with the Company Property or directly attributable to the operation thereof, including without limitation: all expenditures for repair and maintenance of equipment and facilities of the Company Property; the costs of liability, property and rent loss insurance; accounting and auditing fees; legal fees; taxes and assessments payable in respect of personal and/or real property of the Company; and other disbursements incident to the Property; but excluding depreciation, amortization of Company assets and non-cash charges.

"Percentage Interest" of any Member means the Interest of such Member as described in Exhibit A. The Percentage Interest of a Member shall determine the Member's share of capital, Profits, Losses and distributions of Net Cash Flow and shall determine the value of his vote on all matters in which the Members are required to make a decision.

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"Person" means a person as that term is defined in Code Section 7701(a)(1) , namely, an individual, trust, estate, partnership, association, company, or corporation.

"Profits" means the positive number and "Loss" the negative number, determined by adjusting Company taxable income (expressed as a positive number) or loss (expressed as a negative number) as follows:

- (i) add any tax exempt income described in Section 705(a)(1)(B) of the Code;
- (ii) subtract any nondeductible expenditures described in Section 705(a)(2)(B) of the Code; and
- (iii) notwithstanding (i) or (ii) above, disregard any items of income, gain, expense or loss specially allocated pursuant to Section 8.6 or 8.8 below.

"Project" means the development of single-family site condominiums, duplex and quad condominiums on the Land.

"Project Budget" means the budget of the Company for development and operations as approved by the Managers in accordance with Section 9.2.

"Regulations" or "Regulations Section" means the Treasury Regulations, as promulgated and amended from time to time, relating to the Code.

"Related Person" shall mean a Person related to a Member by virtue of a relationship specified in section 267(b) or Section 707(b) of the Code (without modification by Code Section 267(e)(1), by applying 80% or more for 50% or more wherever it appears, disregarding Code Section 267(f)(1)(A) and excluding brothers and sisters from the members of one's family).

"Section" means the designated section of this Agreement if no reference is specified; otherwise, the designated section of the specified agreement, statute or regulation or the comparable provision of any successor agreement, statute or regulation.

"Subsidiaries" means the limited liability companies whose membership interests are wholly owned by the Company.

"Subsidiary" means any one of the subsidiaries of the Company.

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"Tax Item" means any item of income, gain, loss, deduction or credit of the Company, as determined under the Code.

"Tax Matters Member" means Jones, unless a successor is appointed pursuant to this Agreement.

"Transfer" means to lend, pledge, encumber, assign, sell, exchange, give, lease, license, abandon or dispose of in any other manner, voluntarily or involuntarily, of any rights in property, tangible or intangible.

ARTICLE II

FORMATION, NAME

2.1 **Formation and Continuation.** Effective January 1, 2004, the parties formed a limited liability company in accordance with the provisions of the Act.

2.2 **Name.** The Company's business shall be conducted under the name and style of "Bigtime Development, L.L.C." or through its various Subsidiaries.

ARTICLE III

PRINCIPAL OFFICES; RESIDENT AGENT

3.1 **Offices.** The principal office of the Company is _____ (with a mailing address of Post Office Box _____). The Company shall have such other or additional offices as the Managers shall deem advisable and in the best interests of the Company. The Managers may at any time change the location of the principal office and shall give due notice of any such change to the Members.

3.2 **Resident Agent.** Jones shall be the resident agent for the purposes described in the Act unless the Managers unanimously designate a different resident agent. The address of the resident agent shall be the same as the registered office.

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ARTICLE IV

PURPOSE OF THE COMPANY

4.1 **Purpose of the Company.** The Company has been organized solely for the purposes of carrying out the Project, and the ownership, operation and ultimate disposition of the Project and such activities as are reasonably incidental to said purposes. The Company shall form one or more Subsidiaries for the purposes of carrying out various portions of the Project, as provided below.

ARTICLE V

TERM

5.1 **Term.** The term of the Company commenced on January 1, 2004, and shall continue perpetually unless sooner dissolved and terminated in accordance with the provisions of Article XIII hereof.

ARTICLE VI

**ADMISSION AND CAPITAL CONTRIBUTIONS OF MEMBERS;
ACQUISITION OF REAL PROPERTY**

6.1 **Initial Capital Contributions.** XYZ will make an initial Capital Contribution of \$2,000,000.00, and will have a 50% Percentage Interest, at the time the Company acquires the Land pursuant to the Land Transfer Agreement attached hereto as Exhibit "C" and incorporated by this reference. ABC will contribute the land along with all engineering, permits, studies, condominium documents, surveys, and similar development materials and will have a 50% Percentage Interest. The Company shall utilize the cash contribution made by XYZ to discharge the mortgage indebtedness currently encumbering the Land and certain obligations of ABC incurred prior to January 1, 2004 in developing the Land. Such mortgages and other obligations are listed on Exhibit "D". The Members acknowledge and agree that the value of ABC's Capital Contribution shall be \$4,000,000 less the mortgage indebtedness and the obligations listed on Exhibit "D". Additionally, each Member shall contribute \$40,000 to the capital of the Company for working capital upon execution of this Agreement.

6.2 **Additional Capital Requirements.**

6.2.1 Each Member agrees to provide a personal guaranty of its owners to a third-party lender providing construction financing for the Project, if necessary; provided, however, that

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the Company shall use its best efforts to obtain such construction financing without offering or providing such personal guarantees. If the Company, after using its best efforts, should be unable to borrow sufficient funds for construction or operation of the Project, the Managers shall, upon unanimous agreement, demand that the Members make Additional Capital Contributions for Construction. Each Member shall contribute in accordance with its Percentage Interest upon such demand. Each person who is a guarantor of the Company's debt shall sign an agreement substantially in the form attached hereto as Exhibit "E".

6.2.2 A Member shall make an Additional Capital Contribution within 30 days after delivery of a request therefor from the Managers. The failure of a Member to make an Additional Capital Contribution as set forth herein and after 30 days shall have elapsed after delivery of additional notice from the Managers shall result in the non-defaulting Member being able to choose from among the following alternatives as its sole remedy under this Section 6.2:

(i) the non-defaulting Member may, but shall not be required to, lend all of the necessary additional funds to the Company (the "Contribution Loan"). In such event, the Contribution Loan shall bear interest at a rate equal to two (2) percentage points more than the Bank One prime rate of interest (or other generally recognized prime rate in the Detroit Metropolitan area if there ceases to be a Bank One prime rate). Repayment of the Contribution Loan shall be a priority to be paid by the Company before any distributions;

(ii) the non-defaulting Member may, but shall not be required to, make the Additional Capital Contribution in lieu of the defaulting Member. In such event, each Member's Percentage Interest will be adjusted. After the adjustment, each Member's Percentage Interest will be a fraction, the numerator of which is the total Capital Contributions made by all Members prior to the Additional Capital Contributions multiplied by the Member's Percentage Interest plus the Additional Capital Contribution, if any, made by Member and the denominator of which is the total Capital Contributions (including Additional Capital Contributions) made by all Members; or

(iii) the non-defaulting Member which has made a Contribution Loan pursuant to (i) above may convert all or part of such Contribution Loan (including accrued but unpaid interest) to capital at any time during which the Contribution Loan is outstanding by providing thirty (30) days written notice to the defaulting Member, who may repay the Contribution Loan, in whole or in part, with interest during that thirty (30) day period. If the Contribution Loan is repaid in full then the principal repayment by the defaulting Member shall be considered Capital Contributions. If the Contribution Loan is partially repaid, then the remaining principal balance of the Contribution Loan (after the principal repayment) and the principal repayment made by the defaulting Member shall be considered Capital Contributions. If the Contribution Loan is not repaid within thirty (30) days of the written notice, then the Members' Percentage Interests will be readjusted in accordance with (ii) above.

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6.2.3 Either Member may make a Member Loan to the Company without the consent of the Managers if both Managers are aware that additional funds are necessary to pay construction and other development cost overruns, insurance, real estate taxes, utilities soft costs for the next phase of development after 50% of the current phase is sold or under contract or to avoid foreclosure and the Managers have disagreed as to the calling for Additional Capital Contributions.

A Member Loan may be converted to capital in the same manner as a Contribution Loan as provided in Section 6.2.2 (iii), by the Member which made the Member Loan, if it has not been repaid within six (6) months from the date Member Loan was made.

6.3 **Restrictions Relating to Capital.** Except as otherwise specifically provided in this Agreement, no Member shall have the right to withdraw or reduce its Capital Contribution and no Member shall have the right to a partition of Company Property or to receive property other than cash, if any, in return for its Capital Contribution.

6.4 **Capital Accounts.** A Capital Account shall be established and maintained for each Member in accordance with the applicable provisions of the Code and the Treasury Regulations promulgated thereunder including, without limitation, Regulation Section 1.704-1(b)(2)(iv). The Capital Account of each Member shall be credited with his original Capital Contribution and all Additional Capital Contributions, his share of Profits and any items of income or gain specially allocated to him under Section 8.6 or 8.8 below and shall be debited with distributions made to him, his share of Losses and any items of loss or expense specially allocated to him under Section 8.6 or 8.8 below.

In accordance with Section 1.704-1(b)(2)(iv)(q) of the Regulations, each Member's Capital Account shall be adjusted in a manner that maintains equality between, on the one hand, the aggregate of all of the Members' Capital Accounts and, on the other, the amount of capital reflected on the Company's balance sheet as computed for book purposes. If the Percentage Interest of the Members are re-adjusted pursuant to Section 6.2.2(ii) above, then (i) the book value of the Project shall also be adjusted pursuant to Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, so that the book values of all of the Company's assets exceed the Company's recorded liabilities by the total amount of the capital contributions of the Members; (ii) the Capital Accounts of the Members shall be adjusted simultaneously as though the Company recognized a gain or loss equal to the amount of the adjustment to the book value of the Project and such gain or loss were allocated so as to make the Members' Capital Accounts proportionate to their Percentage Interest (as adjusted pursuant to the provisions of Section 6.2.2(ii) above); and (iii) for purposes of determining the Company's Profits, Losses and items of income, gain, expense or loss allocable under Article VIII hereof, (A) depreciation of the Project, determined by reference to such book value in accordance with Section 1.704-1(b)(2)(iv)(g)(3) of the Treasury Regulations, shall be taken into account in lieu of the depreciation allowable for tax purposes, (B) on sale or other disposition of the Project, gain or loss, determined by reference to such book value (less such book depreciation), shall be taken into account

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in lieu of the gain or loss realized for tax purposes and (C) depreciation and gain or loss on disposition of the Project for tax purposes shall be allocated in accordance with the principles of Section 704(c) of the Code and Section 1.704-3(b) of the Regulations, and such tax allocations (as opposed to the book allocations under clauses (A) and (B) above) shall not affect the Members Capital Accounts.

6.5 Nature of Member's Interest. The Interests of the Members in the Company shall be personal property for all purposes. All Company Property, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity. No Member, individually, shall have ownership of such Company Property. The Members hereby agree that no Member, nor any successor in interest to any Member, shall have the right while this Agreement remains in effect, to have any Company asset partitioned, or to file a complaint or institute any proceedings at law or in equity to have such asset partitioned. Each Member, on behalf of himself, his successors, successors-in-title, and assigns, hereby waives any such right.

6.6 Liability of Members. No Member shall be liable for any debts, liabilities, contracts, or obligations of the Company. A Member shall be liable only to make payments of his Capital Contributions as and when due hereunder. After his Capital Contributions shall be fully paid, no Member shall, except as otherwise required by the Act or this Agreement, be required to make any further Capital Contributions or payments or lend any funds to the Company.

ARTICLE VII

COMPENSATION AND EXPENSES OF THE MEMBERS AND AFFILIATES

7.1 Compensation to Manager. Except as provided in this Article VII, no compensation shall be paid to the Managers or the Members.

7.2 Reimbursement of Expenses. The Managers and/or Members shall be entitled to charge the Company, and to be reimbursed by it, for any and all costs and expenses, which are reasonable and necessary, and incurred in connection with the Company's business and which are within the Company's Project Budget. Those reimbursable items include those expenses incurred for the Company's organization and the development of the Project, whether incurred prior to or after the Company's formation if such expenses were incurred on or after July 1, 2003. The reimbursable expenses incurred prior to the formation of the Company for which a Manager or Member may be reimbursed are limited to those items set forth on Exhibit "F" attached hereto. Reimbursable expenses do not include salaries and other overhead expenses of a Manager or Member incurred in the conduct of its business except as provided in the following Sections 7.3, 7.4 and 7.5. Reimbursable expenses do include the salary, payroll and other direct expenses related to construction superintendents and other field personal for work incurred on the Project.

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7.3 **Management Fees.** The Company shall pay a management fee of \$_____ per week ("Management Fees") to each of Jones and Smith, commencing on the Friday after construction of site improvements actually begins. The Company shall cease paying the Management Fees after all of the land development and construction by Subsidiaries has been completed, but in no event later than December 31, 2008.

7.4 **Administrative Expenses.** ABC shall be paid a fee of \$_____ per month as an Administrative Fee which shall begin thirty (30) days after construction of site improvements actually begins and shall continue until all land development and construction by Subsidiaries has been completed but in no event later than December 31, 2008. ABC shall prepare monthly and annual financial statements, process payments, process construction draw requests, work with the Company's accountants in the preparation of tax returns and similar financial management for the Company and its Subsidiaries. Fees of the Company's accounting firm shall be paid by the Company.

7.5 **Construction of Multi-family Condominium Units.** The Company shall contract with ABC or its designated Affiliate to construct the twenty (20) condominium units in Phase I of the duplex project. The Company shall contract with XYZ or its designated Affiliate to construct the twenty-eight (28) condominium units in Phase I of the quad project. The Company shall pay the respective builders a fee of _____% of the budgeted construction cost of each unit for its overhead costs in performing the work. The Managers shall mutually agree in an equitable manner upon which parties shall have construction responsibilities in subsequent phases.

7.6 **Construction of Single-Family Units.** The Company shall sell the developed site condominium units in an equal number to the Members, or their designated Affiliates. The sales price shall be at an agreed upon amount in accordance with the Project Budget. Each party acquiring the site condominium units shall be solely responsible for the construction and financing of the homes and administering the contract with the customer. The Members or their designated Affiliates shall develop a joint sales program with rotating sales. Each agrees to maintain one model and at least one spec house at all times during the Project.

ARTICLE VIII

PROFITS, LOSSES AND DISTRIBUTIONS

8.1 **Profit.** Profits shall be allocated to the Members in proportion to the Members' Percentage Interests.

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8.2 **Losses.** Losses shall be allocated to the Members in proportion to the Members' Percentage Interests; provided, however, that no loss shall be allocated to any Member to the extent such allocation creates or increases a deficit in such Member's Deemed Capital Account.

8.3 **Distribution of Net Cash Flow.** Net Cash Flow shall be distributed in the following order of priority:

First, to repay any interest and then principal on any Contribution Loan.

Second, to repay any interest and then principal on a Member Loan.

Third, to Members in proportion to the Members' Percentage Interests.

8.4 **Timing of Distributions.** Net Cash Flow, if any, shall be distributed to the Members as soon as reasonably practicable after the end of each fiscal quarter.

8.5 **Character of Distributions.** During the existence of the Company, no Member shall be entitled to receive, as distributions from the Company, any Company assets other than money. If, upon winding up of the Company, the Managers determine that (1) an immediate sale of part or all of the Company assets would cause undue loss to the Members and (2) Company assets are susceptible of division for distribution in kind to Members, then, to that extent, the Managers may distribute Company assets in kind to the Members. In such event, each asset distributed in kind shall be valued at its current net fair market value (but not less than zero). The unrealized gain or loss in valuing each such asset shall be allocated to the distributee Members' Capital Account balances in the manner described in Sections 8.1 or 8.2 as if such assets had been sold for the value assigned to them. Each such asset shall then be distributed to the Members as provided in Section 8.3, as if it were Net Cash.

8.6 **Allocations on Liquidation.** After taking into account all allocations pursuant to Section 8.8 below, gain or loss on the sale or other disposition of the Project or all or substantially all of the Company Property shall be allocated first, so as to bring the Members' Capital Account balances into the same ratios as their Percentage Interests, and then, pro rata, based on their Percentage Interests.

8.7 **Reserves.** The Company may establish reasonable reserves for development and construction expenses, anticipated operating expenses, single business taxes, real estate taxes and assessments, insurance, warranties, estimated Tax Distributions (as defined in Section 8.10 following) and such other matters as are reasonably determined by the Managers to be prudent.

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8.8 Minimum Gain Chargeback; Qualified Income Offset.

8.8.1 Minimum Gain Chargeback.

(a) If there is a net decrease in the Company Minimum Gain during a Company taxable year, each Member shall be allocated, before any other allocation is made pursuant to Sections 8.1, 8.2 or 8.6 for such taxable year, items of income and gain for such year (and, if necessary, subsequent years) in the proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulation 1.704-2(g).

(b) If there is a net decrease in Member Nonrecourse Debt Minimum Gain during a Company taxable year, then each Member shall be allocated, before any allocation is made pursuant to Sections 8.1, 8.2 and 8.6 for such taxable year, items of income and gain for such year (and, if necessary, subsequent years) in proportion to and to the extent of, an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulation 1.704-2(i).

(c) Any "Nonrecourse Deductions" (as defined in the Regulations) for any fiscal year shall be allocated among the Members pro rata, based on their Percentage Interests.

(d) Any "Partner Nonrecourse Deductions" (as defined in the Regulations) shall be allocated to the Members who bear the economic risk of loss for the Member Nonrecourse Debt to which such "Partner Nonrecourse Deductions" are attributable in accordance with Section 1.704-2(i)(1).

8.8.2 Qualified Income Offset. If any Member unexpectedly receives either an allocation of loss and deduction pursuant to Code Section 704(e)(2) or 706(d) or Regulations 1.751-(b)(2)(ii) or a distribution to the extent it exceeds offsetting increases to such Member's Capital Account, the effect of which allocation or distribution is to cause or increase a deficit balance in such Member's Deemed Capital Account, such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance in such Member's Deemed Capital Account as quickly as possible in accordance with Section 1.7041((b)(2)(ii)(d) of the Regulations.

8.8.3 Compliance with Code and Regulations. The proviso of Section 8.2 and the provisions of Section 8.8.1 and 8.8.2 (collectively, the "Regulatory Provisions") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all allocations pursuant to the Regulatory Provisions

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shall be offset either with other allocations pursuant to the Regulatory Provisions or, if necessary, with curative allocations of other items of income, gain, loss or deduction pursuant to this Section 8.8.3. Therefore, notwithstanding any preceding provisions of this Agreement, other than the Regulatory Provisions, allocations pursuant to the Regulatory Provisions shall be taken into account in allocating other items of income, gain, expense or loss between the Members that, to the extent possible, the net amount of such allocations of other items and the allocations pursuant to the Regulatory Provisions to each Member are equal to the net amount that would have been allocated to such Member if the Regulatory Provisions were not part of this Agreement. In applying this Section 8.8.3, there shall be taken into account future allocations under Sections 8.8.1(a) and 8.8.1(b) that, although not yet made, are likely to offset other allocations previously made under Sections 8.8.1(c) and 8.8.1(d), respectively.

8.9 Allocations with Respect to Varying Interests. Without limitation of the foregoing, allocations among, and resulting distributions of Net Cash Flow to, Persons who, in any taxable year of the Company, were Members for less than the entire taxable year, or whose Percentage Interests varied during any taxable year, shall be made in accordance with whatever reasonable, consistently applied method the Managers may choose to implement the provisions of Section 706(c) of the Code.

8.10 Tax Distributions. Notwithstanding anything in the Operating Agreement to the contrary, the Company shall at a minimum distribute sufficient cash each year to provide for payment of taxes relating the Members' allocation of taxable income for the prior year to each Member ("Tax Distributions"). Tax Distributions to each Member shall be equal to the federal taxable income reported on the Schedule K-1 of the Company tax return for each Member for the prior year multiplied by 40%, regardless of any Member's individual tax rate. Tax Distributions shall be made no later than April 1 for the prior tax year commencing April 1, 2005 for the 2004 tax year. Any Tax Distributions made to Members shall be credited against the next distribution of Net Cash to be made pursuant to Section 8.3. The Company may borrow funds if necessary, to enable the Company to make Tax Distributions to the extent that the Company does not have adequate cash on hand to make the Tax Distributions.

ARTICLE IX

MANAGEMENT OF THE COMPANY

9.1 Management in General. The Managers shall, collectively, but not individually have all of the powers of a manager under the Act, except as specifically limited herein. Decisions by the Managers shall be made by a vote of the majority in interest of the Managers. Each Manager's vote

DRAFT

shall be weighted so that it is equal to the Percentage Interest of the Member which that Manager represents (i.e., Smith for XYZ and Jones for ABC).

9.2 **Responsibilities of Managers.** Among other things, the Managers shall perform or cause to be performed at the expense of the Company, the following responsibilities and such other responsibilities as the Managers may from time to time delegate:

(a) Project Budget. Cause the project's operating and development budget for the Company and Subsidiaries (the "Project Budget") to be prepared which shall be revised at least on an annual basis;

[ALTERNATIVE]

(a) The Members shall review the proposed Project Budget and shall offer any revisions thereto within fifteen (15) days. After the final Project Budget has been approved by the Members, the Manager shall implement the Project Budget and shall be authorized to make only the expenditures and incur only the obligations provided for therein (subject to this Section 9.2). Notwithstanding the foregoing, the Manager may make any expenditure or incur any obligation, whether or not such expenditure or obligation is set forth in the Project Budget, which is the legal obligation of the Company and not within the reasonable control of the Manager (e.g., real or personal property taxes).

(b) Plans and Specifications. Obtain plans and specifications for the Project;

(c) Tax, Accounting and Clerical Functions. Perform or cause to be performed all tax, accounting and clerical functions for the Company including but not limited to preparation of all tax returns and related documents utilizing ABC as provided in Section 7.4 above;

(d) Employees and Agents. Retain or employ, terminate, supervise and compensate the accountants and any attorneys, management agents, leasing agents, sales agents or any other employees or agents required to be employed or retained by the Company;

(e) Insurance and Fidelity Bonds. Procure and maintain with responsible companies such insurance and fidelity bonds as are reasonably required ;

(f) Bank Accounts. Establish bank accounts for the Company and deposit and withdraw Company funds from such accounts as so required from time to time;

(g) Litigation. Commence litigation or the defense of any litigation involving the Company and the settlement of such litigation;

DRAFT

(h) Records and Minutes. Prepare and distribute to the Members the minutes of the meetings of the Members and maintain such minutes and other records of the Company in a secure location;

(i) Notices. Prepare and distribute notices to be provided to the Members or any other party by the Company or the Members;

(j) Distributions. Make distributions of cash or other assets of the Company to the Members as required by the terms of this Operating Agreement or as may otherwise be determined by the Members;

(k) Reports. Prepare and distribute to the Members, on a monthly basis, development reports, including operating statements;

(l) Construction Supervision. Supervise and manage the land development activities of the Project ;

(m) Promotion. Promote, market and operate the Project in a responsible manner;

9.3 **Limitation on Manager's Authority**. Notwithstanding anything herein to the contrary, the Managers shall not make any Major Business Decision without the [unanimous] consent of the majority of Members.

For purposes hereof, a Major Business Decision shall mean:

(a) The financing or refinancing of any Company indebtedness, including but not limited to, any mortgage loan on the Company Property;

(b) The sale of the Project;

(c) The decision to terminate the Company;

(d) The transfer or assignment of a Member's Interest;

(e) Except as provided in Section 10.3, any transaction entered into with a Member or Manager or an affiliate or subsidiary of either Manager or the Members;

(f) The approval of the Project Budget, and any revisions thereto;

DRAFT

(g) Any deviation of total expenses in the Project Budget that exceed \$50,000 or 10%, or any deviation in an expense line item that exceeds \$10,000 or 50%, except for deviations related to taxes, utilities or snow removal;

(h) The settlement of any litigation which involves the payment by the Company of an amount in excess of \$10,000.00 or in which the Company has made a claim in excess of \$10,000.00;

(i) The making of a call for Additional Capital Contributions; and

(j) The awarding of any major subcontract or trade contract by the Company or its Subsidiaries.

9.4 **Standard of Care; Liability.** The Manager shall discharge its duties in managing the Company in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the Company.

9.5 **Replacement of Managers.**

9.5.1 The Members shall have the right to replace a Manager, if at any time any of the following occur:

(a) A Manager commits an act of gross negligence or fraud;

(b) A Manager becomes bankrupt;

(c) A Manager becomes permanently mentally incapacitated; or

(d) A Manager dies.

If the Company replaces Smith for a reason set forth in (b), (c) or (d) above, then Kimberly Smith shall replace him as Manager. If the Company replaces Jones for a reason set forth in (b), (c) or (d) above, then John A. Jones shall replace him as Manager. If either Manager is removed for any other reason, then the Member affiliated with such replaced Manager shall designate the replacement Manager, subject to the approval of the other Manager, which approval shall not be unreasonably withheld or delayed.

DRAFT

9.5.2 A Manager may resign as Manager upon providing thirty (30) days written notice to the Members of its intention to resign; provided, however, that if such Manager is a Member, its resignation as a Manager shall not effect its status as a Member. The provisions of Section 9.5.1 for replacement of a Manager shall apply if a Manager resigns.

ARTICLE X

THE MEMBERS

10.1 Meetings.

10.1.1 The Members may, but shall not be required to hold any annual, periodic or other formal meetings. However, meetings of the Members may be called by any Manager or by any Member or Members holding at least twenty-five (25%) percent of the Member's Interests. A list of the name and addresses of all Members shall be maintained as part of the books and records of the Company and shall be made available on request to any Member or his representative at his cost. Within ten (10) days of receipt by the Managers of notice from Members having twenty-five (25%) percent or more of the Member's Interests calling for a meeting and stating the purposes of the meeting, the Managers shall give notice to all Members of the meeting and its purpose. Such meeting shall be held on a date not less than fifteen (15) days after receipt of such request and at the Company's office. No notice of the time, place or purpose of any such meeting need be given to any Member who attends such meeting in person or is represented by proxy or to any Member who waives such notice.

10.1.2 For the purpose of determining the Members entitled to vote at any meeting of the Company or any adjournment thereof, the Managers may fix, in advance, a date as the record date as of which such determination shall be made. Such date shall not be more than sixty (60) days nor less than ten (10) days before any such meeting.

10.1.3 A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by the Company. The general proxy of a fiduciary is given the same effect as the general proxy of any other Member. A proxy appointment is valid for twelve (12) months unless otherwise expressly stated in the appointment form.

10.1.4 Each Member shall have one vote for each Percentage Interest owned by it as of the record date. Except as provided in this Section 10.1.4, at any meeting of Members, presence of holders of a majority of the Percentage Interests constitutes a quorum. If a quorum is not achieved at the meeting, notice shall be given to all Members pursuant to Section 10.1.1 to

DRAFT

reconvene the meeting. In the event a quorum is not achieved at the reconvened meeting because of the non-attendance of one or more Members or their proxy which are the same Members who did not attend the original meeting, then, provided the non-attendance is caused without an appropriate reason or for the purpose of obstructing the meeting, the Members attending the reconvened meeting shall be entitled to proceed as an adequate quorum. Unless otherwise provided in this Agreement or the Articles of Organization, action on a matter is approved if it receives the approval by at least fifty-one (51%) percent of the total number of votes cast at such meeting.

10.1.5 Any action required or permitted to be taken at a Members' meeting may be taken without a meeting if the action is taken by one or more written consents describing the action taken or to be taken, signed and dated by the Members holding the required majority and delivered to the Company for inclusion in the minutes.

10.1.6 Any one or all Members may participate in any Members meeting by, or through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person or at the meeting.

10.2 **Additional Member.** An additional Member may be admitted only with the unanimous approval of the Members.

10.3 **Transactions with Members and Affiliates.** The Members or any Affiliates thereof shall have the right to contract or otherwise deal with the Company in connection with the sale of goods or services by the Members or their Affiliates, to the Company in the following circumstances: with the unanimous consent of the Members. Any payment made to a Member or any Affiliates thereof for such goods or services shall be disclosed to all Members.

10.4 **Other Activities.** The Members, including the Managers, may engage in other business activities without any obligation to the Company or the other Members. Both Members and both Managers or their respective affiliates, may engage in other residential building projects which may compete directly with the Project.

10.5 **Representation.** The Members represent and agree that during the term of this Agreement they shall remain more than 50% owned by the principals owning interests in them at the time they became Members of the Company.

DRAFT

ARTICLE XI

TRANSFERS; WITHDRAWALS; BANKRUPTCY

11.1 Transfers.

11.1.1 A Member shall not make any Transfer of all or any portion of its Interest, including, without limitation, a transfer of a right to Profits, Losses or distributions to a Transferee who does not become a substituted Member of the Company, without the unanimous approval of all Members. Notwithstanding the foregoing, either Member may pledge its Interest as collateral security upon written notice to the other Member.

11.1.2 No person shall become a substituted Member in the Company until and unless the following conditions precedent are satisfied: (a) the Member has offered the other Member the opportunity for thirty (30) days to match all of the terms and conditions of the proposed purchase of the Interest by the Transferee; (b) the Transferee shall have assumed any and all of the obligations under this Agreement with respect to the Interest to which the Transfer relates; (c) all reasonable expenses required in connection with the Transfer shall have been paid by or for the account of the Transferee; (d) all agreements, articles, minutes, written consents and all other necessary documents and instruments shall have been executed and filed and all other acts shall have been performed which the Managers deem necessary to make the Transferee a substitute Member of the Company and to preserve the status of the Company as a limited liability company; (e) receipt of an opinion from legal counsel for the Company stating (i) that the Transfer will not cause a termination of the Company under the Act and/or the Internal Revenue Code of 1986, as amended; and (ii) the Transfer will not violate any applicable state and federal securities laws and regulations; (f) If the transfer is to a trust for the benefit of the transferring Member, the trustee grants to the Member an irrevocable proxy coupled with an interest to vote the transferred Member Interest on any matter presented for vote or consent by the Company; and (g) the unanimous approval of all remaining Members is obtained. However, if a corporate Member is liquidated and dissolved during the term of the Company, each of the shareholders of the corporate Member shall become Members of the Company upon executing an agreement to be bound by the terms of this Operating Agreement, as well as complying with the foregoing Paragraphs (b), (c) and (d).

11.1.3 If each and every condition and requirement set forth in this Section is met, the Transferee shall be admitted as a substitute Member in the Company and, as they relate to the Membership Interest transferred, shall be entitled to all the rights and powers of the Member at the time of transfer and shall be subject to all of the restrictions and liabilities of the Member. Until all the terms and conditions set forth in this Section are met, the Transferee shall not be a Member and shall instead remain a Transferee of the Membership Interest with the right only to receive allocations and distributions to which the former Member would have been entitled. In any event,

DRAFT

the Transferee's recourse is only against the Member, not the Company or the other Members. The Company shall have no fiduciary duty to the Transferee unless and until the Transferee is admitted as a Member.

11.1.4 Notwithstanding anything herein to the contrary, each Member is free to transfer and assign all or part of his Interest to an inter-vivos trust qualifying as a Grantor Trust under Subchapter J of the Code, which by its terms provides that the member is the grantor, trustee and beneficiary of all of the trust income, and wherein he has retained for his own life the power to revoke the trust in full, and such trust is in full compliance with all provisions of this Agreement.

The primary purpose of the trust must be to avoid probate on the assets held by the trust on the day the member dies, and the transfer and assignment of the Interest must be for no consideration. The Interest transferred to or held by any such trust shall continue to be governed and bound by the terms of this Agreement, whether or not the terms of the trust are subsequently changed, amended or altered in any way.

11.1.5 **Legends.** The Company shall affix to any certificate evidencing Interest issued to Members (if any such certificates are issued) a legend in substantially the following form:

"THE INTEREST EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN AN OPERATING AGREEMENT EFFECTIVE AS OF JANUARY 1, 2004, AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY. NO REGISTRATION OF TRANSFER OF SUCH INTERESTS WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH."

11.2 Withdrawals.

11.2.1 A Member may withdraw as a Member as permitted in MCL §450.4305. A withdrawing Member has no right to an additional distribution nor to the fair value of the Member's Interest in the Company at the date of withdrawal unless all of the Members agree to make a distribution at any date or no date determined by all of the Members in their sole and arbitrary discretion. Unless otherwise transferred by the Member or former Member, a withdrawing Member shall continue to receive allocations and distributions in the same proportion as if the withdrawing Member was still a Member. Following a withdrawal, the withdrawing Member shall have no voting rights and no right to participate in the management of the Company as it relates to that portion of

DRAFT

the Membership Interest to which the Member has withdrawn. If it is agreed that the withdrawing Member shall receive a distribution, the fair value of the Membership Interest shall be mutually agreed upon as of the date that the withdrawal occurred. In the event the Company and the withdrawing Member cannot agree upon the fair value of the withdrawing Member's interest at that date, the fair value shall be determined as provided for in Paragraphs 11.6.3 and 11.6.4.

11.2.2 **Transfer Election.** In the case of the transfer of a Member's interest in the Company to another individual or entity that becomes a Member pursuant to any of the provisions hereof, the Company shall, if requested in writing by such transferee Member, file the election specified by Section 754 of the Internal Revenue Code of 1954, as amended, or any corresponding section of any future Federal Internal Revenue law.

11.3 **Bankruptcy of a Member.** A Member shall continue as a Member of the Company upon the Bankruptcy of that Member.

11.4 **Transfers Void.** If a Member purports to transfer or withdraw its Interest in breach of this Article XI, that purported Transfer shall be void and of no effect.

11.5 **Indemnification.** Any transferring or withdrawing Member hereby agrees to indemnify the Company for all liabilities and obligations incurred by it, or on account of any actions, or failures to act, in its capacity as Member of the Company during the period in which it was a Member.

11.6 **Involuntary Transfers and Withdrawals.**

11.6.1 In the event that all or any part of a Member's Interest is subjected to any disposition not voluntarily made by such Member (including, but without limitation, transfers pursuant to operation of law, to judicial process, to foreclosure of a security interest granted in the Member's Interest, or to proceedings in bankruptcy or receivership, whether voluntary or involuntary), the person or entity receiving such Member's Interest not voluntarily made (the "Non-Qualified Person") shall offer the Membership Interest for sale to the Company and the other Members upon the following terms and conditions.

11.6.2 For a period of ninety (90) days after the Company and the other Members have received written notice of such involuntary transfer, the Company shall have the right to notify the person or entity receiving the Interest in the involuntary transfer of its exercise of the option to redeem all or part of the Non-Qualified Person's Interest. If the Company does not elect to redeem the full amount of the Non-Qualified Person's Interest, the other Members shall have the opportunity to purchase all, not part, of the Non-Qualified Person's Interest not redeemed by the Company (in

DRAFT

proportion to their respective Percentage Interests in the Company or in some other proportion as they shall agree) within ninety (90) days after expiration of the Company's option to purchase.

11.6.3 The purchase price to be paid for a Member's Interest to be sold pursuant to this Section shall be the net asset value of the Interest. The net asset value shall be the fair market value of the Company Property which shall be determined pursuant to an appraisal in accordance with Section 11.6.4 hereof, less the debt. The value of the Interest shall be the Percentage Interest of the Interest being valued, multiplied by the net asset value. There shall be a combined discount applied for lack of marketability and lack of control equal to 20% of the net asset value.

11.6.4 The selling Member and the purchaser shall each appoint an MAI appraiser, at their own cost, within forty-five (45) days after the buy-out right was triggered. If only one of the parties appoints an appraiser, that appraiser's written opinion on the fair market value of the Interest in question shall be conclusive and binding on both parties. If each party appoints an appraiser and the two appraisers agree on the fair market value of the Interest, their opinion, which shall be submitted in writing, shall be conclusive and binding on both parties. If one appraisal is no greater than 3% higher than the lower appraisal, then the value shall be the average of the two. If the difference in the value of the Interest is greater than 3%, then the parties shall appoint a third MAI appraiser mutually acceptable to them, and shall obtain a written opinion of the third appraiser, whose fees and expenses shall be divided equally between the parties. The third appraiser shall determine a value no greater or lower than the two existing appraisals, and his determination shall be conclusive and binding as to the fair market value of the Interest to be purchased.

11.6.5 The purchase price shall be paid with twenty (20%) percent down, and the lesser of the Company's then borrowing rate or eight (8%) percent annual interest, which shall be paid in quarterly installments and amortized over five (5) years.

11.7 **Key Man Life Insurance of Death.** The Company shall maintain at Company's expense term life insurance policies on the lives of Jones and Smith as key man life insurance policies. The death benefit payable to the Company shall be \$1,000,000 on each policy. Upon death of Jones or Smith, the Company shall utilize the proceeds to hire professional employees to perform the work which had previously been performed by the deceased Manager. The Company may decrease the policy amounts as the Project progresses.

[ALTERNATIVE PROVISIONS]

DRAFT

ARTICLE XII

RESOLUTION OF DISPUTES

12.1 If any material disagreement arises between the Managers or the Members with regard to the conduct of the affairs of the Company, then either Member may give the other Member written notice that such disagreement is a material deadlock dispute ("Deadlock Dispute"). Such written notice shall identify the nature of the disagreement and call for a meeting of the Members for the purpose of discussing and resolving the dispute. The Members shall hold such meeting at the offices of the Company at a mutually agreeable time within ten (10) days from the date of such notice. The resolution of such dispute shall require the vote of all Members.

12.2 If the Deadlock Dispute is not resolved at the meeting identified in Section 12.1, then either Member shall have the buy-out rights described in Section 12.2.1 below. The Member desiring to exercise these rights shall provide written notice to the other (the "Buy-Out Notice") which shall identify the price for the purchase of the Member's Interest ("Buy-Out Price"). The Buy-Out Price must be based upon a cash purchase price, including payment or refinancing of any existing debt for which the Selling Member may be obligated and repayment of any Member Loans made by the Selling Member.

12.2.1 Within thirty (30) days after the receipt of the Buy-Out Notice, the Member receiving the Buy-Out Notice shall elect, by giving written notice to the Member sending the Buy-Out Notice, to either

(a) sell its entire Interest to the Member giving the Buy-Out Notice for the Buy-Out Price (if such election is made, the Member receiving the Buy-Out Notice is hereinafter referred to as the "Selling Member" and the Member sending the Buy-Out Notice is hereinafter referred to as the "Purchasing Member"), or

(b) purchase the entire Interest of the Member giving the Buy-Out Notice for the Buy-Out Price (if such election is made, the Member sending the Buy-Out Notice is hereinafter referred to as the "Selling Member" and the Member receiving the Buy-Out Notice is hereinafter referred to as the "Purchasing Member"), or

(c) in lieu of the provisions in items (a) or (b) above, any one of the parties sending or receiving the Buy-Out Notice may rescind the Buy-Out Notice, and, in such event, the Deadlock Dispute shall be resolved, and the decision of the non-rescinding Member, as to the matter subject to the Deadlock Dispute, shall be deemed to be the decision of the Company.

DRAFT

12.2.2 If the Member receiving the Buy-Out Notice shall fail to make an election during the time and in the manner provided in Section 12.2.1 above, the Member receiving the Buy-Out Notice shall be deemed to have made the election described in Section 12.2.1(a).

12.3 If the Members have unequal Percentage Interests, then the Buy-Out Price will be expressed as a certain amount per percentage point of the Member's Percentage Interest.

12.4 The closing of the purchase and sale of a Selling Member's Interest pursuant to the provisions of this Article XII shall take place at the principal office of the Company (or such other place as is designated by the Selling Member and Purchasing Member) on a date not to exceed ninety (90) days from the expiration of the thirty (30) day period provided in Section 12.2.1 above, as set forth in a written notice given by the Purchasing Member to the Selling Member at least three (3) days prior thereto, or on such other date as shall be mutually agreeable to the Selling Member and Purchasing Member; provided, however, that such closing date shall be automatically extended by any period of time required to obtain any consents or approvals of such sale. At the closing (i) the Buy-Out Price shall be paid in full by bank check or federal wire transfer; (ii) any existing debt for which the Selling Member may be personally obligated with respect to the Project shall be paid and discharged in full or the Selling Member released from such obligations; and (iii) the Selling Member shall execute and deliver such assignments and other instruments as shall be necessary or desirable in the reasonable opinion of the Purchasing Member to transfer and assign the Selling Member's Interest and all of the Selling Member's rights and obligations in connection therewith, effective as of the closing, and to effect the withdrawal of the Selling Member.

ARTICLE XIII

DISSOLUTION, CONTINUATION, WINDING UP AND TERMINATION

13.1 **Dissolution of Company.** The Company shall be dissolved upon the first of any of the following events to occur:

13.1.1 The unanimous consent of all of the Members; or

13.1.2 One (1) year after the sale of the Project; or

13.1.3 Failure of the Company to complete the development and sale of the Project within ten (10) years from the date hereof, unless both Managers agree to extend the development and sales period; or

13.1.4 Any other event causing a dissolution of the Company under the Act, the Articles, or this Agreement.

DRAFT

13.2 Distribution in Liquidation.

13.2.1 Upon the dissolution of the Company by the occurrence of any event described in Section 13.1, without continuation of the Company, the Managers shall proceed to liquidate the assets of the Company and wind up its affairs. Distribution Proceeds shall be applied in the following order of priority:

(a) To the payment of the debts and liabilities of the Company, and the expenses of liquidation in the order of priority as provided by law, and to the establishment of any reserves which the Managers shall deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Said reserves may be paid over by the Managers to a bank or an attorney-at-law to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the Managers shall deem advisable, the balance shall be distributed in the manner provided in paragraph (b) hereinafter.

(b) Any balance of the proceeds of the cash from liquidation shall be distributed to the Members in the following order and priority:

- (i) first, distributions shall be made to each Member, pro rata based upon on the Capital Accounts of each Member, until each Member has received aggregate distributions pursuant to this Section 13.2.1.(b)(i) equal to such Member's Capital Account balance (determined after the allocations of all Profits, Losses and items of income, gain and expense or loss);
- (ii) second, distributions shall be made to the Members, pro rata based on the Members' Percentage Interests.

13.2.2 A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities so as to enable the Managers to minimize the normal losses attendant upon such liquidation. The provisions of Section 8.1 and 8.2 hereof, relating to the Profits and Losses of the Company shall be applicable during the period of liquidation.

13.2.3 Unless waived by all of the Members, the Managers shall furnish each Member with a statement audited, by such firm or certified public accountants as they shall designate showing the financial position of the Company, including a balance sheet, operating statement and source and use of funds statement for the period from the date of the last annual statement prepared under Section 14.3 hereof to the date of the final distribution of the proceeds of liquidation to the

DRAFT

Members and showing the manner in which the proceeds of liquidation of the Company have been distributed.

13.2.4 The Company shall terminate when all the Company Property shall have been disposed of and the net proceeds, after satisfaction of liabilities to creditors, shall have been distributed among the Members as aforesaid. The establishment of any reserves shall not have the effect of extending the term of the Company.

13.3 **Rights of Member to Assets Upon Termination and Liquidation.** Upon termination of the Company, each Member shall look solely to the net assets of the Company for the return of its investment in the Company. If Company assets remaining after the establishment of any reserves are insufficient to permit return of its investment, then such Member shall have no recourse against any other Member or former Member.

ARTICLE XIV

**BOOKS, ACCOUNTING, REPORTS, FISCAL YEAR,
BANKING AND TAX MATTERS MEMBER**

14.1 **Books and Records.** The Company's books and records, this Agreement, and all other Company documents shall be maintained at the principal office of the Company. The Company will maintain at the principal office of the Company a list of the names and last known addresses of all Members and a copy of the Articles of Organization and amendments, corrections, and restatements to it. Each Member (but no assignee of a Member who has not been admitted as Member) shall have access thereto at all reasonable times. The Company's books and records shall be maintained on that method of accounting selected by the Managers.

14.2 **Fiscal Year.** The fiscal year of the Company shall be the calendar year.

14.3 **Reports.** As soon as reasonably practicable after the end of each fiscal year [but no later than March 31], each Member shall be furnished with a copy of a balance sheet of the Company as of the last day of such fiscal year and a statement of income and loss of the Company for such year. Each year, within the time prescribed by law (including extensions of time for filing), the Managers shall furnish to each Member, his respective schedules of the Company's tax returns.

14.4 **Banking.** All Company Funds shall be deposited in a separate account or accounts established at a federally insured bank or banks to be selected by the Managers. The Company may maintain in an interest bearing or non-interest bearing demand deposits such Company funds as the Managers deem necessary or appropriate. All accounts shall require the signatures of both

DRAFT

Managers (or their representatives as unanimously agreed to by the Managers) for withdrawals or checks.

14.5 **Tax Matters Member.** "Tax Matters Member" will have the meaning as ascribed to "tax matters partner" in the Code. The Tax Matters Member is authorized to perform the duties required or appropriate under the applicable provisions of the Internal Revenue Code or any applicable tax or related statute and the Regulations issued pursuant to it, and is responsible for representing the Company and each of the Members before the Internal Revenue and any state or local tax authority or any other government agency with respect to any issue related to the Company's tax returns or tax obligations. The Tax Matters Member will be a Member. The Tax Matters Member will keep the other Members reasonably informed of any Company dealings with any tax authorities or other government agencies. If the Tax Matters Member is no longer a Member, the then Managers will designate a successor Tax Matters Member. Each Member consents to the designation and agrees to execute and deliver such documents as may be necessary or appropriate to evidence the consent and make the appointment effective. Each Member will be bound by actions of the Member acting as the Tax Matters Member. The Tax Matters Member and the other Members shall use their reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Regulations promulgated thereunder), and in doing so shall incur no liability to the Company or any other Member. All out-of-pocket expenses reasonably incurred by the Tax Matters Member in its capacity as Tax Matters Member will be considered expenses of the Company for which the Tax Matters Member will be entitled to full reimbursement.

ARTICLE XV

INDEMNIFICATION AND CONTRIBUTION

15.1 Indemnification by Company. The Company shall defend, indemnify and hold harmless each Manager, Member, principals of either the Manager or Members, or other agent of the Company ("Indemnified Persons") from and against any and all losses, expenses, claims and demands sustained by reason of any acts or omissions or alleged acts or omissions as Manager, Member or agent of the Company, including judgments, settlements, penalties, fines or expenses incurred in a proceeding to which the Indemnified Person is a party or threatened to be made a party because he or she is or was a Manager, Member or agent of the Company. However, the Company shall not indemnify the Indemnified Person if, after a factual finding by a competent court, it is determined that the Indemnified Person did any of the following:

(a) Received a significant financial benefit to which he or she was not entitled either under the Act or under this Agreement;

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(b) The Manager or Member voted for or assented to a distribution in violation of MCL 450.4307 or this Agreement;

(c) Actions described under MCL §450.4905; or

(d) The Indemnified Person willfully violated the law or violated his duties to the Members under the law or this Agreement.

ARTICLE XVI

MISCELLANEOUS

16.1 **Notices.** Company reports, statements, and returns may be mailed to Members via regular first-class mail, postage prepaid. Any other notice, request, demand, consent, approval, or other communications required or permitted to be given hereunder shall be in writing and be personally delivered, transmitted by facsimile, telex or wire or sent by registered or certified mail, postage and fees prepaid, return receipt requested. All such communications shall be addressed as follows:

16.1.1 If to a Member, to the address specified on Exhibit A;

16.1.2 Notices shall be deemed to have been given upon personal delivery, one (1) business day after transmission by telex, facsimile or wire or two (2) business days after mailing in the manner provided above. The address for purposes of this Section may be changed by any Member by the Member giving written notice thereof in the manner provided therein. Unless and until such written notice is given, the last address given, or the address provided herein (if no notice of change has been given) shall control.

16.2 **Section Captions.** Section and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof.

16.3 **Severability.** Every provision of this Agreement is severable. If any provision hereof is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

16.4 **Amendments.** This Agreement may be amended with the unanimous written consent of the Members.

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16.5 **Partition.** Each of the parties irrevocably waives, during the term of the Company and during the period of its liquidation following any dissolution, any right that it may have to maintain any action for partition with respect to any assets of the Company.

16.6 **Federal Income Tax Elections.** The Company shall make all federal income tax elections in such manner as the Managers determine to be in the best interest of the Members upon the advice of the attorneys or accountants retained by the Company.

16.7 **Consent of Member.** Various provisions of this Agreement require or permit the consent, agreement, approval or disapproval, written or otherwise of the Members. In any such case, the Managers may give each Member written notice of the action, event or agreement, and if such notice expressly so states, then if a Member does not indicate his disapproval by written notice to the Managers within the period of time [not less than fifteen (15) days after mailing of the notice] specified in the notice, he shall be deemed to have given his written consent, approval or agreement.

16.8 **Applicable Law.** The laws of the State of Michigan shall govern the interpretations of this Agreement.

16.9 **Counterpart Execution.** The Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

16.10 **Successors.** Except as otherwise provided in this Agreement, each and every provision hereof shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

16.11 **Integrated Agreement.** This Agreement and the documents executed or delivered in connection therewith constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. There are no agreements, understandings, restrictions, representations, or warranties other than those set forth or referred to herein.

16.12 **Number and Gender.** The singular number when used in this Agreement shall include the plural, and the masculine gender shall include the feminine and neuter genders, unless the context clearly indicates otherwise.

16.13 **Further Assurances.** Each Member agrees to execute such further documents and to cooperate fully with other Members in taking whatever further action may be necessary or appropriate to effectuate the purposes of this Agreement.

16.14 **Waiver.** No breach of any provision hereto shall be waived unless in writing signed by all the non-breaching Members. Waiver of any one breach shall not be deemed to constitute a waiver of any other breach of the same or any other provision hereof on the same or any subsequent occasion.

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16.15 **Remedies.** The rights and remedies of any of the Members hereunder shall not be mutually exclusive, and the exercise by a Member of any right he may have shall not preclude the exercise of any other right he may have.

16.16 **Arbitration.** Except as otherwise provided in Article XII hereof, all controversies arising between the Members in connection with or relating to this Agreement or its performance or in connection with dissolution of the Company, shall be settled by arbitration under an arbitration proceeding governed by the statutes of the State of Michigan in accordance with the rules then effective of the American Arbitration Association. Said proceeding shall be held in Southfield, Michigan, or such other place as the parties mutually may agree upon. The award of the arbitrator(s) shall be final and binding upon the parties and enforceable in a court of competent jurisdiction. Anything to the contrary contained in the above-mentioned rules and statutes notwithstanding, the Members hereby consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to, any arbitration proceeding, or for the confirmation of an award and entry of judgment or award, may be served on each of said Members by certified mail addressed to the Member, or by personal service on the Member at the address of the Member as set forth herein. The Members hereby recognize and consent to the jurisdiction of the American Arbitration Association over each and every one of them.

16.17 **Authority.** Each individual executing this Agreement on behalf of a Person other than an individual warrants that he is authorized to do so and that the execution and performance of this Agreement by such Person does not violate any agreement or legal restriction to which such Person is subject and that this Agreement will constitute a legally binding obligation of the Person he represents.

16.18 **Estoppel Certificate.** Each Member shall, within ten (10) days after written request by the Managers, deliver to the Managers a certificate stating, to the Member's knowledge, that: (i) this Agreement is in full force and effect; (ii) this Agreement has not been modified except by any document or documents identified in the certificate; and (iii) there is no default under this Agreement by the Managers or any other Member, or if there is a default, the nature and extent of it. If the certificate is not received within that ten (10) day period, the Managers will execute and deliver the certificate without qualification on behalf of the requested Member, except that if the Managers signing the certificate have actual personal knowledge of any qualification, the qualification will be included in the certificate.

16.19 **Review by Legal Counsel.** Each Member acknowledges that this Operating Agreement and the Articles were prepared by legal counsel for the Company; that conflicts may exist or arise between the individual interests of the Members and that legal counsel for the Company is prohibited from representing parties where a legal conflict exists; and that each Member is advised to seek (and has had an adequate opportunity to seek) advice from independent legal counsel with respect to investment in the Company and execution of this Operating Agreement.

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To evidence their intention to be bound by the terms and conditions of this Agreement, the parties have signed this Agreement on the date appearing below each of their respective names.

Managers:

Joe Jones

John Smith

Members:

ABC:

ABC, Inc., a Michigan corporation

By:

Joe Jones, President

XYZ:

XYZ, L.L.C., a Michigan limited liability company

By:

John Smith, Manager

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Operating Agreement

OPERATING AGREEMENT ALTERNATIVE PROVISIONS

13.2 Disability.

13.2.1 If any Member or if a majority shareholder of a corporate Member experienced a Disability, as defined in Section 13.2.4, the Interest of the Member or Corporate Member, as the case may be, shall be purchased by the Company and/or the other Members upon the following terms and conditions. For purposes of this Section 13.2, the corporate Member shall be deemed to be a "disabled Member" in the event of the Disability of a majority shareholder of a corporate Member.

13.2.2 At any time after a twelve (12) consecutive month period of Disability (as defined in Section 13.2.4), the other Members and/or the Company may require that the disabled Member sell all of the Interest owned by the disabled Member. The Company shall notify the disabled Member or the disabled Member's representative of its intent to redeem all or part of the disabled Member's Interest, and such redemption shall be completed within thirty (30) days after the Company's notice. If the Company does not elect to redeem the full amount of the Interest of the disabled Member, the other Members shall have the obligation to purchase all, not part, of the Interest not redeemed by the Company (in proportion to their respective Percentage Interests in the Company or in some other proportion as they shall all agree) within thirty (30) days after the expiration of the Company's option to purchase.

13.2.3 At any time after a twelve (12) consecutive month period of Disability (as defined in Section 13.2.4), the disabled Member shall have the option of selling all of his Interest to the Company and/or the other Members. The disabled Member or his representative shall notify the Company of his intent to sell all of his Interest, and such sale shall be completed within thirty (30) days after the disabled Member's notice. If the Company does not elect to redeem the full amount of the disabled Member's Interest, the other Members shall have the obligation to purchase all, not part, of the Interest not redeemed by the Company (in proportion to their respective Percentage Interests in the Company or in some other proportion as they shall agree) within thirty (30) days after expiration of the Company's option to purchase.

13.2.4 "Disability" or "Disabled" means that the Member in question:

- (a) has been declared legally incompetent by a final court decree (the date of such decree being deemed to be the date on which the disability occurred);
- (b) received disability insurance benefits from any disability income insurance policy maintained by the Company for a period of six (6) consecutive months; or
- (c) has been found to be disabled pursuant to a Disability Determination. A "Disability Determination" means a finding that the Member, because of a medically determinable disease, injury or other mental or physical disability, is unable to perform substantially all of his regular duties to the Company and that such disability is

determined or reasonably expected to last at least twelve (12) months. The Disability Determination shall be based on the written opinion of the physician regularly attending the Member whose disability is in question. The date of any written opinion conclusively finding the Member to be disabled is the date on which the disability will be deemed to have occurred. If there is a conclusive finding that the Member is not disabled, the remaining Member shall have the right to request additional Disability Determinations, provided they agree to pay all the expenses of the Disability Determinations and do not request an additional Disability Determination more frequently than once every twelve (12) months. In conjunction with a Disability Determination, each Member hereby consents to any required medical examination, and agrees to furnish any medical information requested by any examining physician and to waive any applicable physician-patient privilege that may arise because of such examination.

13.2.5 If the Company or the disabled Member does not exercise their option to purchase or require the Company and the other Members to purchase the disabled Member's Interest, then the Company shall be obligated to purchase the non-disabled Member's Interest within thirty (30) days after the expiration of the periods of time that the Company and the disabled Member, as the case may be, have the right to exercise their options in the foregoing Sections 13.2.2 and 13.2.3.

13.2.6 The price and payment terms under Sections 13.2.2, 13.2.3 and 13.2.5 shall be as set forth in Article XIV, except that the remaining Members, and their majority owners shall, in their individual capacities, guarantee the payment of the purchase price.

13.3 Death of Member.

13.3.1 Upon the death of a Member, all of the Interest of such deceased Member, or upon the death of a majority owner of a corporate Member, all of the Interest of the corporate Member, shall be purchased by the Company and/or the other Members, as the case may be, upon the following terms and conditions. For purposes of Sections 13.3 and 13.5, a corporate Member shall be deemed to be a "deceased Member" in the event of the death of a majority owner.

13.3.2 For a period of thirty (30) days after receipt of written notice of a Member's death, the Company shall have the right to notify the deceased Member's representative of its exercise of the option to redeem all or part of the deceased Member's Interest. If the Company does not elect to redeem the full amount of the Interest, the other Members shall have the obligation to purchase all, not part, of the Interest not redeemed by the Company (in proportion to their respective Percentage Interests in the Company or in some other proportion as they shall all agree) within thirty (30) days after the expiration of the Company's option to purchase.

13.3.3 The price and payment terms shall be as set forth in Article XIV, except the remaining Members, and their majority owners shall, in their individual capacities, guarantee the payment of the purchase price.

13.4 Insurance.

13.4.1 Company or Member Insurance. In addition, the Company and/or the Members may arrange to provide funds needed to acquire some or all of the Interest of any other Member or shareholder of a corporate Member through life insurance policies on the other Member's life to be secured at the Company's or Members' expense, as set forth on Schedule "13.4" attached hereto. The proceeds of said policies shall be applied to the purchase price for the Interest of a deceased Member or corporate Member, as the case may be. If the payment terms herein require payments in excess of said proceeds, the balance shall be paid by the purchaser according to the terms of payment set forth in Section 14.2; provided, however, such payments shall be modified to provide that any insurance proceeds received more frequently or in greater amounts than the payments otherwise due pursuant to Section 14.2 shall be paid over to the deceased Member's representative as rapidly as received. Upon the expiration of any such insurance proceeds, the purchaser's monthly obligation shall not be reduced from that otherwise specified in Section 14.2 until the full purchase price has been paid. Any excess insurance proceeds after fulfilling the payment obligations hereunder shall remain with the owner of said insurance policy.

13.4.2 Applicable Insurance. Only life insurance policies listed in this Agreement, including Schedule 13.4 to this Agreement, or written amendments or written supplements to this Agreement or the Schedules to this Agreement, shall be included as life insurance held pursuant to this Agreement.

13.4.3 Death After Sale. If a Member dies while the Company and/or the other Members are irrevocably bound to purchase his Interest, then the terms and conditions of the purchase shall be the same as the Company or the other Members are already bound to (without regard to any insurance proceeds); provided, that the proceeds of any life insurance owned by the Company or the other Members pursuant to this Agreement on the life of a Member and received as a result of the death of a Member shall be paid forthwith to be applied to the then outstanding balance of the Purchase Price.

13.4.4 Option to Purchase Policy. If the Company redeems or the Members purchase all of the Member's interest during his lifetime pursuant to this Agreement, the selling Member shall have the right to purchase, for a period of sixty (60) days after full payment for his Interest is received, any life insurance policies on his life held hereunder, unless the proceeds have been used to pay the purchase price. The policies shall be kept in effect until such period expires, unless the selling Member dies before then. When the Company redeems or a Member purchases all of the selling Member's Interest, the Company and the other Members shall have the right to purchase, within sixty (60) days thereafter, all contracts of insurance on their life held by the selling Member and/or the Company. The purchase price for the policies shall be the sum of any unearned premium, plus the interpolated terminal reserve, if any, including the cash value of all dividends standing to the credit of the policy, less any indebtedness thereon. If the right to purchase is exercised, the parties shall execute and deliver any documents needed to transfer ownership of the policies to the insured Member. If the right to purchase is not exercised, the policy owner may hold or dispose of the policy at its or his discretion.

13.4.5 Modification of Insurance. The owner of any life insurance held hereunder shall only change the beneficiary or modify or impair the rights of the insurance with the mutual consent of all of the parties hereto.

ARTICLE XIV

PRICE AND TERMS OF BUY-OUT

14.1 Price.

14.1.1 The purchase price for a Member's Interest to be sold pursuant to this agreement shall be equal to the Book Value of the Company determined by the Company's accountants in accordance with generally accepted accounting principles consistently applied as of the last day of the month ending on or preceding the month in which the buy-out right was triggered (the "Valuation Date") multiplied by the Percentage Interest owned by the selling Member adjusted to reflect the fair market value of the Company's assets. The book value shall not be discounted for lack of marketability of the Interest or due to the minority percentage of the Interest held by the selling Member. The then parties to this Agreement shall agree on such fair market value. In the absence of an agreement, the selling Member shall appoint one (1) appraiser and the purchaser shall appoint one (1) appraiser. The two (2) appraisers so appointed shall appoint a third appraiser. The decision of the three (3) appraisers shall be by majority vote and shall be binding upon all parties to this Agreement.

14.1.2 In determining the Book Value of the Company, the following shall be adhered to and be binding upon all parties:

(1) Book Value shall not include any value placed on goodwill, trade name or other similar intangible assets.

(2) Book Value shall include only cash surrender values, if any, of life insurance policies, if any, owned by the Company, and shall not include the proceeds of any policies which insured the life of a deceased Member.

(3) No value shall be attributed to any lease between the Company and any landlord in determining Book Value.

(4) In computing Book Value: (i) accounts receivable less the actual reserve for bad debts established by the Company shall be included; and (ii) unbilled services shall not be included in book Value.

(5) The allowances for depreciation, at the rates used by the Company for Federal Income Tax purposes, shall be conclusively accepted as correct.

(6) Prepaid expenses including, but not limited to, insurance premiums, interest and taxes shall be treated as assets of the Company if they are treated as assets under generally accepted accounting principles.

(7) The following expenses shall be deducted in determining Book Value as of the Valuation Date, whether or not actually paid by the Company prior to such date and whether or not actually due and payable prior to such date:

(a) Real and personal property taxes attributable to the period prior to the Valuation Date, based on the due date basis of such taxes ("due date" is the last date that such taxes can be paid without interest or penalty).

(b) All state, federal, city or other governmental income taxes assessed against the Company and attributable to income earned during the period prior to the Valuation Date.

(c) All interest obligations and expenses which are attributable to periods prior to the Valuation Date.

(d) Payroll taxes of all types and unemployment insurance contributions and premiums attributable to salaries or wages already paid by the Company as of the Valuation Date.

(e) Insurance premiums attributable to periods prior to the Valuation Date.

(8) All other expenses attributable to the period ending on the applicable Valuation Date which have not been paid, on or before the applicable Valuation Date, shall be deducted in computing Book Value, including, by way of illustration but not limitation, all attorneys' fees, accountants' fees, salaries, bonuses, etc.; provided, that these expenses have been billed to the Company, and are attributable to the period ending upon the applicable Valuation Date. All expenses, except those treated pursuant to subparagraph 14.1.2(6) hereof, which have been paid, whether or not attributable to a period after the Valuation Date, shall be deducted in computing "Book Value".

(9) In determining Book Value, there shall be deducted the aggregate amount of all liabilities and indebtedness, of every kind and nature (except those specified in Paragraph (8) above) of the Company as of the applicable Valuation Date including, by way of illustration and not limitation, the amount of all outstanding loans and notes payable as of the applicable Valuation Date, except those which, when paid, will, under generally accepted accounting principles, be reflected as an expense of the Company. Such liabilities shall also include any "contingent" claims (hereinafter individually called "Contingent Claim" and collectively called "Contingent Claims") which have been made or threatened against the Company as of the Valuation Date. In the event any such Contingent Claims exist as of the Valuation Date, the Company and the selling Member shall use their best efforts to value such Contingent Claim. If they are unable to agree on the amount of such Contingent Claim, the

matter may be referred by either party to arbitration in accordance with Section 19.14 hereof. The amount of such Contingent Claim, and therefore, the purchase price, shall be adjusted from time to time to reflect the change in the status of the Contingent Claim, as it progresses towards either dismissal, settlement or a final adjudication of its merits. If the ultimate disposition of the Contingent Claim is for less or more than the amount as is initially determined as of the Valuation Date, the difference shall either be deducted from or added to, and amortized over, then remaining principal payments of the Purchase Price provided for in Section 14.1 hereof. If there are no remaining payments to be made, the difference shall be paid to or by the selling Member, as the case may be, within thirty (30) days that the Contingent Claim is finally determined.

14.1.3 If, between the applicable Valuation Date and the consummation of the sale, the Company has either:

- (1) made any distributions to the Members; or
- (2) declared any distributions which are not in fact paid out during said period, then, and in the either event, the aggregate of (1) and (2) shall be deducted from the Book Value of the Company.

14.2 Payment Terms. The Purchase Price shall be paid starting thirty (30) days after the closing in twenty (20) equal, quarterly installments, including interest at a rate of eight (8%) percent or the minimum rate of interest required by the Code to avoid imputed interest, whichever is greater, per annum. This obligation shall be evidenced by a non-negotiable promissory note executed by the purchaser and delivered to the selling Member or his duly authorized representative. Such note shall provide, among other things, that the maker shall have the privilege of prepaying all or any part thereof at any time with interest to date of payment, without penalty, and that a default in any installment continuing for more than thirty (30) days after written notice of default is given by the holder, shall cause the remaining balance to become due and payable immediately. The Note shall be secured by a mortgage and/or security interest on the assets of Company, subject to the outstanding debt to any financial institution or bonding company, or any extension, modification or replacement of such debt or bond.

14.3 Restrictions on Maximum Payouts in Any Year. Notwithstanding anything to the contrary contained in this Agreement, the maximum aggregate payments to all redeeming Members in any one fiscal year of the Company, exclusive of insurance proceeds, shall not exceed one (1%) percent of the Company's Gross Revenues for the prior fiscal year. For the purposes of the limitations of this Section 14.3, Gross Revenues shall not include the insurance proceeds received by the Company on account of the death of a Member. If this limitation is applicable in any fiscal year, the non-insurance payments due the redeeming Members shall be apportioned among such redeeming Members in proportion to the respective balance due each of them, exclusive of insurance.

14.4 Repayment of Loans. The Company or the other Members shall be entitled to credit at the closing, against the total purchase price hereunder, the full amount of any then

outstanding loan by the Company or the other Members to the selling Member, as the case may be, plus any accrued interest, whether or not said sums are then due and owing.

14.5 Execution of Promissory Note. In the event the Company or a Member (the "Purchaser") is required to execute a promissory note in favor of the Member selling his Interest, the following provisions shall apply:

14.5.1 Voting. As long as the Purchaser is not in default in the payment of principal and interest with respect to the purchase price, the Purchaser shall:

(i) In the case of the Company as the Purchaser, not be deemed to have any voting rights attached to such purchased Interest for any purpose; or

(ii) In the case of a Member as the Purchaser, be deemed to be owned by the purchasing Member and the purchasing Member shall be entitled to exercise and enjoy all the rights associated with holding an Interest in the Company.

14.5.2 Default. In the event that the Purchaser defaults in any payment of principal or interest with respect to the promissory note evidencing the purchase price, if such default continues for a period of thirty (30) days after written notice of default is given by the holder of the promissory note, the amount already received by the selling Member shall be retained as damages. This shall be in addition to any other remedies the selling Member may have at law or in equity .

ARTICLE XV

THIRD-PARTY OFFERS

15.1 In the event that any Member (hereinafter called a "Selling Member") receives a bona fide, arms-length, and legally enforceable written offer to buy all or any part of his Interest in the Company from any unrelated and unaffiliated person or entity (hereinafter called a "Third Party"), which the Selling Member desires to accept, the Selling Member shall first notify the Company and the other Members, in writing (the "Offer Notice"), setting forth detail the percentage of Interest proposed to be sold, to whom and the price, terms and conditions pursuant to which such percentage of Interest are proposed to be sold (the "Offer Terms"), and including a copy of the written offer.

15.2 The Company shall then have an option, exercisable by written notice to the Selling Member and the other Members given within thirty (30) days following receipt of the Offer Notice, to purchase not less than all of the Percentage Interest so offered by the Selling Member upon the Offer Terms or upon the price and payment terms set forth herein, as the Company desires. Upon the failure of the Company to timely exercise said option, the remaining Members shall have an option, exercisable by written notice to the Selling Member within fifteen (15) days after the expiration of such thirty (30) day period, to purchase (in proportion to their respective Percentage Interests in the Company or in some other proportion as they all agree) not

less than all of the Member's Interest so offered by the Selling Member upon the Offer Terms or upon the price and payment terms set forth herein, as the remaining Members desire.

15.3 In determining whether the Company shall exercise any of said options, the Selling Member shall refrain and abstain from participation in any aspect of the decision. The failure of the Company to elect to purchase such Member's Interest within the applicable option period shall be considered a rejection of such offer. In the event an option as set forth above has been timely exercised, the purchase and sale of all of such Member's Interest subject to the option shall be consummated within thirty (30) days after the date of exercise of such option or, if later, by the date fixed in the Offer Terms, or on a date fixed by the purchaser with reasonable notice to the Selling Member.

15.4 In the event that the other Members and the Company elect not to exercise any of said options within the time provided, the Selling Member may sell all (but not less than all) of his offered Interest to the Third Party in accordance with the Offer Terms; provided, however, that such sale must be consummated within a period of thirty (30) days following expiration of all applicable time periods for exercise of such options under this Article XV. Provided, further, however, as a condition precedent to any obligation of the Company to recognize the transferee as a Member of record of the Company for any such purpose, such transferee agrees to be bound by, and execute the most current version of, this Agreement.

Dilution Formulas for Additional Capital Contributions

DILUTION FORMULAS FOR ADDITIONAL CAPITAL CONTRIBUTIONS

Example I. Members' Percentage Interests Disproportionate to Original Capital Contributions

(2) The Managing Member shall have the right to

(A) reduce the Percentage Interest of a Declining Investing Member to the percentage which is the result of (i) multiplied by (ii), where (i) is 50% [i.e., the original aggregate Percentage Interest of the Investing Members] and (ii) is a fraction, the numerator of which is the capital contribution theretofore made by the Declining Investing Member and the denominator of which is the aggregate capital contribution of all Investing Members and

(B) apportion the excess of the Declining Investing Member's Percentage Interest prior to the operation of this Section 2.5(b)(2) over his Percentage Interest as determined pursuant to item (A) hereof among the Members making the Omitted Contribution, pro rata, in accordance with the respective portion of the Omitted Contribution made by each of them.

Example II. Penalty Dilution

As an alternative to the remedies provided for in Section 5.07, the non-defaulting Member may fulfill the Capital Call on behalf of a Member who has failed to do so for fifteen (15) days following written notice of non-payment. In such event, the Percentage Interest of the non-defaulting Member will be recalculated after the Capital Call so that it is equal to the result of the following formula: non-defaulting Member's original Capital Contribution plus the non-defaulting Member's required additional Capital Contribution plus [the defaulting Member's required additional Capital Contribution x 1.15] divided by the Total Capital Contributions. The new Percentage Interest of the defaulting Member will be one-hundred (100%) percent minus the newly computed Percentage Interest the non-defaulting Member.