

**NOTE: THIS IS A SAMPLE OPERATING AGREEMENT FOR ILLUSTRATIVE PURPOSES ONLY.**

**IF YOU DECIDE TO INVEST, AN OPERATING AGREEMENT SPECIFIC TO THAT INVESTMENT WILL BE PROVIDED FOR YOUR SIGNATURE.**

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE SECURITIES OFFERED HEREBY MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

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**EXHIBITS**

Exhibit “A”    Definitions

Exhibit “B”    Special Allocations

**OPERATING AGREEMENT  
OF  
(ENTITY NAME)  
(PENDING STATE REGISTRATION)**

This Operating Agreement, effective this **(DATE)**, is entered into by and between Russell B. McKee, Inc., dba McKee Private Capital, a California corporation, as the Manager (“McKee Private Capital” or “Manager”), and Russell B. McKee, as the Initial Member, pursuant to the Act on the following terms and conditions. Certain capitalized terms used herein shall have the meanings set forth in Exhibit A.

1. Organization.

1.1 Formation. On **(DATE)**, Articles of Organization were filed in the office of the Secretary of State of **(STATE OF ORGANIZATION)** in accordance with and pursuant to the Act.

1.2 Name and Place of Business. The name of the Company shall be **(ENTITY NAME)**, and its principal place of business shall be 1001 B Avenue, Suite 203, Coronado, California 92118. The Manager may change such name, change such place of business or establish additional places of business of the Company as the Manager may determine to be necessary or desirable.

1.3 Purpose. This limited liability company’s purpose is solely limited to (i) owning, operating, managing, leasing, selling, transferring or exchanging certain real property commonly known as the **(PROPERTY NAME AND LOCATION)** (the “Property”); (ii) entering into a mortgage loan with **(NAME OF LENDER)** (“Lender”) on such terms and conditions as the Manager shall negotiate with the Lender and in an amount not to exceed **(LOAN AMOUNT)** (the “Loan”), which Loan is to be evidenced by the Company’s promissory note in favor of Lender in the amount of the Loan and to be secured by, inter alia, a first priority mortgage lien encumbering the Company’s fee interest in the Property; and (iii) transacting any and all lawful business for which a limited liability company may be organized under **(STATE OF ORGANIZATION)** law that is incident, necessary and appropriate to accomplish the foregoing.

Term. The term of this Agreement shall continue until the Company is dissolved pursuant to Section 13 of this Agreement. **The initial term of this Agreement will run coterminous with the term of the purchase financing secured to acquire the Property which shall be (TERM OF LOAN) months. If, in the judgment of the Manager, it would be financially advantageous to extend the term of this Agreement beyond (TERM OF LOAN) months, the term may be extended for up to an additional (NUMBER OF MONTHS) months, subject to the requirement of a unanimous vote of 100% of the Units, and the consent of the Manager to pass and become effective.**

1.4 Required Filings. The Manager shall execute, acknowledge, file, record and/or publish such certificates and documents, as may be required by this Agreement or by law in connection with the formation and operation of the Company.

1.5 Registered Office and Registered Agent. The Company's initial registered office and initial registered agent shall be as provided in the Articles of Organization. The registered office and registered agent may be changed from time to time by the Manager by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.6 Certain Transactions. Any Manager, Member, Economic Interest Owner, or any Affiliate, or any shareholder, officer, director, employee, partner, member or any person owning an interest therein, may engage in or possess an interest in any other business or venture of any nature or description, whether or not competitive with the Company including, but not limited to, the acquisition, syndication, ownership, financing, leasing, operation, maintenance, management, brokerage, construction and development of property similar to the Project and no Manager, Member or other person or entity shall have any interest in such other business or venture by reason of their interest in the Company.

1.7 Limitation on Powers and Duties. The Company shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the property commonly known as **(PROPERTY NAME AND LOCATION)**, or become a shareholder of or member or partner in any equity which acquires or holds any property other than the Property.

1.8 Separateness Provisions. This limited liability company shall observe all organizational formalities and preserve its existence as an entity duly organized, validly existing and in good standing under the applicable laws of the State of **(STATE OF ORGANIZATION)**.

2. Definitions. Definitions for this Agreement are set forth on Exhibit A and are incorporated herein.

3. Capitalization and Financing.

3.1 Manager's Capital Contribution. The Manager shall contribute management services to the Company.

3.2 Members' Capital Contributions.

3.2.1 Initial Members. Russell B. McKee, as the Initial Member, shall contribute **\$(DOLLAR AMOUNT) in cash, as valuable consideration for (NUMBER OF UNITS) Member Units.**

3.2.2 Units. The Company is hereby authorized to sell and issue not less than **(MINIMUM AND MAXIMUM NUMBER OF UNITS)** Units at a purchase price of \$1,000.00 per Unit and to admit the persons who acquire such Units as Members. The Offering shall terminate on the Offering Termination Date.

3.2.3 Payment of Purchase Price. The purchase price of each Unit shall be paid in full in cash or in property or an obligation to contribute property at the time of execution of the Subscription Agreement. Payment of the purchase price for a Unit shall constitute the Member's initial Capital Contribution. As described in the Memorandum, Units may be sold to certain persons for a contribution of property to the Company of \$1,000.00 per Unit.

3.2.4 Subscription Agreement. Each person desiring to acquire Units and become a Member shall tender to the Company a Subscription Agreement for the number of Units desired, together with the correct full Subscription Payment of the Units so subscribed by the subscription deadline. The Company shall accept or reject each Subscription Agreement within 30 days after the Company receives the same (and the failure by the Company to accept a Subscription Agreement within said 30 days shall constitute a rejection thereof). Acceptance of a Subscription Agreement shall be evidenced by the execution of Subscription Agreement by the Manager. Subject to Section 3.2.6, upon the acceptance of a Subscription Agreement, the accompanying Subscription Payment shall become a Capital Contribution by such subscriber.

**Subscription Payment Schedule Due As Follows: 50% of the investment commitment due and payable with the execution and submission of the Subscription Agreement; with 50% remaining balance of the investment commitment due and payable on or before (FINAL DUE DATE).**

3.2.5 Cancellation of Offering. If the Company has not accepted Subscription Deposits for at least **(MINIMUM UNITS)** on or before **(FINAL DUE DATE)**, the Offering shall be canceled and all Subscription Payments received shall be promptly refunded to the subscribers; provided, however, that such date may be extended for an additional ninety (90) days in the sole and absolute discretion of the Manager.

3.2.6 Admission of a Member. To the extent required by law, the Manager shall amend this Agreement and take such other action as the Manager deems necessary or appropriate promptly after receipt of the Members' Capital Contributions to the Company to reflect the admission of those persons to the Company as a Member.

3.2.7 Liabilities of Members. Except as specifically provided in this Agreement, no Member shall be required to make any additional contributions to the Company and no Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company, nor shall the Members be required to lend any funds to the Company or to repay to the Company, any Member, or any creditor of the Company any portion or all of any deficit balance in a Member's Capital Account.

3.3 Member Loans. The Manager or Affiliates may, but will have no obligation to, make loans to the Company to pay Company operating expenses. Any such loan shall bear interest at the actual cost of funds to the Manager and provide for the payment of principal and any accrued but unpaid interest in accordance with the terms of the promissory note evidencing such loan, but in no event later than dissolution of the Company.

3.4 Company Loans. The Company may obtain, in the sole and absolute discretion of the Manager, loans to acquire or refinance the Project.

4. Allocation of Tax Items.

4.1 Allocation of Net Income and Net Loss. For each fiscal year, the Net Income and Net Loss of the Company shall be allocated as follows:

(a) Net Income Allocations. After giving effect to the special allocations set forth in Exhibit B attached hereto, Net Income for any fiscal year shall be allocated entirely to the Member Units, including Manager's Member Units (if applicable).

(b) Net Loss Allocations. After giving effect to the special allocations set forth in Exhibit B attached hereto, Net Loss for any fiscal year shall be allocated entirely to the Member Units, including Manager's Member Units (if applicable).

5. Distributions.

5.1 Cash from Operations. Except as otherwise provided in Section 13, Distributable Cash from Operations with respect to each calendar year shall be distributed 100% to the Members, in an amount proportionate to the Member Units owned by each Member. Cash distributions will be made monthly, on or about the 10th of each month, from the prior month's operations.

5.2 Distributions of Property. Except as otherwise provided in Section 13, the Manager may cause the Company to distribute Property to the Members in lieu of Distributable Cash from Operations provided that the value of the Property shall be adjusted to reflect its Book Value.

5.3 Restrictions. The Company intends to make periodic distributions of substantially all cash determined by the Manager to be distributable, subject to the following: (i) Distributions may be restricted or suspended for periods when the Manager determines in its reasonable discretion that it is in the best interest of the Company; and (ii) all Distributions are subject to the payment, and the maintenance of reasonable reserves for payment of Company obligations.

6. Compensation to the Manager.

6.1 Manager's Compensation. The Manager shall not receive compensation from the Company for services rendered or to be rendered, except as specified in this Agreement.

6.1.1 Acquisition Fee on Purchase of Property. The Manager shall receive an acquisition fee in connection with the acquisition of the Property, paid from the Company's initial capital in an amount not to exceed 2.0% of the purchase price of the property. Acquisition fee will be reduced in direct proportion to reflect any compensation earned from Seller in connection with property acquisition.

6.1.2 Asset Management Fee. The Manager shall receive an annual Asset Management Fee equal to two percent (2.0%) of the effective gross income of the Property. Fee shall be earned and payable monthly from Property operations. Manager, at its sole



discretion, may elect to defer any portion of Asset Management Fee, to be paid at a future date during the life of the Company.

Notwithstanding anything herein to the contrary, so long as the loan from **(LENDER)** secured by the Property (the "Loan") is outstanding (a) Asset Management Fees due to Manager hereunder are and shall be subordinated in right of payment to the prior payment in full of the Loan; (b) if, by reason of its exercise of any other right or remedy hereunder, Manager acquires by right of subrogation or otherwise a lien on the Property which (but for this provision) would be senior to the lien of the mortgage encumbering the Property which secures the Loan (the "Mortgage"), then, in that event, such lien shall be subject and subordinate to the lien of the Mortgage; (c) until Manager receives notice (or otherwise acquires actual knowledge) of a default by the Company under the Loan documents, Manager shall be entitled to retain for its own account all Asset Management Fees; (d) after Manager receives notice (or otherwise acquires actual knowledge) of a default under the Loan documents, it will not accept any Asset Management Fees without Lender's prior written consent; (e) if, after Manager receives notice (or otherwise acquires actual knowledge) of a default under the Loan Documents, Manager receives payment of Asset Management Fees, such payment will be received and held in trust for Lender and unless Lender otherwise notifies Manager, will be promptly remitted, in cash or readily available funds, to Lender, properly endorsed to Lender, to be applied to the principal of, interest on and other amounts due under the loan documents evidencing and securing the Loan in such order and in such manner as Lender shall determine in its sole and absolute discretion; and (f) Manager will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to the Company, without Lender's prior written consent.

The Company agrees that after the Company receives notice (or otherwise has actual knowledge) of a default under the Loan documents, it will not make any payment of Asset Management Fees to the Manager under or pursuant to this Operating Agreement without Lender's prior written consent.

6.1.3 Property Management Fee. The Manager shall be entitled to a competitive fee not to exceed 5.0% of total income from operations for providing the Company with professional property management services. Alternatively, Manager may select third party property management providers to provide property management services to the Company with same fee limitation.

6.1.4 Recourse Loan Guarantee Fee. Should Manager, or an officer thereof, be required to guarantee any portion of the financing secured by Property, then Manager shall be entitled to a loan guarantee fee equal to \$20,000.00 annually for the period that the loan guarantee remains in force. This fee shall be payable in monthly installments, or at the sole option of Manager may be deferred to a future date during the life of the Company.

6.1.5 Disposition Fee on Sale of Property. The Manager shall receive a disposition fee in connection with the sale of the Property, paid from the sale proceeds in an amount not to exceed 5.0% of the sales price of the property. Manager shall be authorized to retain the services of cooperating brokers, and to share disposition fee in any manner, at Manager's sole discretion.

6.1.6 Cash Distribution at Sale. At the time of sale, the Manager shall be entitled to a preferred distribution of **(PREFERRED PERCENTAGE)** of the sale proceeds that remain following distribution to each Member (including Manager/Member) of their initial Capital Contribution, plus any subsequent capital contribution(s). The remaining **(REMAINING PERCENTAGE)** of the sale proceeds shall be distributed in an amount proportionate to the Member Units owned by each Member (including Manager/Member).

7. Authority, and Responsibilities of the Manager.

7.1 Management. The business and affairs of the Company shall be managed by its Manager. Except as otherwise set forth in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

7.2 Number, Tenure and Qualifications. The Company shall have one Manager which shall be McKee Private Capital. Each Manager shall hold office until such Manager is removed or withdraws or resigns.

7.3 Manager Authority. The Manager shall have all authority, rights and powers conferred by law (subject only to Section 7.4) and those required or appropriate to the management of the Company's business.

7.4 Restrictions on Manager's Authority. Neither the Manager nor any Affiliates shall have authority to:

7.4.1 Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of the Company; and

7.4.2 Alter the primary purpose of the Company.

7.5 Responsibilities of the Manager. The Manager shall:

7.5.1 Have a fiduciary responsibility for the safekeeping and use of all the funds and assets of the Company;

7.5.2 Devote such of its time and business efforts to the business of the Company as they shall in its discretion, exercised in good faith, determine to be necessary to conduct the business of the Company for the benefit of the Company and the Members;

7.5.3 File and publish all certificates, statements, or other instruments required by law for formation, qualification and operation of the Company and for the conduct of its business in all appropriate jurisdictions;

7.5.4 Cause the Company to investigate public liability, property damage and other insurance determined by the Manager in its discretion to be appropriate to the business of the Company;

7.5.5 At all times use its best efforts to meet applicable requirements for the Company to be taxed as a partnership and not as an association taxable as a corporation; and

7.5.6 Amend this Agreement to reflect the admission of Members not later than 90 days after the date of admission or substitution.

7.6 Administration of Company. So long as it is the Manager and the provisions of this Agreement for compensation and reimbursement of expenses of the Manager are observed, the Manager shall have the responsibility of providing continuing administrative and executive support, advice, consultation, analysis and supervision with respect to the functions of the Company, including decisions regarding the sale or refinancing or other disposition of Property, and compliance with federal, state and local regulatory requirements and procedures. In this regard, the Manager may retain the services of such Affiliates or unaffiliated parties as the Manager may deem appropriate to provide management and financial consultation and advice, and may enter into agreements for the management and operation of Company assets.

7.7 Tax Matters Partner. The Members hereby appoint the Manager to act as the “tax matters partner.”

7.8 Indemnification of Manager.

7.8.1 The Manager, its shareholders, Affiliates, officers, directors, partners, employees, agents and assigns, shall not be liable for, and shall be indemnified and held harmless (to the extent of the Company’s assets) from, any loss or damage incurred by them, the Company or the Members in connection with the business of the Company, including costs and reasonable attorneys’ fees and any amounts expended in the settlement of any claims of loss or damage resulting from any act or omission performed or omitted in good faith, which shall not constitute gross negligence or willful malfeasance, pursuant to the authority granted, to promote the interests of the Company. Moreover, the Manager shall not be liable to the Company or the Members because any taxing authorities disallow or adjust any deductions or credits in the Company income tax returns.

7.8.2 Notwithstanding Section 7.8.1, the Company shall not indemnify any Manager, or shareholder, director, officer or other employee thereof, for liability imposed or expenses incurred in connection with any claim arising out of a violation of the Securities Act of 1933, or any other federal or state securities law, with respect to the offer and sale of the Units. Indemnification will be allowed for settlements and related expenses in lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that (i) the Manager is successful in defending the action; (ii) the indemnification is specifically approved by the court of law which shall have been advised as to the current position of the Securities and Exchange Commission (as to any claim involving allegations that the Securities Act of 1933 was violated) or the applicable state authority (as to any claim involving allegations that the applicable state’s securities laws were violated); or (iii) in the opinion of counsel for the Company, the right to indemnification has been settled by controlling precedent.

7.9 No Personal Liability for Return of Capital. The Manager shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contribution of any Member of any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from any Member) of the Company.

7.10 Authority as to Third Persons.

7.10.1 No third party dealing with the Company shall be required to investigate the authority of the Manager or secure the approval or confirmation by any Member of any act of the Manager in connection with the Company business. No purchaser of any property or interest owned by the Company shall be required to determine the right to sell or the authority of the Manager to sign and deliver any instrument of transfer on behalf of the Company, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith.

7.10.2 The Manager shall have full authority to execute on behalf of the Company any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by one or more officers of Russell B. McKee, Inc. dba McKee Private Capital, a California corporation, executing on behalf of the Company shall be the only execution necessary to bind the Company thereto. No signature of any Member shall be required.

7.10.3 The Manager shall have the right by separate instrument or document to authorize one or more individuals or entities to execute leases and lease-related documents on behalf of the Company and any leases and documents executed by such agent shall be binding upon the Company as if executed by the Manager.

8. Rights, Authority and Voting of the Member.

8.1 Members Are Not Agents. Pursuant to Section 7 and the Articles of Organization, the management of the Company is vested in the Manager. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company.

8.2 Voting by a Member. Members who own Units shall be entitled to cast one vote for each Unit they own. Except as otherwise specifically provided in this Agreement, Members who own Units (but not Economic Interest Owners) shall have the right to vote only upon the following matters:

8.2.1 Admission of the Manager or election to continue the business of the Company after the Manager ceases to be the Manager when there is no remaining Manager; and

8.2.2 Amendment of this Agreement.

8.3 Member Vote; Consent of Manager. Except as provided in Section 9.1, matters upon which the Members may vote shall require a Majority Vote of 75% of the Units and the consent of the Manager to pass and become effective.

8.4 Meetings of the Members. The Manager may at any time call for a meeting of the Partners, or for a vote without a meeting, on matters on which the Members are entitled to vote, and shall call for such a meeting (but not a vote without a meeting) following receipt of a written request therefor of Members holding more than fifty percent (50%) of the Units entitled to vote as of the record date. Within 20 days after receipt of such request, the Manager shall notify all Members of record on the record date of the Company meeting.

9. Resignation, Withdrawal or Insolvency of the Manager. Subject to Section 10, the Manager shall not resign or withdraw as the Manager or do any act that would require its resignation or withdrawal without a vote of 75% of the Units.

9.1 Removal. Due to covenants contained in the Fannie Mae mortgage, which will be secured by subject Property, the Manager may not be removed for any reason whatsoever during the term of the Fannie Mae financing.

10. Assignment of the Manager's Interest.

10.1 Permitted Assignments. Except as otherwise provided in this Agreement, the Manager may sell, assign, hypothecate, encumber or otherwise transfer any part or all of its interest in the Company.

10.2 Substitute Manager. Upon acceptance by the Members of an Assignment by the Manager, any assignee of such Manager's interest in compliance with this Section 10 shall be substituted as the Manager.

10.3 Transfer in Violation Not Recognized. Any Assignment, sale, exchange or other transfer in contravention of the provisions of this Section 10 shall be void and ineffectual and shall not bind or be recognized by the Company.

11. Assignment of Units.

11.1 Permitted Assignments. A Member may only sell, assign, hypothecate, encumber or otherwise transfer any part (but not less than the lesser of (i) one Unit or (ii) the Member's entire interest in the Company) or all of his or her interest in the Company if the following requirements are satisfied:

11.1.1 The Manager consents in writing to the transfer;

11.1.2 No Member shall transfer, assign or convey or offer to transfer, assign or convey all or any portion of an Unit to any person who does not possess the financial qualifications required of all persons who become Members, as described in the Memorandum;

11.1.3 No Member shall have the right to transfer any Unit to any minor or to any person who, for any reason, lacks the capacity to contract for himself under applicable law. Such limitations shall not, however, restrict the right of any Member to transfer any one or more Units to a custodian or a trustee for a minor or other person who lacks such contractual capacity;

11.1.4 The Manager, with advice of counsel, must determine that such transfer will not jeopardize the applicability of the exemptions from the registration requirements under the Securities Act of 1933, as amended, and registration or qualification under state securities laws relied upon by the Company and Manager in offering and selling the Units or otherwise violate any federal or state securities laws;

11.1.5 The Manager, with advice of counsel, must determine that, despite such transfer, Units will not be deemed traded on an established securities market or “readily tradable on a secondary market (or the substantial equivalent thereof)” under the provisions applicable to publicly traded Company status;

11.1.6 Any such transfer shall be by a written instrument of Assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the assignor of such Units and accepted by the Manager in writing. Upon such acceptance by the Manager, such an assignee shall take subject to all terms of this Agreement and shall become an Economic Interest Owner; and

11.1.7 A transfer fee shall be paid by the transferring Member in such amount as may be required by the Manager to cover all reasonable expenses, including attorneys’ fees, connected with such Assignment.

## 11.2 Substituted Member.

11.2.1 Conditions to be Satisfied. No Economic Interest Owner shall have the right to become a Substituted Member unless the Manager shall consent thereto in accordance with Section 11.2.2 and all of the following conditions are satisfied:

(a) A duly executed and acknowledged written instrument of Assignment shall have been filed with the Company, which instrument shall specify the number of Units being assigned and set forth the intention of the assignor that the assignee succeed to the assignor’s interest as a Substituted Member in his place;

(b) The assignor and assignee shall have executed, acknowledged and delivered such other instruments as the Manager may deem necessary or desirable to effect such substitution, which may include an opinion of counsel regarding the effect and legality of any such proposed transfer, and which shall include: (i) the written acceptance and adoption by the Economic Interest Owner of the provisions of this Agreement and (ii) the execution, acknowledgment and delivery to the Manager of a special power of attorney, the form and content of which are more fully described herein; and

(c) A transfer fee sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

11.2.2 Consent of Manager. The consent of the Manager shall be required to admit an Economic Interest Owner as a Substituted Member. The granting or withholding of such consent shall be within the sole and absolute discretion of the Manager.

11.2.3 Consent of Member. By executing or adopting this Agreement, each Member hereby consents to the admission of additional or Substituted Members, and to any Economic Interest Owner becoming a Substituted Member upon consent of the Manager and in compliance with this Agreement.

11.3 Rights of Economic Interest Owner. An Economic Interest Owner shall be entitled to receive Distributions from the Company attributable to the interest acquired by reason of such Assignment from and after the effective date of the Assignment; provided, however, that notwithstanding anything herein to the contrary, the Company shall be entitled to treat the assignor of such interest as the absolute owner thereof in all respects, and shall incur no liability for allocations of Net Income and Net Loss or Distributions, or for the transmittal of reports or accounting until the written instrument of Assignment has been received by the Company and recorded on its books. The effective date of such Assignment shall be the date on which all of the requirements of this Section have been complied with, subject to Section 4.9.

11.4 Right to Inspect Books. Economic Interest Owners shall have no right to inspect the Company's books or records, to vote on Company matters, or to exercise any other right or privilege as Members, until they are admitted to the Company as Substituted Members except as provided in the Act.

11.5 Assignment of 50% or More of Units. No Assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units and Manager interests assigned within the 13 immediately preceding months, would, in the opinion of counsel for the Company, result in the termination of the Company under the Code.

11.6 Transfer Subject to Law. No Assignment, sale, transfer, exchange or other disposition of any Units may be made except in compliance with the applicable governmental laws and regulations, including state and federal securities laws.

11.7 Termination of Membership Interest. Upon the transfer of a Unit in violation of this Agreement or the occurrence of a Dissolution Event as to such Member which does not result in the dissolution of the Company, the Company Interest of a Member shall be converted into an Economic Interest.

## 12. Books, Records, Accounting and Reports.

12.1 Records, Audits and Reports. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

12.1.1 A current list in alphabetical order of the full name and last known business or resident address of each Owner and Manager, together with the Capital Contribution and the share in profits and losses of each Owner;

12.1.2 A copy of the Articles of Organization and all amendments thereto, together with any powers of attorney pursuant to which the Articles of Organization or any amendments thereto were executed;

12.1.3 Copies of the Company's Federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

12.1.4 Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed;

12.1.5 Copies of any financial statements of the Company, if any, for the six most recent years; and

12.1.6 The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four fiscal years.

## 12.2 Delivery to Members and Inspection.

12.2.1 Each Member has the right, upon reasonable written request for purposes related to the interest of that person as a Member, to receive from the Company:

(a) True and full information regarding the status of the business and financial condition of the Company;

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

(c) A current list of the name and last known business, residence or mailing address of each Member and Manager;

(d) A copy of this Agreement and the Articles of Organization and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which this Agreement and any certificate and all amendments thereto have been executed; and

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

12.3 Annual Report. The Manager will cause the Company, at the Company's expense, to prepare an annual report containing a year-end balance sheet, income statement and a statement of changes in financial position. Copies of such statements shall be distributed to each Member within 120 days after the close of each fiscal year of the Company.

12.4 Tax Information. The Manager shall cause the Company, at the Company's expense, to prepare and timely file income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Owners'



individual income tax returns to be distributed to the Owners not later than 75 days after the end of the Company's fiscal year.

13. Termination and Dissolution of the Company.

13.1 Termination of Company. The Company shall be dissolved, shall terminate and its assets shall be disposed of, and its affairs wound up upon a determination by the Manager, with a Majority Vote, to terminate the Company.

13.2 Articles of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 13.1, the Manager who has not wrongfully dissolved the Company or, if none, the Members shall execute Articles of Dissolution in such form as shall be required by the Act.

13.3 Liquidation of Assets. Upon a dissolution and termination of the Company, the Manager (or in case there is no Manager, the Members or person designated by a Majority Vote) shall take full account of the Company assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining the fair market value thereof, and shall apply and distribute the proceeds therefrom in the following order:

13.3.1 To the payment of creditors of the Company, including Members who are creditors to the extent permitted by law, but excluding secured creditors whose obligations will be assumed or otherwise transferred on the liquidation of Company assets;

13.3.2 To the setting up of any reserves as required by law for any contingent liabilities or obligations of the Company; provided, however, that said reserves shall be deposited with a bank or trust company in escrow at interest for the purpose of disbursing such reserves for the payment of any of the aforementioned contingencies and, at the expiration of a reasonable period, for the purpose of distributing the balance remaining in accordance with remaining provisions of this Section 13.3; and

13.3.3 To the Owners in proportion to their positive Capital Account balances as of the date of such Distribution, after giving effect to all Capital Contributions, Distributions and allocations for all periods, including the period during which such Distribution occurs.

13.4 Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions and its Capital Contributions, and shall have no recourse therefor (upon dissolution or otherwise) against any Manager or any Member.

13.5 Liquidation of Member's Interest. If there is a Liquidation of a Member's interest in the Company, any liquidating Distribution pursuant to such Liquidation shall be made only to the extent of the positive Capital Account balance, if any, of such Member for the taxable year during which such Liquidation occurs after proper adjustments for allocations and Distributions for such taxable year up to the time of Liquidation. Such Distributions shall be made by the end of the taxable year of the Company during which such Liquidation occurs, or if later, within 90 days after such Liquidation.

14. Special and Limited Power of Attorney.

14.1 Power of Attorney. The Manager shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such Member to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

14.1.1 This Agreement, as well as any amendments to the foregoing which, under the laws of the **(STATE OF ORGANIZATION)** or the laws of any other state, are required to be filed or which the Manager shall deem it advisable to file;

14.1.2 Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Manager shall deem it advisable to file;

14.1.3 Any instrument or document that may be required to effect the continuation of the Company, the admission of Substituted Members, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement);

14.1.4 Any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage, or other instrument of conveyance or encumbrance, with respect to Property; and

14.1.5 Any and all other instruments as the Manager may deem necessary or desirable to affect the purposes of this Agreement and carry out fully its provisions.

14.1.6 Provision of Power of Attorney. The special and limited power of attorney of McKee Private Capital in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

14.1.7 Is a special power of attorney coupled with the interest of McKee Private Capital in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

14.1.8 May be exercised by McKee Private Capital by and through one or more of the officers of Russell B. McKee, Inc., for each of the Members by the signature of an officer of Russell B. McKee, Inc., acting as attorney-in-fact for all of the Members, together with a list of all Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and

14.1.9 Shall survive an Assignment by a Member of all or any portion of his Units except that, where the assignee of the Units owned by the Member has been approved

by the Manager for admission to the Company as a Substituted Member, the special power of attorney shall survive such Assignment for the sole purpose of enabling McKee Private Capital to execute, acknowledge and file any instrument or document necessary to effect such substitution.

14.2 Notice to Members. The Manager shall promptly furnish to a Member a copy of any amendment to the Operating Agreement executed by McKee Private Capital pursuant to a power of attorney from the Member.

15. Relationship of This Agreement to the Act. Many of the terms of this Agreement are intended to alter or extend provisions of the Act as they may apply to the Company or the Members. Any failure of this Agreement to mention or specify the relationship of such terms to provisions of the Act that may affect the scope or application of such terms shall not be construed to mean that any of such terms is not intended to be an Limited Company agreement provision authorized or permitted by the Act or which in whole or in part alters, extends or supplants provisions of the Act as may be allowed thereby.

16. Amendment of Agreement.

16.1 Admission of Member. Amendments to this Agreement for the admission of any Member or Substitute Member shall not, if in accordance with the terms of this Agreement, require the consent of any Member.

16.2 Amendments with Consent of Members. In addition to any amendments otherwise authorized herein, this Agreement may be amended by the Manager with a Majority Vote of the Members.

16.3 Amendments Without Consent of the Members. The Manager may amend this Agreement, without the consent of any of the Members, to (i) change the name and/or principal place of business of the Company, or (ii) decrease the rights and powers of the Manager (so long as such decrease does not impair the ability of the Manager to manage the Company and conduct its business and affairs); provided, however, that no amendment shall be adopted pursuant to this Section 16.3 unless the adoption thereof (A) is for the benefit of or not adverse to the interests of the Members, (B) is not inconsistent with Section 7, and (C) does not affect the limited liability of the Members or the status of the Company as a Company for federal income tax purposes, or (iii) to satisfy any special purpose entity requirements of Lender..

16.4 Execution and Recording of Amendments. Any amendment to this Agreement shall be executed by the Manager, as attorney-in-fact for the Members pursuant to the power of attorney contained in Section 16. After the execution of such amendment, the Manager shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company holds any Property or otherwise does business.

17. Miscellaneous.

17.1 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart.

17.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Members.

17.3 Severability. In the event any sentence or Section of this Agreement is declared by a court of competent jurisdiction to be void, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

17.4 Notices. All notices under this Agreement shall be in writing and shall be given to the Member or Economic Interest Owner entitled thereto, by personal service or by mail, posted to the address maintained by the Company for such person or at such other address as he may specify in writing.

17.5 Manager's Address. The name and address of the Manager is as follows:

Russell B. McKee, Inc. dba McKee Private Capital  
1001 B Avenue, Suite 203  
PO Box 180792  
Coronado, California 92178-0792

17.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the **(STATE OF ORGANIZATION)**.

17.7 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provisions hereof.

17.8 Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, and vice versa.

17.9 Time. Time is of the essence with respect to this Agreement.

17.10 Additional Documents. Each Member, upon the request of the Manager, shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a Notary Public of any signature made by a Member.

17.11 Descriptions. All descriptions referred to in this Agreement are expressly incorporated herein by reference as if set forth in full, whether or not attached hereto.

17.12 Binding Arbitration. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the Units shall be settled by arbitration in San Diego, California, in accordance with the rules of The American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within 30 days following notice by one party that he desires that a matter be arbitrated. If there was no mediation and the parties are unable within such 30 day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the San Diego office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by him or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within 30 days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within 30 days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Member shall be entitled to discovery.

17.13 Venue. Any action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in San Diego, California.

17.14 Partition. The Members agree that the assets of the Company are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that he may have, or may obtain, to maintain any action for partition of any of the assets of the Company.

17.15 Integrated and Binding Agreement. This Agreement contains the entire understanding and agreement among the Partners with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the Partners other than those set forth herein except the Subscription Documents. This Agreement may be amended only as provided in this Agreement.

17.16 Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company, the Manager and its Affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Members, other than the Manager, in any respect. In addition, each Member consents to the Manager hiring counsel for the Company which is also counsel to one or more of the Managers.

IN WITNESS WHEREOF, the undersigned have set their hands to this Agreement as of the date first set forth in the preamble.

MANAGER:

RUSSELL B. McKEE, INC.,  
dba McKEE PRIVATE CAPITAL,  
a California corporation

By: \_\_\_\_\_  
Russell B. McKee, Manager

INITIAL MEMBER:

By: \_\_\_\_\_  
Russell B. McKee, Member

MEMBERS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INVESTOR INITIALS: /

EXHIBIT A  
DEFINITIONS

“Act” shall mean the **(STATE OF ORGANIZATION)** Limited Liability Company Act, as the same may be amended from time to time.

“Agreement” shall mean this Operating Agreement, as amended from time to time.

“Articles of Organization” shall mean the Articles of Organization of the Company as filed with the Secretary of State of **(STATE OF ORGANIZATION)** as the same may be amended or restated from time to time.

“Asset Management Fee” shall mean a fee payable by the Company to the Manager for providing services to the Company equal to two percent (2.0%) of the Property EGI (Effective Gross Income), payable monthly, or accrued, at the sole option of the Manager.

“Capital Account” with respect to any Member (or such Member’s assignee) shall mean such Member’s initial Capital Contribution adjusted as follows:

- (i) such Member’s share of Net Income;
  - (a) any income or gain specially allocated to a Member and not included in Net Income or Net Loss;
  - (b) any additional cash Capital Contribution made by such Member to the Company; and
  - (c) the fair market value of any additional Capital Contribution consisting of property contributed by such Member to the capital of the Company reduced by any liabilities assumed by the Company in connection with such contribution or to which the property is subject.
- (ii) A Member’s Capital Account shall be reduced by:
  - (a) such Member’s share of Net Loss;
  - (b) any deduction specially allocated to a Member and not included in Net Income or Net Loss;
  - (c) any cash Distribution made to such Member; and
  - (d) the fair market value, as agreed to by the Manager and the Members pursuant to a Majority Vote, of any Property (reduced by any liabilities assumed by the Member in connection with the Distribution or to which

the distributed Property is subject) distributed to such Member; provided that, upon liquidation and winding up of the Company, unsold Property will be valued for Distribution at its fair market value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Company then sold the Property for its fair market value. Such fair market value shall not be less than the amount of any nonrecourse indebtedness that is secured by the Property.

Property other than money may not be contributed to the Company unless agreed to by the Manager. Property of the Company may not be revalued for purposes of calculating Capital Accounts unless the Company complies with the requirements of Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and (g); provided, however, for purposes of calculating Book Gain or Book Loss (but not for purposes of adjusting Capital Accounts to reflect the contribution and distribution of such Property), the fair market value of Property shall be deemed to be no less than the outstanding balance of any nonrecourse indebtedness secured by such Property.

The Capital Account of a Substituted Member shall include the Capital Account of his transferor. Notwithstanding anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b). References in this Agreement to the Treasury Regulations shall include corresponding subsequent provisions.

“Capital Contribution” shall mean the gross amount invested in the Company by a Member and shall be equal in amount to the cash purchase price paid by such Member for the Units sold to him by the Company. In the plural, “Capital Contributions” shall mean the aggregate amount invested by all of the Members in the Company and shall equal, in total, the sum of the amount attributable to the purchase of Units and the contributions of the Manager.

“Cash from Operations” shall mean the net cash realized by the Company from all services, including, but not limited to, the operations of the Company including the sale, financing, refinancing or other disposition of the Project after payment of all cash expenditures of the Company, including, but not limited to, all operating expenses including all fees payable to the Manager or Affiliates, all payments of principal and interest on indebtedness, expenses for repairs and maintenance, capital improvements and replacements, and such reserves and retentions as the Manager reasonably determines to be necessary and desirable in connection with Company operations with its then existing assets and any anticipated acquisitions.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

“Company” shall refer to **(NAME OF ENTITY), LLC**, a **(STATE OF ORGANIZATION)** limited liability company.

“Company Minimum Gain” shall have the same meaning as “partnership minimum gain” as set forth in Treasury Regulations Sections 1.704-2(d).

“Distributable Cash” shall mean Cash from Operations and Capital Contributions determined by the Manager to be available for Distribution to the Members.



“Distribution” shall refer to any money or other property transferred without consideration (other than repurchased Units) to Members or Owners with respect to their interests or Units in the Company, but shall not include any payments to the Manager pursuant to Section 6.

“Economic Interest” shall mean an interest in the Net Income, Net Loss and Distributions of the Company but shall not include any right to vote or to participate in the management of the Company.

“Economic Interest Owner” shall mean the owner of an Economic Interest who is not a Member.

“Event of Insolvency” shall occur when an order for relief against the Manager is entered under Chapter 7 of the federal bankruptcy law, or (A) the Manager: (1) makes a general Assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that Manager a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Manager in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Manager or of all or a substantial part of that Manager’s properties, or (B) the expiration of 60 days after either (1) the commencement of any proceeding against the Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (2) the appointment without the Manager’s consent or acquiescence of a trustee, receiver, or liquidator of the Manager or of all or any substantial part of the Manager’s properties, if the appointment has not been vacated or stayed (or if within 60 days after the expiration of any such stay, the appointment is not vacated).

“Initial Member” shall refer to Russell B. McKee.

“Interest” shall mean a Membership Interest or an Economic Interest.

“Liquidation” means in respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may exist for purposes of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and in respect to a Member where the Company is not in Liquidation means the date upon which occurs the termination of the Member’s entire interest in the Company by means of a distribution or the making of the last of a series of Distributions (whether or not made in more than one year) to the Member by the Company.

“Manager” shall refer to Russell B. McKee, Inc., dba McKee Priave Capital, a California corporation. The term “Manager” shall also refer to any successor or additional Manager who is admitted to the Company as the Manager.

“Majority Vote” shall mean the vote of more than 75% of the Units entitled to vote. Members shall be entitled to cast one vote for each Unit they own, and a fractional for each fractional Unit they own.

“Member” shall mean any holder of a Unit who is admitted to the Company as a Member or the Manager.

“Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and such voting and other rights and privileges that the Member may enjoy by being a Member.

“Net Income” or “Net Loss” shall mean, respectively, for each taxable year of the Company the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Company as determined for federal income tax purposes in accordance with Section 703(a) or the Code (including all items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703(a)(1) of the Code) (other than any specific item of income, gain (exclusive of Built-In Gain), loss (exclusive of Built-In Loss), deduction or credit subject to special allocation under this Agreement), with the following modifications:

- (a) The amount determined above shall be increased by any income exempt from federal income tax;
- (b) The amount determined above shall be reduced by any expenditures described in Section 705(a) (2) (B) of the Code or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i);
- (c) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner; and
- (d) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of Property attributable to unrealized gain or loss in such Property shall be treated as Net Income and Net Loss.

“Offering” shall mean the offering and sale of the Units made in accordance with the provisions of Section 3.2.

“Offering Termination Date” shall mean the date the Offering of Units will terminate which is the earliest of (i) \$ **(DOLLAR VALUE/1,000) Units are sold, or** (ii) **(TERMINATION DATE OF OFFERING)**, which date can be extended up to 90 days in the sole and absolute discretion of the Manager.

“Organization and Offering Expenses” shall mean all expenses incurred in connection with the organization and formation of the Company, the preparation of the offering materials, and the marketing and sale of the Units, including but not limited to legal, accounting, tax planning fees, promotional fees or expenses, filing and recording fees, market research and

surveys, property inspections and research, engineering services, printing costs, securities sales commissions, travel expenses and other costs or expenses incurred in connection therewith.

“Owner” shall mean a Member, Manager or the holder of an Economic Interest.

“Prime Rate” shall mean the reference rate announced from time-to-time by the Wall Street Journal, and changes in the Prime Rate shall be deemed to occur on the date that changes in such rate are announced.

“Property” shall refer to any or all of such real and tangible or intangible personal property or properties as may be acquired by the Company, including the Project.

“Purchase Agreement” shall mean the Agreement for Purchase and Sale of Real Estate and Escrow Instructions dated as amended, entered into by and between and for the acquisition of the Property.

“Subscription Payment” shall mean the cash payment that must accompany each subscription for Units sold through the Offering.

“Substituted Member” shall mean any person admitted as a substituted Member pursuant to this Agreement.

“Tax Payment” shall have the meaning set forth in Section 4.12.

“Unit” shall represent an interest in the Company entitling the owner of the Unit if admitted as a Member to the respective voting and other rights afforded to a Member holding a Unit, and affording to such Member a share in Net Income, Net Loss and Distributions as provided for in this Agreement.

## EXHIBIT B

### SPECIAL ALLOCATIONS

Notwithstanding any other provision of Section 4:

(a) Qualified Income Offset. Except as provided in Section (c) hereof, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustment, allocation or distribution as quickly as possible.

(b) Gross Income Allocation. Net Loss shall not be allocated to any Member to the extent such allocation would cause any Member to have an Adjusted Capital Account Deficit at the end of a fiscal year. In the event any Member has an Adjusted Capital Account Deficit at the end of any fiscal year, each such Member shall be specially allocated items of Company gross income and gain in the amount of such Adjusted Capital Account Deficit as quickly as possible.

(c) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Exhibit B, if there is a net decrease in Company Minimum Gain during any fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g) (2). This Section (c) is intended to comply with the partnership minimum gain chargeback requirement in the Treasury Regulations and shall be interpreted consistently therewith. This provisions shall not apply to the extent the Member's share of net decrease in Company Minimum Gain is caused by a guaranty, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced or otherwise change debt or to the extent the Member contributes cash to the capital of the Company that is used to repay the Nonrecourse Debt, and the Member's share of the net decrease in Company Minimum Gain results from the repayment.

(d) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Exhibit B, except Section (c), if there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under Treasury Regulations Section 704-2(i)(5)) as of the beginning of the year shall be allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section shall not apply to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to conversion, refinancing or other change in a debt instrument that causes it to become partially or wholly a Nonrecourse Debt. This Section is intended to comply

with the partner minimum gain chargeback requirements in the Treasury Regulations and shall be interpreted consistently therewith and applied with the restrictions attributable thereto.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member in their Percentage Interests and each Member's share of excess Nonrecourse Debt shall be in the same proportion.

(f) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any fiscal year shall be allocated to the Member who bears the economic risk of loss as set forth in Treasury Regulations Section 1.752-2 with respect to the Member Nonrecourse Debt. If more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, any Member Nonrecourse Deductions attributable to that Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss.

(g) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations.

(h) Curative Allocations. Notwithstanding any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

(i) Contributed Property. Notwithstanding any other provision of this Agreement, the Members shall cause depreciation and or cost recovery deductions and gain or loss attributable to Property contributed by a Member or revalued by the Company to be allocated among the Members for income tax purposes in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder.

(j) Recapture Income. The portion of each Member's distributive share of Net Income that is characterized as ordinary income pursuant to Section 1245 or 1250 of the Code shall be proportionate to the amount of Net Income or New Loss which included the corresponding depreciation deductions that were allocated to such Member as compared with the amount of depreciation deductions allocated to all Members.

(k) Allocation Among Membership Interests. Except as otherwise provided in this Agreement, all Distributions and allocations to the Membership Interests shall be in accordance with the Percentage Interests held by each such Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month), and, except as otherwise provided in this Agreement without regard to the number of days during such month that the

Membership Interests were held by each Member. Members who purchase Membership Interests at different times during the Company tax year shall be allocated Net Income and Net Loss using the monthly convention set forth in Section m (i). For purposes of this Exhibit B, an Economic Interest Owner shall be treated as a Member.

(l) Allocation of Company Items. Except as otherwise provided herein, whenever a proportionate part of Net Income or Net Loss is allocated to a Member, every item of income, gain, loss or deduction entering into the computation of such Net Income or Net Loss, and every item of credit or tax preference related to such allocation and applicable to the period during which such Net Income or Net Loss was realized shall be allocated to the Member in the same proportion.

(m) Assignment. (i) In the event of the assignment of a Membership Interests, the Net Income and Net Loss shall be apportioned as between the Member and his assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the membership Interests as of the date of the Distribution. An assignee who receives Membership Interests during the first 15 days of a month will receive any allocations relative to such month. An assignee who acquires Membership Interests on or after the sixteenth day of a month will be treated as acquiring his Membership Interests on the first day of the following month. (ii) In the event of the assignment of the Manager's Interest, the allocations of Net Income or Net Loss shall be as agreed between the Manager and its assignee. In the absence of an agreement, the Net Income, Net Loss and Distributions shall be allocated in a manner similar to that provided in Section (i) hereof.

(n) Power of Manager to Vary Allocations. It is the intent of the Members that each Member's share of Net Income and Net Loss be determined and allocated in accordance with Section 704(b) of the Code and the provisions of this Agreement shall be so interpreted. Therefore, if the Company is advised by the Company's legal counsel that the allocations provided in this Exhibit B are unlikely to be respected for federal income tax purposes, the Manager is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) of the Code and effect the plan of allocations and distributions provided for in this Agreement.

(o) Consent of Members. The allocation methods of Net Income and Net Loss are hereby expressly consented to by each Member as a condition of becoming a Member.