Most real estate projects are developed and owned as joint ventures, as mean of leveraging various sources and types of capital and expertise, and as a technique for mitigating risk in complex projects. Developers may seek equity or mezzanine loans from investors and long-term loans from commercial lenders. Contractors may have profit participation rights in exchange for an abatement of some fees and management of the project may be outsourced to a third party. Joint ventures may also not be formal joint ventures, with a separate entity formed to develop and/or own the property, but come in the form of complex, overlapping agreements among the parties. In every respect, real estate joint ventures are very complex exercises in finance and risk management. This program will provide you with a real-world guide to types of real estate joint ventures, major capital structuring issues, and a guide to drafting the major provisions of the underlying documents.

**Day 1 – April 2, 2015:**

- Types of joint ventures – income projects, develop/sell, rehabilitation
- Expectations and timeframes of project participants – investors, developers, lenders
- Capital structure issues – getting the right mix of equity, mezzanine and long-term debt
- Capital contributions from joint venture partners – money, property, expertise/services
- Economics of the deal – allocation of profits and losses, and tax attributes
- Quasi-joint ventures – mimicking a JV without forming a new entity

**Day 2 – April 3, 2015:**

- Management of the project or property, and related information rights
- Risk management, shifting liabilities and the role of personal guarantees
- Withdrawal of joint venture partners, valuation, and buyout/redemption rights
- Transfer of interests to third parties
- Major tax issues to consider when drafting JV documents

**Speakers:**

Manuel A. Fernandez is partner in the Miami office of Akerman, LLP, where he has an extensive real estate practice representing commercial mortgage lenders, developers, and institutional and non-institutional investors in connection with the acquisition, development, financing, leasing and management of commercial and residential real estate assets and distressed real estate transactions. He also represents hedge funds, pension funds, and other real estate opportunity funds in connection with joint ventures. Mr. Fernandez received his B.A., *cum laude*, from the University of Miami and his J.D., *magna cum laude*, from the University of Miami School of Law.
John S. Hollyfield is of counsel and a former partner in the Houston office Norton Rose Fulbright, LLP. He has more than 40 years’ experience in real estate law practice. He formerly served as chair of the ABA Real Property, Probate and Trust Law Section, president of the American College of Real Estate Lawyers, and chair of the Anglo-American Real Property Institute. He has been named a "Texas Super Lawyer" in Real Estate Law by Texas Monthly magazine and is listed in Who’s Who in American Law. He is co-editor of Modern Banking and Lending Forms (4th Edition), published by Warren, Gorham & Lamont. He received his B.B.A. from the University of Texas and his LL.B. from the University of Texas School of Law.

Richard R. Goldberg is a retired partner, resident in the Philadelphia office of Ballard Spahr, LLP, where he established an extensive real estate practice, including development, financing, leasing, and acquisition. Earlier in his career, he served as vice president and associate general counsel of The Rouse Company for 23 years. He is past president of the American College of Real Estate Lawyers, past chair of the Anglo-American Real Property Institute, and past chair of the International Council of Shopping Centers Law Conference. Mr. Goldberg is currently a Fellow of the American College of Mortgage Attorneys and is a member of the American Law Institute. Mr. Goldberg received his B.A. from Pennsylvania State University and his LL.B. from the University of Maryland School of Law.
VT Bar Association Continuing Legal Education Registration Form

Please complete all of the requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100. Fax: (802) 223-1573 PLEASE USE ONE REGISTRATION FORM PER PERSON.

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Firm/Organization ________________________________________________________________
Address __________________________________________________________________________
City __________________________ State __________ ZIP Code ____________________________
Phone # __________________________ Fax # ______________________
E-Mail Address _________________________________________________________________

Real Estate Joint Ventures, Part 1
Teleseminar
April 2, 2015
1:00PM - 2:00PM
1.0 MCLE GENERAL CREDITS

PAYMENT METHOD:
Check enclosed (made payable to Vermont Bar Association) Amount: ______
Credit Card (American Express, Discover, Visa or Mastercard)
Credit Card # ___________________________ Exp. Date ____________
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VBA Members $75
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Firm/Organization ________________________________________________________________
Address __________________________________________________________________________
City __________________________  State _________  ZIP Code __________________________
Phone # __________________________  Fax # __________________________
E-Mail Address ________________________________________________________________

Real Estate Joint Ventures, Part 2  
Teleseminar  
April 3, 2015  
1:00PM - 2:00PM  
1.0 MCLE GENERAL CREDITS

VBA Members $75  
Non-VBA Members $115

NO REFUNDS AFTER March 27, 2015

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Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association
Date: April 2, 2015
Seminar Title: Real Estate Joint Ventures, Part 1
Location: Teleseminar - LIVE
Credits: 1.0 MCLE General Credit
Program Minutes: 60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.
CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association

Date: April 3, 2015

Seminar Title: Real Estate Joint Ventures, Part 2

Location: Teleseminar - LIVE

Credits: 1.0 MCLE General Credit

Program Minutes: 60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.
REAL ESTATE JOINT VENTURES, PART 1 & PART 2

Select Real Estate Joint Venture Provisions

Capital provisions – pages 18-25
Powers and Duties provisions – pages 29-41

Speakers:

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that the Company is in default and the Managing Member at its sole expense is diligently pursuing a resolution of such dispute (but not to exceed 90 days).

"Vertical Date" shall mean the date on which all of the following have occurred: (i) the Company has acquired fee simple title to the Property; (ii) final approvals have been obtained for the commencement of construction and development of the Project from all applicable government authorities; (iii) a final building permit has been issued for the Project; (iv) the Approved construction contract with the Contractor and such other Approved agreements relating to the commencement of construction of the Project have been fully executed and delivered by the parties thereto; (v) all documents relating to the Construction Loan that have been Approved by Investor Member and meeting the financing guidelines for the Project set forth in the Approved Project Plan and Budget have been fully executed and delivered by the parties thereto; (vi) the Project Plans are complete and have been Approved by Investor Member, (vii) the Members have Approved the Project Plan and Budget for the construction of the Project; and (viii) the Company has commenced construction of the Project (which shall include commencement of site work).

ARTICLE III
CAPITAL CONTRIBUTIONS

3.1 Required Contributions. Each Member shall be obligated to make the following Contributions to the Company, provided that no Member, without its approval, shall be obligated to make aggregate Contributions in excess of the Investor Member Limit, with respect to Investor Member, or the Managing Member Limit, with respect to Managing Member. Contributions shall be made as follows:

(a) Upon the closing of the purchase of the Phase I Tract:

(i) Each Member shall contribute its Target Share of the Acquisition Capital as shown on the Acquisition Closing Statement. The Acquisition Capital shall be used by the Company to acquire the Property. Any contribution made by a Member pursuant to this Section 3.1(a)(i) shall be treated as a Contribution to such Member’s Capital Account;

(ii) Managing Member shall be entitled to a credit to Managing Member’s Capital Account equal to Managing Member’s Formation Costs that are shown on Exhibit A-1 attached hereto and Investor Member shall be entitled to a credit to Investor Member’s Capital Account equal to Investor Member’s Formation Costs that are shown on Exhibit A-2 attached hereto. Any credit to a Member’s Contribution Account pursuant to this Section 3.1(a)(ii) shall be treated as a Contribution to such Member’s Capital Account;

(iii) Investor Member shall contribute a sufficient amount, as shown on Exhibit A-1 attached hereto, of capital to the Company to allow the Company to pay to Managing Member for the amount of Managing Member’s Formation Costs contributed by Managing Member to the
Company pursuant to Section 3.1(a)(ii) in excess of Managing Member’s Target Share of such Contributions such that after Investor Member’s Contribution pursuant to this Section 3.1(a)(iii) the parties’ respective Capital Accounts shall reflect each party’s Target Share with respect to the Formation Costs. Any contribution made by Investor Member pursuant to this Section 3.1(a)(iii) shall be treated as a Contribution to Investor Member’s Capital Account and any distribution to Managing Member by the Company pursuant to this Section 3.1(a)(iii) shall constitute a return of capital to Managing Member and reduce Managing Member’s Capital Account by the amount distributed to Managing Member.

(iv) Each Member shall contribute its Target Share of the amount of working reserves shown on Exhibit A-3, which shall be used by the Company as working reserves related to the development of the Project in accordance with this Agreement. Any contribution made by a Member pursuant to this Section 3.1(a)(iv) shall be treated as a Contribution to such Member’s Capital Account;

(b) Subject to the obligations of Managing Member to fund Excused Cost Overruns and Unexcused Cost Overruns pursuant to Section 3.2, from and after the Effective Date and until Substantial Completion, Investor Member and Managing Member shall contribute all capital as needed to fund all Approved Project Costs and all other costs of operating the Property in accordance with their respective Target Shares. If capital is needed to fund such costs, either Member shall have the right to issue a Funding Notice substantially in the form attached hereto as Exhibit D setting forth the amount of capital being requested. Within ten (10) days after receipt of a duly issued Funding Notice or such longer period as the Funding Notice may permit, each Member shall advance to the Company such capital. Any contribution made by a Member pursuant to this Section 3.1(b) shall be treated as a Contribution to such Member’s Capital Account.

(c) Subject to the obligations of Managing Member to fund Excused Cost Overruns and Unexcused Cost Overruns pursuant to Section 3.2, if at any time after the Members have contributed up to the Investor Member Limit, with respect to Investor Member, or the Managing Member Limit, with respect to Managing Member, the Members unanimously approve the funding of additional capital to the Company, the Members shall contribute such funds in such proportion and in such amount and at such times as they may jointly approve. Any contribution made by the Members pursuant to this Section 3.1(c) shall be treated as a Contribution to each Member’s respective Capital Account.

3.2 Cost Overrun Capital. The Members anticipate that through advances of the Authorized Financing and Contributions of Required Capital, there will be sufficient funds to pay all costs in the Budgeted Hard Costs and Budgeted Soft Costs. To the extent permitted by the holder of any Authorized Financing and subject to Section 10.6, cost savings under one line item of Budgeted Hard Costs and Budgeted Soft Costs may be utilized to offset cost overruns in another line item of Budgeted Hard Cost and Budgeted Soft Costs. If at any time or from time to
time or for any reason prior to Substantial Completion, either (a) the holder of any Authorized Financing determines that there exists a Cost Overrun and requires the Company to pay or contribute an amount on account thereof (in excess of contingency and hard and soft cost reallocations as permitted by ARTICLE X) or (b) Investor Member reasonably and in good faith determines that there is a Cost Overrun, after permitting the reallocation of amounts in the Project Plan and Budget (in excess of contingency and hard and soft cost reallocations as permitted by ARTICLE X) to cover such Cost Overrun (it being understood that Investor Member will only permit such reallocation subject to Section 10.6 and if such reallocation is expressly permitted under the terms of the Approved Financing), then (i) if the Cost Overrun is an Unexcused Cost Overrun, Managing Member shall contribute to the Company all capital required to pay such Cost Overruns, and (ii) if the Cost Overrun is an Excused Cost Overrun, then Managing Member and Investor Member shall each contribute to the Company their Target Share of all capital required to pay such Excused Cost Overrun. Any such contributions made by the Members pursuant to subclause (ii) of the immediately preceding sentence shall be referred to herein as “Cost Overrun Capital” (for the avoidance of doubt, contributions made by Managing Member pursuant to subclause (i) of the immediately preceding sentence to pay Unexcused Cost Overruns shall not constitute Cost Overrun Capital). Contributions of Cost Overrun Capital, with respect to the Members, and payment of Unexcused Cost Overruns, with respect to Managing Member, shall be made by no later than the date such capital or payment is required to be made by the holder of any Authorized Financing, but in any event not later than the date ten (10) days after a Funding Notice is issued by a Member requiring a contribution under this Section. Cost Overrun Capital shall be treated as a Contribution to each Member’s respective Capital Account. Subject to the Investor Member Limit, with respect to Investor Member, or the Managing Member Limit, with respect to Managing Member, the failure of (i) the Members to contribute Cost Overrun Capital or (ii) the Managing Member to contribute capital to fund Unexcused Cost Overruns, as and when due, shall be an Event of Default by the Member failing to contribute capital hereunder.

3.3 Preservation Capital. If, at any time after the Members have made all Contributions or payments to the Company required under Sections 3.1 and 3.2, either the Managing Member or the Investor Member reasonably determines (after taking into account any existing cash reserves of the Company and any funds available for disbursement under any debt financing) that the Company requires additional capital to fund the payment of debt service obligations (if Approved as set forth below), real estate taxes, utility costs, insurance premiums, and/or other costs and expenses reasonably necessary to protect and preserve the value of the Project or the safekeeping, health and welfare of occupants or invitees thereof or to obtain the Construction Loan or Permanent Loan in the amounts set forth in Section 3.10 (all such costs, collectively “Preservation Costs”), such Member shall have the right to issue a Funding Notice to the other Members setting forth the amount needed to pay such Preservation Costs and each Member’s Requested Amount of such costs. Within ten (10) Business Days after receipt of such notice or such longer time as the Funding Notice may permit, each of the Members shall have the option, but not the obligation, of contributing to the Company such Member’s Proportionate Share of such Requested Amount on the terms set forth in the Funding Notice. If the Members elect to make such Contributions, such Contributions shall constitute additional Contributions to the Company by such Members. If a Member fails to make such Contribution under this Section 3.3, then the non-failing Member(s) shall elect either (a) to receive the return of any unmatched Contribution made under this Section, or (b) to make an additional contribution to the Company
(in addition to the non-failing Member's unmatched Contribution) in the amount of the Contribution not made by the failing Member (herein called a "Default Contribution") and shall be entitled to receive a "Preferred Return" on the balance of the Default Contribution from time to time unreturned to non-failing Member(s), equal to the Default Rate, compounded annually from the date the Default Contribution was made until the Default Contribution is fully returned to the non-failing Member by the Company as provided in ARTICLE V. All Default Contributions and the Preferred Returns thereon shall be returned in full prior to any other distributions to the Members as provided under ARTICLE V. If more than one Member has made a Default Contribution, then return of all Default Contributions and the respective Preferred Returns thereon shall be made to the Members in proportion to the outstanding amount of the Default Contributions made by each Member. Notwithstanding the above, the Managing Member shall not have the right to issue a Funding Notice to pay debt service obligations of the Company without the Approval of the Investor Member except for debt service obligations on an Authorized Financing.

3.4 Loan Maturity Capital. In the event an Authorized Financing is maturing after all extensions to the maturity date have been exercised (if available), and the Members have not agreed as a matter of Major Decision to refinance such loan on the terms required under Section 3.10 of this Agreement, either the Managing Member or the Investor Member may reasonably determine (after taking into account any existing cash reserves of the Company and any funds available for disbursement under any debt financing) that the Company requires additional capital to refinance or exercise extension options under such Authorized Financing, including closing costs relating thereto ("Repayment Cost"), and such Member shall have the right to issue a Funding Notice to the other Member setting forth the amount needed to pay such Repayment Cost and each Member's requested amount of such Repayment Cost. Within ten (10) Business Days after receipt of such notice or such longer time as the Funding Notice may permit, each of the Members shall have the option, but not the obligation, of contributing to the Company such Member's Proportionate Share of such Repayment Cost on the terms set forth in the Funding Notice. If the Members elect to make such Contributions, such Contributions shall constitute additional Contributions to the Company by such Members. If a Member fails to make such Contribution under this Section 3.4, then the non-failing Member(s) may elect to make a Default Loan for such Repayment Cost (pursuant to the terms set forth in Section 3.9 (a) except that the maturity date of such loan shall be 180 days) ("Maturity Default Loan"). The failing Member shall have the right to pay the Company the amount due under such Maturity Default Loan prior the maturity date of the Maturity Default Loan, and thereafter the non-failing Member shall have no recourse against such failing Member or have the right to exercise the remedies set forth in Section 3.9. If the failing Member shall not so pay the amount due under such Maturity Default Loan, the non-failing Member who made the Maturity Default Loan solely shall have the rights set forth under Section 3.9 (b), (c) and (d), except that with respect to its rights under Section 3.9 (b) the rate of dilution shall be an amount equal to 100% of the Member's requested amount of such Repayment Cost.

3.5 Form of Contributions. Unless otherwise Approved and except for the Contributions of Managing Member and Investor Member pursuant to Section 3.1(a)(ii), all Contributions shall be paid in cash.
3.6 No Right to Interest or Return of Capital. Except as specifically provided for herein, no Member shall be entitled to any return of or interest on Contributions to the Company.

3.7 No Third Party Rights. Any obligations or rights of the Company or the Members to make or require any Contribution under this ARTICLE III shall not result in the grant of any rights to or confer any benefits upon any Person who is not a Member.

3.8 Limitations. Except as set forth in this ARTICLE III, no Member shall be entitled or required to make any Contribution to the Company. No Member shall have any liability for the repayment of the Contribution of any other Member (other than as set forth in this ARTICLE III), and each Member shall look only to the assets of the Company for return of its Contributions.

3.9 Failure to Contribute Capital. If any Member fails to make required Contributions under Section 3.1 and Section 3.2 or if the Managing Member fails to fund Unexcused Cost Overruns required under Section 3.2, in each case by the date such contribution or payment is due and such failure continues for ten (10) days after written notice from the other Member who has not failed to make its contribution (any such failing Member shall be a "Defaulting Member" and the amount of the failed contribution shall be the "Default Amount"), then, such failure shall be deemed an Event of Default hereunder and in addition to its other rights and remedies set forth herein or otherwise provided by law, the non-defaulting Member ("Non-Defaulting Member") shall have one or more of the following remedies:

(a) to advance to the Company on behalf of, and as a loan to the Defaulting Member, an amount equal to the Default Amount to be evidenced by a promissory note in substantially the form attached hereto as Exhibit J (each such loan, a "Default Loan") and the payee of such note shall be the Non-Defaulting Member. The Capital Account of the Defaulting Member shall be credited with the amount of such Default Amount and such amount shall constitute a debt owed by the Defaulting Member to the Non-Defaulting Member. Any Default Loan shall bear interest at the Default Rate and shall be payable from any distributions due the Defaulting Member hereunder, but shall in all events be payable in full by the Defaulting Member on or before the first anniversary after the date of the Default Loan is advanced. A Default Loan shall be prepayable, in whole or in part, at any time or from time to time without penalty. Any such Default Loans shall be secured solely by the Defaulting Member’s Company Interest. Except as expressly provided herein, Default Loans, with interest as aforesaid, shall otherwise be without recourse to any other assets of the Defaulting Member. The Defaulting Member hereby grants a security interest in its Company Interest to the Non-Defaulting Member and the Defaulting Member hereby irrevocably appoints the Non-Defaulting Member, and any of its respective officers, as its attorney-in-fact coupled with an interest with full power to prepare and execute any documents, instruments and agreements, including, but not limited to, any note evidencing the Default Loan and such Uniform Commercial Code Financing Statements, continuation statements, and other security instruments as may be appropriate to perfect and continue its security interest in favor of the Non-Defaulting Member. If the Defaulting Member fails to pay the amount of the
Default Loan when due, the Non-Defaulting Member may exercise all rights and remedies available to a secured party under the Uniform Commercial Code. The Defaulting Member agrees that the requirement of the Uniform Commercial Code that the Non-Defaulting Member give the Defaulting Member reasonable notice of any proposed sale or disposition of the Defaulting Member's Company Interest shall be met if such notice is given to the Defaulting Member at least five (5) days before the time of such sale or disposition. Any Contributions contributed by the Non-Defaulting Member on behalf of a Defaulting Member shall be deemed to be made by the Defaulting Member except as otherwise expressly provided herein. All payments on account of Default Loans and distributions to the Defaulting Member hereunder shall be applied first to payment of any interest due under any Default Loan and then to principal until all amounts due thereunder are paid in full. While any Default Loan is outstanding, the Company shall be obligated to pay directly to the Non-Defaulting Member, until all Default Loans have been paid in full, the amount of (w) all payments on account of Default Loans payable to the Defaulting Member, (x) any distributions payable to the Defaulting Member, and (y) any proceeds from the sale of the Property or from any sale of the Defaulting Member's Company Interest that would otherwise be payable to the Defaulting Member. In addition, the Company shall pay to the Non-Defaulting Member, until all Default Loans have been paid in full, all fees or other amounts due the Defaulting Member or any Related Party of a Defaulting Member under this Agreement or any other agreement between the Company or any Subsidiary on the one hand and Defaulting Member or any Related Party of the Defaulting Member on the other hand; or

(b) to advance to the Company as an additional Contribution the Default Amount whereupon the Proportionate Shares of the Members shall be recalculated as follows (i) the Proportionate Share of the Non Defaulting Member shall equal a fraction (expressed as a percentage), the numerator of which shall equal the aggregate sum of (x) all Contributions made by the Non-Defaulting Member other than the Default Amount plus (y) an amount equal to 200% of the Default Amount; and the denominator of which shall equal the aggregate sum of all Contributions made by all Members under this Agreement, including the Default Amount and (ii) the Proportionate Share of the Defaulting Member shall equal 100% minus the Proportionate Share (expressed as a percentage) of the Non-Defaulting Member after the application of this formula, and appropriate adjustments shall be made to the Members' Capital Account balances to reflect the foregoing. Any such adjustment shall be treated as liquidated damages paid by the Defaulting Member to the Non-Defaulting Member in respect of such Event of Default. As an example, if the Proportionate Shares of the Investor Member and the Managing Member are 90% and 10% respectively and the Investor Member has made aggregate Contributions of $900,000 and the Managing Member has made aggregate Contributions of $100,000 and there is a Funding Notice for $200,000 and the Investor Member funds $180,000 and the Managing Member fails to fund $20,000, then if the Investor Member elects under this subparagraph to advance the Default Amount of $20,000 as an additional Contribution, the Proportionate Share of the Investor Member shall
equal 93.333% ($900,000+$180,000 + ($20,000 x 200% or $40,000) / $1,200,000 and the Proportionate Share of the Managing Member shall equal 6.667% (100% minus 93.333%). For purposes of this subparagraph, if there is more than one instance of the application of the formula set forth in this subparagraph, the Default Amount shall be the aggregate amount of additional Contributions made to the Company by the Non-Defaulting Member pursuant to this subparagraph;

(c) to make an additional contribution to the Company in the Default Amount (which additional Contribution in the Default Amount shall also be a "Default Contribution" herein) and shall be entitled to receive a Preferred Return on the balance of the Default Contribution from time to time unreunited to such Non-Defaulting Member, equal to the Default Rate, compounded annually, from the date the Default Contribution was made until the Default Contribution is fully returned to the Non-Defaulting Member by the Company as provided in ARTICLE V. All Default Contributions and the Preferred Returns thereon shall be returned in full prior to any other distributions to the Members as provided under ARTICLE V. If more than one Member has made a Default Contribution, then return of all Default Contributions and the respective Preferred Returns thereon shall be made to the Members in proportion to the outstanding amount of the Default Contributions made by each Member. In addition, the Company shall pay to the Non-Defaulting Member all Distributions made by the Company (whether Cash Flow or Capital Proceeds), until all Default Contributions made under this Section 3.8(c) have been returned and all Preferred Return thereon paid in full, and all fees or other amounts due the Defaulting Member or any Defaulting Member Related Party under this Agreement or any other agreement between the Company on the one hand and Defaulting Member or any Defaulting Member Related Party on the other hand shall not be paid to such Defaulting Member or any Defaulting Member Related Party until all Non-Defaulting Members have been paid in full; or

(d) in lieu of the remedies set forth in subparagraph (a), (b) or (c) above, to revoke the Funding Notice, whereupon any unmatched Contributions paid by the Non-Defaulting Member pursuant to such Funding Notice shall be returned, with interest computed at the Default Rate, in which event the Members shall reconsider the needs of the Company for additional capital and may issue a new Funding Notice following such reconsideration.

3.10 Financing and Credit Enhancement. It is the intention of the Members to seek (i) Third Party non-recourse financing in an amount Approved by the Investor Member which is not less than between sixty-five percent (65%) and seventy percent (70%) of Budgeted Hard Costs and Budgeted Soft Costs during the period of construction of the Project, and (ii) Third Party non-recourse, fixed rate permanent financing with a minimum term of five (5) years equal to not more than 50% of the fair market value of the Project upon final maturity of the construction financing. In addition, it is the intention of the Members that all financings obtained by the Company recognize all rights of Investor Member pursuant to this Agreement, including, without limitation, Investor Member’s rights under Section 8.1.3. Advisor shall be entitled hereunder, on an exclusive basis, to use commercially reasonable efforts to source, on
the Company's behalf, Authorized Financing for (x) construction of the Project pursuant to the "Construction Loan", and (y) permanent financing of the Project pursuant to the "Permanent Loan"; in each case in such amounts, and on such terms and conditions, as shall be Approved. In consideration for Advisor's (or Advisor's Affiliate's) sourcing of the Construction Loan and the Permanent Loan, Advisor (or Advisor's Affiliate) shall be entitled to a financing fee equal to fifty (50) basis points of the original principal amount(s) of the Construction Loan or Permanent Loan (as the case may be), all of which sums are (or shall be) included within the Project Plan and Budget as Approved Project Costs and which shall be paid upon the closing of the Construction Loan and Permanent Loan (as the case may be). The amounts paid by the Company to Advisor (or Advisor's Affiliate) pursuant to this Section 3.10 shall be collectively referred to herein as the "Financing Fees". If in connection with any Authorized Financing, the lender requires one or more guaranties, including, without limitation, any repayment guaranty, recourse or completion guaranty, guaranty of non-recourse carve outs, environmental guaranty or indemnity or the like (each, a "Guaranty") to facilitate the closing and funding of the Authorized Financing, the Managing Member shall provide or, if required by a lender, cause a credit-worthy Related Party of the Managing Member (any such party giving a Guaranty is herein referred to as a "Guarantor") to provide any such Guaranty; provided that the form and substance of such Guaranty is customarily required by lenders, and provided by borrowers, in connection with loans similar to the Authorized Financing and is approved by Managing Member and Guarantor using good faith and commercially reasonable discretion. In connection with the Permanent Loan, Managing Member shall be asked only to give a guaranty of non-recourse carve outs and an environmental guaranty or indemnity. In no event shall Investor Member or any Investor Member Related Party be required to provide a Guaranty hereunder. Subject to the limitation below in this sentence, the Company hereby agrees to indemnify and hold harmless Managing Member (or any Managing Member Related Party that enters into a Guaranty) from and against all losses, costs and expenses, including, without limitation, reasonable attorneys' fees arising from the enforcement by the holder of such Guaranty of amounts due or claimed due under any such Guaranty (collectively, "Guaranty Losses"); provided that in no event shall the Company have any obligation to indemnify or hold harmless any such party (nor shall such party have any rights of subrogation against the Company) on account of Guaranty Losses if such Guaranty Losses arise from Unexcused Cost Overruns or the fraud, intentional misconduct, misappropriation or gross negligence of Managing Member or any Managing Member Related Party. Any indemnification obligation of the Company arising under this Section 3.10 shall be referred to herein as a "Guaranty Indemnification Obligation." In no event shall any distributions be made to the Members under Article V until all outstanding Guaranty Indemnification Obligations of the Company have been satisfied in full.

3.11 Contribution Cap. Notwithstanding anything in this Agreement to the contrary, unless Approved, neither Member shall be obligated to contribute an amount of capital to the Company in excess of the Investor Member Limit, with respect to Investor Member, or the Managing Member Limit, with respect to Managing Member.

3.12 Completion and Cost Overrun Guaranty. The Managing Member and Investor Member shall provide a guaranty to the Company and Investor Member jointly and severally guarantying (i) Substantial Completion of the Project on or before the Anticipated Completion Date and (ii) the obligations of Managing Member to fund Cost Overrun Capital and
Sections (the “Excess”), the Managing Member shall be responsible for making a contribution of the Excess to the Company which Excess shall be distributed to the Investor Member. To the extent there is no Excess as determined above, then distributions shall be made to the Members without regard to this Section 5.5.

ARTICLE VI
POWERS AND DUTIES

6.1 General Responsibilities of Managing Member. Subject to the terms and conditions of this Agreement, the Managing Member shall have responsibility and authority for (a) the day-to-day management and operation of the business and affairs of the Company in accordance with the (i) Project Plan and Budget from and after the Effective Date but prior to Substantial Completion, and (ii) the Operating Plan and Budget from and after the date of Substantial Completion, (b) implementing all Major Decisions that have been Approved, and (c) managing the Company consistent with the other terms and conditions of this Agreement, including, without limitation, the requirements of obtaining Approval as provided in this Agreement. The Managing Member accepts and agrees to perform its duties and undertake its responsibilities set forth in this Agreement, to act in good faith and in the best interests of the Company and to exercise commercially reasonable efforts to cause the Project (1) to be developed in accordance with the Project Plan and Budget from and after the Effective Date but prior to Substantial Completion, and (2) to be operated and managed in accordance with the Operating Plan and Budget from and after Substantial Completion and otherwise in a manner similar to other comparable first class properties in the general area of the Project. Except as expressly set forth herein to the contrary, the Managing Member shall act as the Company’s representative with respect to all aspects of the acquisition, development, construction, ownership leasing, and management of the Property and other assets of the Company, shall perform or cause to be performed the specified reporting functions, shall use commercially reasonable efforts to comply with and perform all obligations of the Company, shall execute and implement all Major Decisions that have been Approved and shall operate the Project consistent with (i) the Project Plan and Budget from and after the Effective Date but prior to Substantial Completion, (ii) the Operating Plan and Budget from and after Substantial Completion, and (iii) any Approval, and shall act as the Company’s representative in connection with any proposed sale or financing transaction, providing required financial information or other documentation, dealing with brokers and potential sources of financing or purchasers and performing such additional duties as Investor Member may reasonably request. The Managing Member is, to the extent of its rights and powers set forth in this Agreement, the “manager” of the Company within the meaning of Section 18-101 of the Act for the purpose of conducting the Company’s business and the actions of the Managing Member taken in accordance with such rights and powers shall bind the Company.

6.2 Specific Responsibilities of Managing Member. In addition to the general responsibilities of the Managing Member set forth above, the Managing Member shall also use all commercially reasonable efforts to provide or cause the Developer and/or the Property Manager to provide the following services:

(a) Collect all rents and other charges which may become due at any time from any tenant under any lease or use and occupancy agreement and any other
monies due the Company in connection with the Property and deposit all funds collected in the applicable Property Account;

(b) Coordinate the bidding (when appropriate), awarding, and negotiation of contracts with, and coordinate activities among all applicable service providers such as architects, engineers, designers, brokers, consultants, attorneys and other professionals providing services to the Company in connection with the ownership, development, operation, management, or redevelopment of the Property;

(c) Coordinate the administration and payment of all construction costs, equipment costs, architectural and engineering costs, insurance costs and other hard and soft costs incurred in connection with the Project or other capital improvement to or development or redevelopment of the Property;

(d) Maintain copies of all documents evidencing or securing any Authorized Financing and take such actions as it determines, in the exercise of reasonable business judgment, to be necessary or required to be in compliance with all such documents;

(e) Promptly notify the Investor Member of any condition that would cause the Property to be in violation of any Governmental Requirements or the terms of any Authorized Financing and take such remedial action as it determines, in the exercise of reasonable business judgment, to be necessary or required to cause the Property to remain in compliance with Governmental Requirements and the terms of all Authorized Financings;

(f) Maintain copies of all leases and other use and occupancy agreements and any amendments or modifications thereof; advise, administer, coordinate and oversee all leasing activities, leasing negotiations and other communications with present and proposed tenants and take such action as it determines, in the exercise of reasonable business judgment, to be necessary or required to be in compliance with the material terms of all such leases and occupancy agreements;

(g) Review bills for real estate taxes, improvements assessments and other like charges which are or may become liens against the Property and, subject to the terms of each lease, as part of the Operating Plan and Budget recommend payment, appeal or application for abatement as in its reasonable judgment it shall determine; and assist the Company in the preparation and prosecution of any such appeal or application for abatement;

(h) Keep the Investor Member well informed as to the status of all bona fide inquiries, proposals and/or offers to acquire the Property or any portion thereof or other material assets of the Company or any Subsidiary or any interest of the Managing Member in the Company;
(i) Inspect or cause to be inspected the Property as often as reasonably prudent property managers managing properties comparable to the Property would inspect such properties;

(j) Ensure that the loan documents evidencing or securing any Authorized Financing permit, without further approval of or consideration paid to the holder thereof (x) the Investor Member to exercise its rights under Section 6.7 and (y) the Transfers permitted by the Investor Member pursuant to Section 8.1.3;

(k) Ensure that any Approved counsel engaged by the Managing Member on behalf of the Company or any Subsidiary acknowledges and agrees as a condition of engagement that it is representing the Company or applicable Subsidiary and all Members thereof and will make any information, files or advice which it provides or is required to provide to the Company or applicable Subsidiary available to each Member upon such Member’s request; and

(l) Include “Responsible Contractors” as defined in the Responsible Contractor Policy currently in place for the Company, in its project bidding list including those Responsible Contractors timely identified by Investor Member, to the extent possible after good faith, commercially reasonable efforts.

6.3 Specific Approval Rights of Investor Member. Notwithstanding any provision of this Agreement to the contrary, the Managing Member shall not, in the exercise of its general control and decision-making authority as more particularly described in Section 6.1, take or cause the Company or any Subsidiary to take any of the following actions (each, a “Major Decision”), without in each instance first obtaining Approval:

(a) Establish any Subsidiary or acquire any real or personal property or interest therein or on behalf of the Company or any Subsidiary other than the Property and other personal property in the ordinary course of business or acquire shares of capital stock of or other equity interest in any Person;

(b) Borrow money, issue evidences of indebtedness or grant any mortgages or other liens on or security interests in the assets of the Company or any Subsidiary, including without limitation, any financing or refinancing of the Property or any portion thereof, or modify, extend, renew, change or prepay in whole or in part any borrowing, financing or refinancing, or make any commitments to borrow funds or give any consideration to obtain a commitment for the loan of funds;

(c) Enter into any interest rate swap, cap, collar, or other interest rate hedging transaction or other derivative whether or not in connection with any Authorized Financing, but not excluding, the use of LIBOR interest rate in connection with any Authorized Financing;

(d) Sell, convey, exchange, mortgage, subdivide or otherwise transfer or encumber (including, without limitation, the granting of any easement or license) all of or any interest in the Property or any real or personal, tangible or intangible property, other than (i) non-material transfers of personal, tangible or intangible
property in the ordinary course of business or (ii) as contemplated by, as applicable, the Project Plan and Budget or the Operating Plan and Budget;

(e) Take any action that would violate an affirmative or negative covenant or other provision of any document evidencing or securing any Authorized Financing or other material agreement binding on the Company, any Subsidiary or the Property;

(f) Voluntarily agree or enter into any conditions or restrictions in connection with the permits or entitlements applicable to the Property, except as contemplated by, as applicable, the Project Plan and Budget or the Operating Plan and Budget;

(g) Institute, amend or modify the Leasing Plan or enter into, amend, or modify any lease or use and occupancy agreement with respect to the Project in a manner inconsistent with the Leasing Plan (Managing Member shall have the right to enter into, modify, amend or terminate any residential lease in the ordinary course of business);

(h) Establish a condominium, cooperative or other comparable ownership regime with respect to the Property or any portion thereof or enter into any of the documents or agreements in connection therewith;

(i) A. Enter into or amend, modify or terminate any contract for the servicing, operation, maintenance and repair of the Property other than any contract which (i) is terminable without penalty upon not more than thirty (30) days’ prior written notice from the Company, (ii) is entered into in the ordinary course of the Company’s business, and (iii) is for work or services contemplated, as applicable, in the Project Plan and Budget or an Operating Plan and Budget; and

B. Enter into or amend, modify or terminate any contract that is other than for the servicing, operation, maintenance and repair of the Property unless such contract expressly provides that (x) such contract or agreement is assignable to Investor Member or Investor Member’s designee upon written notice from Investor Member, and (y) from and after any such assignment to Investor Member or Investor Member’s designee, Investor Member or Investor Member’s designee shall have no liability for amounts due or for obligations arising under such contract or agreement prior to the date of the assignment;

(j) Enter into or amend, modify or terminate any contract for the design, construction, development, improvement or rehabilitation of the Property, unless (i) with respect to any new contract, the aggregate liability under such contract for any one year period is less than Twenty-Five Thousand Dollars ($25,000) and the identity of the service provider as well as the work to be completed under such contract has been Approved; (ii) with respect to the making or approval of any change orders, any such single change order (or series of related change orders) or
amendment or modification of any such contract, does not result in a price adjustment in excess of Fifty Thousand Dollars ($50,000) in any one instance or, taken together with all other change orders that do not require Approval, result in a price adjustments of Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate or reduce in any material respect the quality of the work or services to be provided thereunder, or (iii) contemplated by an Operating Plan and Budget;

(k) Commission or approve any plans for the construction of any improvements or the making of any capital improvements or alterations in or to the Property or any portion thereof having a cost in excess of Twenty-Five Thousand Dollars ($25,000) unless Approved as part of, as applicable, the Project Plan and Budget or the Operating Plan and Budget or approve any material deviation in construction from Approved plans and specifications;

(l) Enter into or amend, modify or terminate any property management, asset management, brokerage, franchise or other similar agreement which is not in the ordinary course of the business, except as contemplated by the Operating Plan and Budget;

(m) Expend, or incur obligations to expend or approve the expenditure of funds, unless the expenditures made and obligations incurred are Emergency Expenditures in accordance with the terms of this Agreement, or are (i) contemplated by any agreement expressly Approved in accordance with the subparagraphs above or which are expressly exempt from Approval under such subparagraphs, or (ii) in the ordinary course of business, in an amount of less than Fifty Thousand Dollars ($50,000) and are in accordance with the Operating Plan and Budget; provided, however, that Approval under this provision shall not be required to pay regularly scheduled debt service payments under any Authorized Financing, real estate taxes then due and payable, ordinary course utility costs, insurance premiums for insurance required hereunder or other similar non-discretionary type expenses;

(n) Make a distribution of any Cash Flow or Capital Proceeds which is inconsistent with the Operating Plan and Budget or otherwise in contravention of this Agreement;

(o) Subject to Section 10.6.2, institute, amend or modify the Project Plan and Budget or an Operating Plan and Budget. The content of the Project Plan and Budget and the Operating Plan and Budget or any other budget or report to be generated by the Managing Member pursuant to this Agreement shall require Approval before any such plan, budget or report shall become operative or effective. The foregoing shall not be deemed to require separate Approval for a conforming amendment to an expenditure, plan, budget or report which has otherwise been expressly Approved where such amendment is clearly derived from such Approval. The parties acknowledge and agree that the Project Plan and Budget attached as Exhibit K has been Approved;
(p) Institute legal action or proceedings (including any tax abatement proceeding) or otherwise bring or prosecute any claim or settle any claim or any other matter, in each case outside of the ordinary course of business of the Company; or settle any tax abatement or eminent domain taking. Notwithstanding the foregoing, neither the initiation of legal proceedings or arbitration (x) in connection with any matter of an emergency nature, or (y) for the collection of rent or eviction of a tenant, or (z) for the collection of rent after notice to the Investor Member, nor the commencement of any litigation involving an aggregate claim of $100,000 or less (including claims in respect of all other legal proceedings or arbitrations which have not been the subject of Investor Member’s Approval hereunder) shall require the Approval of the Investor Member;

(q) Alter the amount or nature of the Contributions or requirements to contribute capital under ARTICLE III;

(r) Engage the Accountant or any other accountant, any appraiser for the Property, any real property tax consultant or legal counsel for the Company or change or terminate any accountant, appraiser, real property tax consultant or legal counsel with being approved as the initial Accountants and

(s) Name or change the name of the Project, establish or change the primary use or uses of the Project or make or agree to any material changes to the site-plan, subdivision or zoning of the Property, the Project or any portion thereof; alter (in any material respect), re-develop or renovate the Project or the Property (other than in accordance with the Approved Project Plans), approve the terms or provisions of any restrictive covenants or easement agreements, except as contemplated by, as applicable, the Project Plan and Budget or the Operating Plan and Budget, or any documents establishing, evidencing or relating to any ownership association that may have an interest in the Property or any portion thereof and/or any amendments or modifications thereof;

(t) Except as provided above in Section 5.1, establish, increase, replenish or decrease the amount of reserves held by the Company, except in accordance with, as applicable, the Project Plan and Budget or the Operating Plan and Budget unless required by law or pursuant to the terms of any Authorized Financing;

(u) Permit any Related Party of the Managing Member to engage in activities in violation of the provisions of Section 6.5.3 and 6.5.5 hereof;

(v) Permit the Transfer of any Member’s Company Interest or admit any additional Members, except for Transfers permitted under ARTICLE VIII;

(w) Dissolve the Company or any Subsidiary;

(x) Effect a merger, conversion, consolidation or other reorganization of the Company or modify or amend this Agreement, or the LLC Certificate;
(y) Engage in any business not described in Section 1.2;

(z) Pay any fees, compensation or expense reimbursement to the Managing Member or any Managing Member Related Party or enter into any transaction with any Managing Member Related Party other than Approved Related Party Agreements;

(aa) Modify the Insurance Requirements set forth in Exhibit F;

(bb) Guaranty the payment of any money, or debt of another Person, or guaranty the performance of any other obligation of another Person;

(cc) Grant any general power of attorney or other unlimited authority to act on behalf or in the name of the Company;

(dd) Appoint any officers or authorized agents except under Approved Related Party Agreements;

(ee) Select accounting principles, practices or policies with respect to the maintenance of the Company's books and records and agree to any material change to accounting and related matters material to the Company or the Members or any material changes to accounting principles, practices or policies;

(ff) File any voluntary petition under Title 11 of the United States Code, the Bankruptcy Act, or seek the protection of any other Federal or State bankruptcy or insolvency law or debtor relief statute or consenting to the institution or continuation of any involuntary bankruptcy proceeding or the admission in writing of the inability to pay debts generally as they become due; or make a general assignment for the benefit of creditors;

(gg) Take any action in respect of the Property relating to environmental matters other than obtaining environmental studies and reports and conducting (or arranging for) evaluations and analyses thereof;

(hh) Make any decision regarding (i) the building or restoration of the Property after or arising out of a casualty or condemnation, except for Emergency Expenditures; or (ii) the disposition of any proceeds received in connection with a casualty or condemnation with respect to the Property or any portion thereof;

(ii) Make any other decision or take any other action which by any provision of this Agreement is required to be approved by Investor Member;

(jj) Take any action with respect to the acquisition and development of any part of the Property other than the Phase I Tract;

(kk) Do any act in contravention of this Agreement; and/or
(II) Appoint replacements for David Reid and Trent Conner for the day to day development, operation and management of the Project when neither David Reid and Trent Conner can continue to do so.

6.4 Additional Provisions Relating to Investor Member and Managing Member.

6.4.1 Additional Rights of Investor Member. In addition to other rights reserved or granted to Investor Member, Investor Member and its agents and representatives shall have the right, at any time and from time to time, upon reasonable notice (which shall not be deemed to require notice of more than two (2) Business Days) and during normal business hours to:

(a) inspect the Property or other assets of the Company upon reasonable notice, during normal business hours and in a manner which does not unduly interfere with the development or operation of the Property;

(b) review, inspect and copy (i) the books and records required to be maintained under ARTICLE X below, and (ii) all information, reports and files within the possession or control of the Company, including, without limitation, information, reports and files relating to the management, operations, policies or strategies of the Property or other assets of the Company;

(c) obtain on behalf of and at the expense of the Company an appraisal of the Property not more than once every twelve (12) months.

(d) discuss, provide advice and consult with the Managing Member with respect to the business, financial and other operations of the Company and any other matters materially affecting the business and affairs of the Company and submit business proposals or suggestions to Managing Member from time to time with the requirement that one (1) or more members of the management of Managing Member, discuss such proposals or suggestions with the Investor Member within a reasonable period after such submission; and

(e) call meetings with the Managing Member.

6.4.2 Employees. All persons engaged by the Managing Member in connection with its services hereunder shall be either Managing Member's employees or its agents or independent contractors and in any event shall not be employees of the Company. The Managing Member shall be solely responsible for the salaries of its employees and any employee benefits to which such employees may claim to be entitled. The Managing Member shall indemnify and hold harmless the Company, the Members and any of their agents, officers, partners, members, employees, representatives, directors, shareholders or the like from any loss, cost, expense, claim or damage in connection with the failure or claimed failure of the Managing Member to fully comply with all applicable laws and regulations having to do with workers' compensation, social security, unemployment insurance, hours of labor, working conditions, wrongful discharge, employment discrimination, labor management disputes and other employer-employee related subjects with respect to Managing Member's employees.
6.4.3 Compensation of Managing Member. Except as otherwise expressly set forth herein, the Managing Member shall not be entitled to any compensation or reimbursement for its services hereunder without the express written Approval of Investor Member. Any such approval must expressly acknowledge that such compensation or reimbursement is to be paid to the Managing Member.

6.5 Other Business Activities of the Members.

6.5.1 Managing Member; Exclusivity. The Managing Member shall devote such business efforts as are necessary to the management, operation and development of the Company’s business and affairs in accordance with the provisions of this Agreement.

6.5.2 General Provisions. Subject to Section 6.5.5, any Member and all of its Related Parties may engage in or possess any interest, directly or indirectly, in any other business venture of any nature or description independently or with others, including but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property competitive with the Phase I Tract. Membership in the Company and the assumption by a Member of any duties hereunder shall be without prejudice to such Member’s rights (or the rights of its Affiliates) to have such other interests and activities and to receive and enjoy profits or compensation therefrom, and neither the Company nor the other Members shall have any right by virtue of this Agreement in and to such ventures or the income or profits derived therefrom.

6.5.3 Related Party Transactions. Except as set forth in Section 6.5.4, the Managing Member shall not engage or pay any compensation to any Related Party of the Managing Member for the provision of services to the Company unless (a) such party is fully qualified and experienced to provide the required services, (b) both the scope of services and the compensation payable to such Related Party for the services are consistent with then current market standards for arms-length transactions, (c) the Managing Member discloses such engagement to Investor Member as a transaction with a Related Party of the Managing Member and (d) such engagement or payment is Approved.

6.5.4 Permitted Related Party Transactions.

(a) The Members hereby Approve the Company or applicable Subsidiary entering into (i) the Development Agreement with the Developer substantially upon the terms and in the form set forth in Exhibit C; (ii) the Management Agreement with the Property Manager substantially upon the terms and in the form set forth in Exhibit G and (iii) the Construction Contract with the Contractor upon the terms and in the form set forth in Exhibit P. For purposes of this Agreement, the Development Agreement, the Management Agreement, the Construction Contract and any other contract or agreement between the Company and the Managing Member or a Related Party of the Managing Member, which is Approved, shall be referred to as an “Approved Related Party Agreement”.

(b) The Managing Member acknowledges and agrees that Investor Member shall have the sole and exclusive right and authority on behalf of the Company to
take any action on the part of the Company with respect to each Approved Related Party Agreement, including, without limitation: (1) the right to modify, amend or terminate any such agreement on behalf of the Company, (2) the right to exercise any right or option on the part of the Company or to grant or withhold any material consent or approval contained therein, and (3) the right to enforce any rights or remedies therein.

6.5.5 Managing Member Investment Opportunities. If Managing Member and/or any Managing Member Related Party on a joint venture basis desires to acquire land and thereafter develop, construct and operate any residential project in the area within eight (8) miles from the Project at any time within two (2) years after the Effective Date (each, an "Investment Opportunity"), then Managing Member shall give written notice (the "Investment Notice") of the Investment Opportunity to Investor Member. The Investment Notice shall include the purchase price and other terms of the Investment Opportunity, an estimate of the capital contributions and/or financing required in connection with the Investment Opportunity, and the other relevant proposed terms and conditions of the Investment Opportunity in reasonable detail so as to enable Investor Member to reasonably evaluate the Investment Opportunity and to make an informed investment decision with respect thereto. Neither the Managing Member nor any Managing Member Related Party shall finalize any Investment Opportunity without first delivering an Investment Notice to Investor Member and otherwise complying with the provisions of this Section 6.5.5. For a period of thirty (30) days following the effective date of the Investment Notice, Investor Member shall have the right, but not the obligation, to elect to participate in the Investment Opportunity by giving written notice and acceptance (a "Participation Notice") of such election to Managing Member. If Investor Member elects to participate in such Investment Opportunity, then the parties shall use their good faith and reasonable efforts to form a partnership, limited liability company or other business entity (the "Project Entity") to acquire and/or participate in such Investment Opportunity. If the parties are unable for any reason to agree upon the terms of the partnership agreement, limited liability company agreement or other organizational agreement that will govern the Project Entity within thirty (30) days following the effective date of the Participation Notice, then Managing Member and the applicable Managing Member Related Parties shall have the right, but not the obligation, to engage in such Investment Opportunity without any further obligation to offer any interest in such Investment Opportunity to Investor Member a second time.

6.6 Limitation of Liability.

6.6.1 Exculpatory Provisions. None of the Managing Member, Investor Member, any Related Party of any Member or any Member’s agents, officers, partners, members, managers, employees, representatives, directors, officers or shareholders (each such party, an "Indemnified Party") shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for (i) any act performed in good faith within the scope of the authority conferred by this Agreement that does not constitute a breach of this Agreement, (ii) any good faith failure or refusal to perform any acts except those required by the terms of this Agreement, or (iii) any performance or omission to perform any acts in reliance on
the advice of accountants or legal counsel for the Company other than those which would constitute a breach of this Agreement; provided, however, that each Indemnified Party shall nevertheless be liable and shall not be entitled to indemnification in all events for its own fraud, misappropriation, gross negligence or willful misconduct.

6.6.2 Indemnification. To the fullest extent permitted by law, the Company shall indemnify and save harmless each Indemnified Party from any loss, cost, damage, fee (including, without limitation, legal fees and costs) or expense incurred by reason of (i) such party’s status as a Member or a Related Party of a Member or such party’s status as agent, officer, partner, member, manager employee, representative, director, officer or shareholder of such Member (ii) any act performed in good faith within the scope of the authority conferred by this Agreement, (iii) any failure or refusal to perform any acts except those required by the terms of this Agreement or (iv) any performance or omission to perform any acts based upon reasonable good faith reliance on the advice of accountants or legal counsel for the Company, provided, however, that no indemnification shall be given with respect to acts or omissions which constitute fraud, misappropriation, gross negligence or willful misconduct.

6.6.3 Modification of Liability. The Managing Member expressly agrees that with respect to the exercise of the Investor Member’s right under ARTICLE IX, Investor Member shall have no fiduciary duty whatsoever to the Managing Member and that with respect to the exercise of any unilateral or approval right granted to Investor Member, the Investor Member may exercise such right and grant or deny such approval as determined by the Investor Member in its sole and absolute discretion. Investor Member expressly agrees that with respect to the exercise of the Managing Member’s rights under ARTICLE IX, the Managing Member shall have no fiduciary duty whatsoever to Investor Member, provided that the Managing Member has fully complied with its obligations under Section 6.2(h).

6.6.4 Insurance. The Managing Member, shall, consistent with, as applicable, the Project Plan and Budget or an Operating Plan and Budget, maintain, for the benefit of and at the expense of the Company such insurance in such amounts, with such carriers and providing such coverages as satisfy the Insurance Requirements.

6.7 Investor Member’s Right to Become the Managing Member. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any Unilateral Control Event, Investor Member shall have the unilateral right, by delivering written notice to the Managing Member within one hundred twenty (120) days of the occurrence of the Unilateral Control Event (and if Investor Member does not exercise such right within such 120 days, such right shall not be waived unless Investor Member does not exercise such right within thirty (30) days after receipt of written notice from Managing Member that such right shall be deemed waived if not exercised prior to the expiration of such 30 days) and subject to compliance with the terms of any Authorized Financing (such notice, the “Replacement Notice”), to become or appoint a Related Party or Third Party designee to become the Tax Matters Partner of the Company and become the sole “manager” of the Company within the meaning of Section 18-101 of the Act for the purpose of conducting the Company’s business and in such capacity, the Investor Member or its designee shall have the unilateral decision-making authority to take all actions on behalf of and at the Company’s expense permitted or required of a manager or managing member of a Delaware limited liability company, including, without limitation, all Major Decisions and all
powers and authorities granted to a “tax matters partner” under applicable laws, without the necessity for obtaining any consent or approval of the Managing Member. Upon the exercise of such right, (a) the powers and authorities granted to the Managing Member hereunder shall terminate and be of no force or effect and (b) Investor Member or its designee shall have the power and authority to propose and unilaterally approve all actions which would otherwise constitute Major Decisions without the necessity for obtaining any consent or approval of the Managing Member. The Managing Member hereby consents to the right afforded to Investor Member hereunder and agrees to execute and deliver any such documents, instruments or certificates as Investor Member or its designee may reasonably request to evidence such changes. Notwithstanding anything to the contrary, after the time at which Investor Member has assumed unilateral control of the Company as the result of a Unilateral Control Event, a) The indemnity rights under Section 3.10.1 granted to the Managing Member by the Company shall not terminate upon the occurrence of a Unilateral Control Event, b) the Company will indemnify the Managing Member for acts or events first occurring after the Replacement Notice unless Managing Member is removed as a result of fraud, gross negligence, misappropriation or intentional misconduct, c) this Agreement may not be amended without the consent of Managing Member and d) Contemporaneously with delivery of a Replacement Notice under this Section, Investor Member shall either (i) obtain for the benefit of the Managing Member, any Managing Member Related Party and any Guarantor, as applicable, the release of any Guaranties provided by the Managing Member, such Managing Member Related Party or such Guarantor to third party lenders under any Authorized Financing, except on account of the fraud, willful misconduct or gross negligence of the Managing Member, such Managing Member Related Party or such Guarantor occurring before the date of the Replacement Notice or (ii) deliver to the Managing Member, any Managing Member Related Party and any Guarantor, as applicable, an agreement executed by an Affiliate of Investor Member with a net worth of at least $30,000,000 agreeing to indemnify, defend and hold harmless the Managing Member, such Managing Member Related Party and/or such Guarantor, as applicable, from and against any loss, cost, liability or expense, including, without limitation, reasonable attorney fees and other defense costs, arising from the enforcement by the holder of such Guaranty of amounts due or claimed due under the Guaranty, except on account of the fraud, willful misconduct or gross negligence of the Managing Member, such Managing Member Related Party or such Guarantor, as applicable, occurring before the date of the Replacement Notice (“IM Unilateral Control Event Indemnity”)

6.8 Reliance by Third Parties. With respect to the rights, powers and authorities granted to Investor Member hereunder, any Person dealing with the Company shall be entitled to rely on a certificate given by Investor Member stating that the Managing Member, or if applicable the Investor Member, has duly exercised its rights, powers and authorities in compliance with the terms of this Agreement. Each and every certificate, document or other instrument executed on behalf of the Company by Investor Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect; (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company; and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.
THE FOLLOWING LIMITED LIABILITY COMPANY AGREEMENT IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY AND SHOULD NOT BE USED WITHOUT FIRST CONSULTING COUNSEL REGARDING THE EFFECT OF THE TERMS AND CONDITIONS OF THIS DOCUMENT

LIMITED LIABILITY COMPANY AGREEMENT

OF

_____________________, LLC
# LIMITED LIABILITY COMPANY AGREEMENT

OF

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Exhibit A Members; Percentages
Exhibit B Allocation of Profit and Loss
Exhibit C Property Management and Leasing Agreement
THIS LIMITED LIABILITY COMPANY AGREEMENT is made and entered into effective for all purposes and in all respects as of the ____ day of ____________, 2005, by and among the undersigned parties.

WHEREAS, the parties hereto desire to form a limited liability company for the purpose set forth in Article III hereof, pursuant to the Act (as defined herein) and other relevant laws of the State of Delaware; and

WHEREAS, the undersigned parties desire to set forth herein their agreements and understandings with respect to the foregoing.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby covenant and agree as follows:

ARTICLE I
Definitions

1. The following terms shall have the indicated meanings ascribed to them when used herein:

   “Act” shall mean and refer to Delaware Limited Liability Company Act, as amended from time to time.

   “Affiliate” (and its derivatives) shall have the meaning set forth in Section 101(2) of the Bankruptcy Code (that is, Title 11 of the United States Code) and, without limitation of the foregoing, shall mean any Person controlling or controlled by or under common control with a Member, including, without limitation (i) any Person who has a familial relationship, by blood, marriage or otherwise with any member, manager or employee of a Member, or any affiliate thereof, and (ii) any Person who or which receives compensation for administrative, legal or accounting services from a Member, or any affiliate. For purposes of this definition, “control” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.
“Agreement” shall mean and refer to this Limited Liability Company Agreement and Exhibits A, B and C attached hereto and made a part hereof, as amended and in effect from time to time.

“Bankruptcy” (and any derivations thereof) shall mean and refer to an adjudication of bankruptcy under Title 11 of the United States Code, as amended, an assignment for the benefit of creditors and/or an adjudication of insolvency under any state or local insolvency statute or procedure or the occurrence of any other event of bankruptcy or insolvency under the Act.

“Borrower” shall mean [Entity], LLC, a Delaware limited liability company wholly owned by the Company.

“Capital Account” shall have the meaning ascribed to such term in Exhibit B attached hereto.

“Capital Contribution” or “Capital Contributions” shall mean and refer to the amount of cash, and/or the “Gross Asset Value” (as defined in Exhibit B attached hereto) of Shopping Center [less the amount of indebtedness, if any, of such Member which is assumed by the Company and/or the amount of indebtedness, if any, to which such Shopping Center is subject as of the date of contribution (without regard to the provisions of I.R.C. Section 7701(g)) actually contributed (or deemed contributed) by a Member to the capital of the Company, including, but not limited to, any amounts paid by a Member (except to the extent indemnification is made by another Member) in respect of any claims, liabilities or obligations against the Company and/or pursuant to any guaranty of Company indebtedness or otherwise by such Member.

“Capital Percentage Interest”, as to any Member, shall mean and refer to the percentage shown opposite the name of such Member in Exhibit A.

“Capital Proceeds” of the Company shall mean and refer to (i) the net proceeds of the Company, after payment of or due provision for expenses of the Company and all liabilities to creditors of the Company (including loans from Members or Affiliates thereof, if any), resulting from the sale, exchange or other disposition of all or a substantial part of the Company’s interest in the Borrower and (ii) the net proceeds of the Borrower, after payment of or due provision for expenses of the Company and all liabilities to creditors of the Borrower (including loans from Members or Affiliates thereof, if any), resulting from (x) the sale, exchange or other disposition of all or a substantial part of the Borrower’s assets, including, but not limited to, the Shopping Center, (y) the excess proceeds from the financing or refinancing of any loan to the Borrower (that is, any financing proceeds not needed for the repayment of the loan refinanced or for other obligations or expenditures of the Borrower) or (z) the receipt by the Borrower of any proceeds from insurance settlements or other claims attributable to fire or other casualty with respect to the assets of the Borrower, including, but not limited to, the Shopping Center, or from partial condemnation, sales or grant of easements, rights-of-way or the like with respect to the assets of the Borrower, including,
but not limited to, the Shopping Center, in excess of those needed for repair, restoration or replacement of the damaged, destroyed or condemned Shopping Center.

“Certificate” shall mean and refer to that certain Certificate of Formation of the Company filed with, and approved, by the Office of the Secretary of State of Delaware, as the same may be amended, modified, supplemented and/or restated from time to time.

“Company” shall mean and refer to ______, LLC, a Delaware limited liability company formed under and pursuant to the Act and other relevant laws of the State of Delaware and operated pursuant to the terms of this Agreement.

“Company Accounting Year” shall mean and refer to the twelve (12)-month period ending December 31 of each year, which shall constitute the accounting year of the Company.

“Company Assets” shall mean and refer to the Company’s entire legal and beneficial right, title and interest in the Borrower and any other assets or property (tangible or intangible, choate or inchoate, fixed or contingent), which the Company may acquire from time to time, as such assets are reflected on the books and records of the Company.

“Company Interest”, as to any Member, shall mean and refer to the entire ownership interest of such Member in the Company at any particular time, including such Member’s Capital Account, Percentage Interest, right to distributions under Article XI hereof and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under the Act, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement and the Act.

“Exhibit A” shall mean and refer to the original Exhibit A to this Agreement, as the same may be amended from time to time, relating to the names, addresses, initial Capital Contributions and Percentage Interests of the Members.

“Exhibit B” shall mean and refer to the original Exhibit B to this Agreement, relating to the allocation of Profit and Loss to the Members, as amended and in effect from time to time.

“Exhibit C” shall mean and refer to the original Exhibit C to this Agreement, containing the form of Property Management and Leasing Agreement to be executed between the Borrower and Smith Management Company.

“Fair Market Value” shall have the meaning ascribed to such term in Article XV hereof.

“I.R.C.” shall mean and refer to the Internal Revenue Code of 1986, as amended from time to time, or any similar Federal internal revenue law enacted in substitution of the Internal Revenue Code of 1986, and the corresponding revenue law (and sections thereof) of any state or local jurisdiction.
“[Lender] Loan” shall mean and refer to that certain loan from [Lender] to the Borrower in the original principal amount of Million Six Hundred Thousand Dollars ($10,600,000), which will be secured by a first lien on the Shopping Center.

“[Lender] Loan Documents” shall mean and refer collectively to the promissory note, deed of trust, modification and extension agreement and other instruments (including UCC-1 Financing Statements) and other agreements to be executed and delivered by the Borrower in connection with the [Lender] Loan.

“Lender” shall mean and refer to [Lender] and its successors and/or assigns.

“Loss” shall have the meaning ascribed to such term in Exhibit B attached hereto.

“Majority in Interest” shall mean and refer to the Members who are the holders of an aggregate of fifty-one percent (51%) or more of the total Net Capital Investments in the Company.

“Management and Leasing Agreement” shall mean and refer to the Property Management and Leasing Agreement between Smith Management Company and the Borrower attached hereto as Exhibit C.

“Manager” shall mean and refer to Smith

“Member” or “Members” shall mean and refer to the Members, either individually or collectively.

“Net Capital Investment” shall, with respect to the Members, mean and refer to the Capital Contributions of such Member, reduced by any distributions to such Member pursuant to Article XI-4(b) hereof.

“Net Cash Flow” shall mean and refer to the total cash receipts of the Borrower (including, without limitation, proceeds of any loans and gross sales proceeds), plus cash Capital Contributions of the Members, plus any other funds (including amounts previously set aside as reserves by the Manager, to the extent the Manager no longer regards such reserves as necessary in the efficient conduct of the Borrower’s business) deemed available for distribution and designated as “Net Cash Flow” by the Manager, less the total cash disbursements of the Borrower (including, but not limited to, operating expenses and capital expenditures of the Borrower and repayments of any loans, including the [Lender] Loan and/or those from any Member(s)), less any cash reserves which the Manager deems reasonably necessary for the efficient conduct of the Borrower’s business, and less Capital Proceeds.

“Person” shall mean and refer to an individual or entity, such as, but not limited to, a corporation, partnership, joint venture, limited partnership, limited liability company, trust, foundation or business association.
“Preferred Return” shall, with respect to each Member, mean and refer to an aggregate amount equal to (i) an eight percent (8%) per annum cash-on-cash return (cumulative but noncompounded) on such Member’s Net Capital Investment, as computed and aggregated on a per diem basis for each Company Accounting Year commencing as of the date such Member makes (or is deemed to have made) Capital Contributions to the Company, less (ii) any distributions actually made to such Member under Articles XI-3(a), XI-3(b) and/or XI-4(a) hereof.

“Profit” shall have the meaning ascribed to such term in Exhibit B attached hereto.

“Redemption Date” shall have the meaning ascribed to such term in Article XIII-3 hereof.

“Redemption Price” shall have the meaning ascribed to such term in Article XIII-1 hereof.

“Redemption Right” shall have the meaning ascribed to such term in Article XIII-1 hereof.

“Residual Percentage Interest”, as to any Member, shall mean and refer to the percentage shown opposite the name of such Member in Exhibit A.

“Shopping Center” shall mean and refer to the _____________, a shopping center located in _____________, owned by the Borrower.

“Substitute Member(s)” shall mean and refer to that Person or those Persons admitted to the Company as a Member, in accordance with the provisions of Article XII hereof and so reflected in Exhibit A.

“Term” shall mean and refer to the period of time that the Company shall continue in existence, which period of time shall begin as of the date of this Agreement and shall end on December 31, 2065, unless sooner terminated in accordance with the provisions of Article XIV hereof.

2. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the neuter shall include the masculine or feminine, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

3. Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by the Manager shall mean and refer to such decision, determination, act, action, exercise or other procedure of the Manager, in its reasonable discretion.
ARTICLE II

Name of Company

The name of the Company shall be “____________, LLC”.

ARTICLE III

Purpose of Company

The sole purpose to be conducted or promoted by the Company is to act as the owner and Manager of Borrower and to do any and all things necessary or incidental to accomplish the foregoing purpose.

ARTICLE IV

Principal Place of Business; Registered Agent

The registered office of the Company in the State of Delaware shall be located c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Manager may change the principal place of business and/or the specified office of the Company at any time and from time to time; in such event, the Manager shall notify the Members in writing within twenty (20) days of the effective date of such change. The registered agent of the Company in the State of Delaware for service of process shall be Corporation Service Company. The post office address of the registered agent of the Company shall be 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

ARTICLE V

Capital Contributions; Percentage of Company Interest

1. Simultaneously with the execution of this Agreement, each of the Members shall be obligated (and does so hereby covenant and agree) to contribute to the capital of the Company that sum set forth after its name in Exhibit A attached hereto, for which such Member shall receive appropriate credit to its Capital Account and Net Capital Investment.

2. In the event that at any time additional funds are required by the Company, then the Manager, acting for and on behalf of, and in the name of, the Company, shall have the right (but not the obligation) to cause the Company to borrow such required funds (the “Additional Funds”), with interest payable at then-prevailing rates, from commercial banks, savings and loan
associations and/or other lending institutions or other Persons (including Members or affiliates thereof). In the event that the Manager is unable (or unwilling) to cause the Company to borrow the Additional Funds in accordance with the terms of this Article V-3, then the Members may (but shall not be obligated to) contribute the Additional Funds to the Company, pro rata, in proportion to their respective Percentage Interest (unless they agree upon another proportion). Any additional Capital Contributions by the Members made pursuant to this Article V-3 shall be credited as contributions of capital to the Company and become part of the Capital Account and Net Capital Investment of each such contributing Member on the date of contribution.

3. The provisions of this Article V are not intended to be for the benefit of any creditor or other Person (other than a Member in its capacity as a partner) to whom or which any debts, liabilities or obligations are owed by (or who or which otherwise has any claim against) the Company or any of the Members; and no such creditor or other Person shall obtain any right under any such foregoing provision or shall by reason of any such foregoing provision make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any of the Members.

4. No Member shall be required to make any contributions to the capital of the Company beyond the amounts set forth in this Article V.

5. Except as set forth in this Agreement, no interest shall accrue or be payable to any Member by reason of its Capital Contribution, Capital Account or Net Capital Investment.

6. No Member shall be personally liable for losses, costs, expenses, liabilities or obligations of the Company in excess of its contributions of capital or other obligations under this Article V, without such Member’s prior written consent.

ARTICLE VI

Allocation of Profit and Loss

1. Profit and Loss of the Company for each Company Accounting Year or other period shall be allocated in accordance with the provisions set forth in Exhibit B attached hereto and made a part hereof.

2. It is the intent of the Members that each Member’s distributive share of income, gains, losses, deductions, credits or basis (or items thereof) shall be allocated in accordance with the provisions set forth in Exhibit B to the fullest extent permitted by I.R.C. Sections 704(b) and 704(c). In order to preserve and protect the allocations provided for in this Article VI and Exhibit B, the Manager, with the review and concurrence of the Company’s certified public accountants, shall allocate Profit, income, gains, Loss, deductions, credits or basis (or items thereof) arising in any Company Accounting Year in a manner other than provided for in Exhibit B if, and to the extent that, the allocations otherwise provided for under this Article VI and Exhibit B would not be permissible under I.R.C. Sections 704(b) and/or 704(c). Any allocation
made pursuant to, and in accordance with, this Article VI-2 shall be deemed to be a complete substitute for any allocation otherwise provided in Exhibit B, and no amendment of this Agreement or approval of any Member shall be required with respect thereto, unless such allocation under this Article VI-2 would, or could, have a materially adverse effect on the balance of each Member’s Capital Account relative to the balance of each Member’s Capital Account had the allocation been made as provided for under paragraph 3 or paragraph 4 of Exhibit B.

ARTICLE VII

Withdrawal of Member

1. Notwithstanding anything expressly or implicitly to the contrary provided under the Act, no Member shall have the right to withdraw from the Company prior to the expiration of the Term; provided, however, that, following the expiration of the Term, a Member shall be entitled to receive, upon ninety (90) days’ written notice to the Manager, a distribution equal to its Capital Account as of the date of withdrawal (or as otherwise provided under the Act), provided that Company Assets are then sufficient to cover all of the Company’s liabilities, both fixed and contingent, including liabilities to Members in respect of their Capital Accounts. Upon the withdrawal of a Member and any such return to such Member of its Capital Account, other than in dissolution of the Company, the Percentage Interest of such Member shall be allocated among the Members (other than the withdrawing Member), pro rata, in proportion to the Percentage Interest owned by the Members (other than the withdrawing Member). The Manager and the other Members shall not, under any circumstances, have any personal liability whatsoever with respect to the return of the Capital Account to any withdrawing Member under this Article VII.

2. In the event that any Member withdraws from the Company in breach of this Agreement, including specifically, the provisions of Article VII-1 hereof, such withdrawal shall, ipso facto, without any further action by the Company or any Members, constitute a default by such Member under this Agreement, for which the Company and the other Members shall have all of their rights and remedies, at law or in equity, under this Agreement or under applicable law, including, without limitation, the right to recover damages from such Member, which damages may offset the amount otherwise distributable to such Member under this Agreement (including, without limitation, under the provisions of Article XI hereof).
ARTICLE VIII

Legal Title to Company Assets

1. Legal title to the Company Assets shall be held in the name of the Company, or in any other manner which the Manager, in its sole discretion, determines to be in the best interests of the Company. Without limiting the foregoing grant of authority, the Manager may take and hold title, or arrange to have title taken and held in the name of others, as trustee or nominee for and or behalf of the Company.

2. It is expressly understood and agreed that the manner of holding title to the Company Assets (or any portion thereof) is solely for the convenience of the Company. Accordingly, the spouse, heirs, executors or administrators, beneficiaries, distributees, members, managers, successors or assigns of any Member shall have no right, title or interest in or to any of the Company Assets by reason of the manner in which title is held; rather, the Company Assets shall be subject to the terms of this Agreement. In connection therewith, each of the Members hereby waives any right that such Member may have to maintain any action for the partition (or other division) of all or any portion of the Company Assets.

ARTICLE IX

Management; Indemnification

1. (a) Except as otherwise expressly set forth herein (including, specifically, the provisions of Article IX-1(b) hereof), management of the Company business shall in every respect be the full, exclusive and complete responsibility of the Manager, which as a Manager, shall devote to the management of the business of the Company so much of its time as the Manager, in its sole discretion, deems reasonably necessary to the efficient operation of the Company business. Any and all actions and/or decisions with respect to the management and/or control of the Company and the Company business by the Manager shall be binding upon the Company and its Members and, in connection therewith, the Manager shall recognize its fiduciary duty to the Company and the Members. The Manager, acting for and on behalf of the Company, in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Company business, to do any and all acts and things necessary, proper, convenient or advisable to effectuate the purposes of the Company.

(b) In furtherance of the provisions of Article IX-1(a) hereof, the Manager, in its capacity as a Manager, shall, in the exercise of its reasonable discretion, have the right, power and authority, acting for and on behalf of the Company, directly in the name of the Company or indirectly in the name of the Borrower, to enter into and execute any lease, contract, agreement, bill of sale deed, mortgage or other instrument or document required or otherwise appropriate to purchase, lease, sell, mortgage, convey or refinance all or any portion of the assets owned by the Company and/or the Borrower and to carry on any and all other activities related to the business
of the Company or the Borrower (as the case may be), to borrow money and execute promissory notes, to secure the same by mortgage (which term “mortgage” is hereby defined for all purposes of this Agreement to include deeds of trust, financing statements, chattel mortgages, pledges, conditional sales contracts and similar security agreements) upon any of the assets owned by the Company and/or the Borrower to renew, extend or refinance any and all such loans (including, without limitation, the [Lender] Loan) or notes, and to convey any of the assets owned by the Company and/or the Borrower in fee simple by deed, mortgage or otherwise; provided, that, notwithstanding the foregoing, in the event the Manager desires to (x) sell or refinance any Company Assets (in whole or part) or cause the Borrower to sell or refinance the Shopping Center (in whole or part) (for purposes of this clause (x), an extension of the term of any existing debt beyond sixty (60) days shall be deemed to be a refinance), (y) amend the provisions of the Management and Leasing Agreement, or (z) execute any ground lease with a term (including fixed rate extension options) of twenty (20) years or more, the Manager shall obtain the prior written consent of at least a Majority in Interest; and provided further, that in the event of the Manager’s death, the prior written consent of at least a Majority in Interest shall be required for:

(i) any lease of greater than twenty thousand (20,000) square feet;
(ii) capital expenses in excess of Fifty Thousand Dollars ($50,000) in any Company Accounting Year; or
(iii) the engagement of any Shopping Center management and/or leasing company (other than Smith Management Company).

2. (a) The Manager shall be indemnified and held harmless by the Company from and against any and all claims, demands, liabilities, costs, damages and causes of action, of any nature whatsoever, arising out of or incidental to the management and supervision of the Company’s affairs and/or the acquisition of any Company Assets or as otherwise permitted under the Act, except where the claim at issue is based upon the Manager’s breach of its fiduciary duty to the Company or the Members or based upon the fraud or gross negligence of, or the willful breach of any material provision of this Agreement by, the Manager. The Members shall be indemnified and held harmless by the Company from and against any and all claims, demands, liabilities, costs, damages and causes of action, of any nature whatsoever, arising out of or incidental to such Member’s authorized participation in the supervision of the Company’s affairs and/or the acquisition of any Company Assets or as otherwise provided under the Act, except where such claim is based upon the fraud or gross negligence of, or willful breach of any material provision of this Agreement by, such Member or an action by such Member which was not authorized by this Agreement or the Manager.

(b) The indemnification authorized by this Article IX-2 shall include, but not be limited to, payment of (i) reasonable attorneys’ fees or other expenses incurred in connection with settlement or in any finally-adjudicated legal proceeding, and (ii) the removal of any liens affecting any Shopping Center of the indemnitee.

(c) The indemnification rights contained in this Article IX-2 shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which the
Manager or the Members (as applicable) shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity. Indemnifications shall be made solely and entirely from the Company Assets; and no Member shall be personally liable to the indemnitee under this Article IX-2 or otherwise under this Agreement. Furthermore, the provisions of this Article IX-2 are not intended to be for the benefit of any creditor or other Person to whom or which any debts, liabilities or obligations are owed by (or who or which otherwise has a claim against) the indemnitee; and no such creditor or other Person shall obtain any right under the provisions of this Article IX-2 against the Company or any of the Members by reason of any debt, liability or obligation of (or other claim against) the indemnitee.

3. Except as otherwise set forth in this Agreement or the Management and Leasing Agreement, no Manager or Member or any Affiliate thereof shall be entitled to receive compensation for rendering services to the Company. In addition, the Manager shall be fully and entirely reimbursed by the Company for any and all reasonable out-of-pocket costs and expenses incurred by the Manager in connection with the acquisition and/or disposition of all or any portion of the Company Assets, the financing or refinancing of any Company indebtedness and/or the management and supervision of the Company business, as described in the Management and Leasing Agreement; provided, however, that, with respect to any such reimbursement, the Manager shall present the Company with such invoices, in such detail and with such receipts, as are necessary to substantiate such out-of-pocket costs and expenses.

4. In furtherance of the provisions of this Article IX, the Manager, on behalf of the Borrower, may contract with any Person, including, without limitation, any of the Members or any entity in which any of the Members may have an interest and/or any affiliated or related corporation or other entity, at reasonable and competitive rates of compensation, commission or remuneration, for the performance of any and all services which may at any time be necessary, proper, convenient or advisable to carry on the business of the Company. In furtherance of the foregoing, the Borrower shall pay an asset management fee of one percent (1%) to Gary D. Smith and shall engage Smith Management Company to perform certain management and leasing activities pursuant to the Management and Leasing Agreement.

5. (a) The Manager is hereby designated the “Tax Matters Member” (as such term is defined and used under the I.R.C. and the Treasury Regulations thereunder) of the Company.

(b) In the event the Tax Matters Member elects to file a petition for readjustment of any partnership tax item (in accordance with I.R.C. Section 6226(a)), such petition shall, unless Members owning at least a Majority in Interest agree otherwise, be filed in the United States Tax Court.

(c) The Tax Matters Member shall, within ten (10) business days of receipt thereof, forward to each Member a photocopy of any correspondence relating to the Company received from the Internal Revenue Service which relates to matters that are of material importance to the Company and/or its Members. The Tax Matters Member shall, within ten (10) business days thereof, advise each Member in writing of the substance of any conversation held
with any representative of the Internal Revenue Service which relates to matters that are of material importance to the Company and/or its Members.

(d) Any reasonable costs incurred by the Tax Matters Member for retaining accountants, lawyers and/or other professionals on behalf of the Company in connection with dealing with the Internal Revenue Service shall be selected by Members owning at least a Majority in Interest and shall, upon the review of the Company’s independent certified public accountants, be expenses of the Company.

(e) Without the affirmative vote of Members owning at least a Majority in Interest, the Tax Matters Member shall have no right to extend the statute of limitations for assessing or computing any tax liability against the Company or the amount or character of any partnership tax item.

(f) Without the affirmative vote of Members owning at least a Majority in Interest, the Tax Matters Member shall have no right to settle any audit with the Internal Revenue Service for the readjustment of any partnership tax item.

ARTICLE X

Books and Records; Tax Elections

1. The funds of the Company shall be deposited in such separately Federally-insured bank accounts as shall be determined by the Manager, in its sole discretion, and the Manager shall arrange for the appropriate conduct of such accounts.

2. The Company shall keep at its specified office (i) books and records setting forth a current list of the full name and last known address of each Member, (ii) a copy of the Certificate, together with any executed powers of attorney, (iii) copies of the Company’s and Borrower's Federal and state income tax returns and personal property or intangible property tax returns, if any, for the three (3) most recent Company Accounting Years, (iv) copies of any written limited liability company agreements or other documents of the Company and Borrower and (v) copies of any financial statements of the Company and Borrower for the three (3) most recent Company Accounting Years. Any Member may inspect and copy such records at such Member’s personal expense.

3. If there is a distribution of all or any portion of the Company Assets as described in I.R.C. Section 734, or if there is a transfer of a Company Interest as described in I.R.C. Section 743, then, upon the request of any Member, the Manager may cause the Company to file an election under I.R.C. Section 754 to provide for an optional adjustment to the basis of Company Assets. Moreover, notwithstanding the possible future applicability of the provisions of I.R.C. Section 761(a), it is understood that no election shall be made by the Company or any Member to be excluded from the application of the provisions of Subtitle A, Chapter 1, Subchapter K of the I.R.C.
ARTICLE XI

Distributions

1. Net Cash Flow and Capital Proceeds shall be distributed at such time or times as the Manager may determine, in its reasonable discretion, among the Members in accordance with the provisions of this Article XI.

2. All distributions made within the Company Accounting Year shall be subject to adjustment by reference to the financial statements for such Company Accounting Year. If any additional amount is to be distributed by reason of such financial statements, such additional amount shall be deemed a distribution for such Company Accounting Year; and if any excess amount was distributed during such Company Accounting Year, as reflected by such financial statements, the excess amount shall be taken into account in reducing subsequent distributions.

3. Except to the extent Net Cash Flow shall be distributed upon termination of the Company pursuant to Article XIV-3 hereof, the Net Cash Flow generated during a Company Accounting Year shall be distributed during such Company Accounting Year (or at such time or times as the Manager shall determine, in its reasonable discretion) as follows:
   
   (a) First, to the Members, pro rata, in proportion to their respective shares of the Preferred Return.
   
   (b) Second, any remaining Net Cash Flow shall be distributed to the Members, pro rata, in proportion to their respective Residual Percentage Interests.

4. Except to the extent Capital Proceeds shall be distributed upon termination of the Company pursuant to Article XIV-3 hereof, Capital Proceeds shall be distributed as follows and in the following order of priority:

   (a) First, to the Members, pro rata, in proportion to their respective unpaid Preferred Return.
   
   (b) Second, to the Members, pro rata, in proportion to their respective Net Capital Investments, and pari passu, an amount equal to their respective Net Capital Investment of each Member to the Company.

   (c) Third, any remaining Capital Proceeds shall be distributed to the Members, pro rata, in proportion to their respective Residual Percentage Interests.
ARTICLE XII

Assignment of Company Interests

1. [Specified Member], LLC may not transfer its interest in the Company. Members (other than [Specified Member], LLC) may transfer their interests in the Company, provided, that such transfer shall not cause the transferee to own directly or indirectly forty-nine percent (49%) or more of the Borrower.

2. Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed that no transfer of any Company Interest (or any portion thereof), and no substitution of a Member, shall be permitted under any circumstances whatsoever if, in the reasonable discretion of the Manager, such transfer and/or substitution would, or could, either (i) jeopardize the Company status of the Company for Federal income tax purposes, (ii) violate or cause the Company to violate any state or Federal securities law or any other applicable law or governmental rule or regulation, or (iii) violate or cause the Company or the Borrower to violate any term or condition of or any document to which the Company or Borrower is a party. [Specified Member] shall be authorized to pledge to [Member I] its right to receive distributions under Article XI hereof.

3. Unless named in this Agreement or otherwise admitted to the Company in accordance with the terms of this Agreement, no Person shall be considered a Member. The Company, each Member and any other Persons having business with the Company need deal only with Members so named or so admitted; they shall not be required to deal with any other Person by reason of an assignment by a Member or by reason of the death or complete dissolution of a Member, except as otherwise provided in this Agreement. In the absence of the substitution (as provided herein) of a Member for an assigning or deceased or dissolved Member, any payment to a Member or to its legal representatives shall acquit the Company and the other Members of all liability to any other Persons who or which may be interested in such payment by reason of an assignment by, or the death or dissolution of, such Member.

ARTICLE XIII

Redemption Right

1. Notwithstanding anything to the contrary contained in this Agreement, each Member (other than [Specified Member], LLC) shall have the right to require the Company to redeem (all but not less than all) of the Company Interests owned by such Member (each such right hereinafter referred to as a “Redemption Right”) in accordance with the provisions of this Article XIII. For purposes of this Article XIII, the Redemption Right must be exercised simultaneously by [Member I] and [Member II] (and their successors and assigns). The Company shall give each Member written notice prior to each Redemption Date (as herein defined) advising such Member of its right to exercise its Redemption Right (the “Redemption Notice”) as follows: (a) if the Redemption Date is either the maturity date of the [Lender] Loan
or the maturity date of any subsequent refinancing thereof, the Company shall provide each Member with the Redemption Notice at least one (1) year prior to such date; and (b) if the Redemption Date is the closing date on which the Borrower intends to refinance the [Lender] Loan or any refinancings thereof prior to the maturity date of such loan (that is a “prepayment”), the Company shall provide each Member with the Redemption Notice at least ninety (90) days prior to such date. Each Member may exercise its Redemption Right under this Article XIII by sending written notice thereof to the Manager at any time during the thirty (30) day period immediately following the date of the Redemption Notice. The redemption price of the Company Interest pursuant to this Article XIII shall be the Fair Market Value thereof as determined in accordance with Article XV hereof as of the applicable Redemption Date by the Company and the redeeming Member (the “Redemption Price”). The Redemption Price shall be payable by the Company to each Member exercising its Redemption Right under this Article XIII-1 in cash within thirty (30) days after the applicable Redemption Date.

2. (a) If any Member has exercised its Redemption Right under Article XIII-1 hereof as a result of the maturity of the [Lender] Loan or the maturity of a subsequent refinancing, as described in Article XIII-1(a) hereof, and the Company is unable for any reason whatsoever to redeem in full the Company Interests of each Member that has exercised its Redemption Right under Article XIII-1, no redemptions shall occur and the Manager shall be obligated to pursue the orderly sale of the Shopping Center, including, engaging a reputable broker and diligently pursuing the sale in order to permit the timely repayment of the maturing loan (in which event the proceeds received by the Company from such sale shall constitute Capital Proceeds and shall be distributed to the Members in accordance with Article XI-4 hereof). If the Shopping Center is sold pursuant to this Article XIII-2, the sole and exclusive remedy under this Agreement for each Member who exercised its Redemption Right shall be to receive its share of the Capital Proceeds.

(b) If any Member has exercised its Redemption Right under Article XIII-1 hereof as a result of the refinancing of the [Lender] Loan or any refinancings thereof, as described in Article XIII-1(b) hereof, and the Company is unable for any reason whatsoever to redeem in full the Company Interests of each Member that has exercised its Redemption Rights under Article XIII-1, no redemptions shall occur and the Manager shall not be permitted to prepay such loan.

3. For purposes of this Article XIII, the “Redemption Date” shall be the maturity date of the [Lender] Loan or (a) with respect to any refinancing described in Article XIII-1 hereof, the maturity date of any subsequent refinancing and (b) with respect to any refinancing described in Article XIII-1(b) hereof, the closing date on which the Borrower refinances the [Lender] Loan or any refinancings thereof.

4. Settlement on the exercise of the Redemption Right shall be held within thirty (30) days after the Redemption Date at the principal office of the Company or such other location as shall be determined by the Manager. At settlement on the exercise of a Redemption Right by any Member, the Company shall deliver (or cause to be delivered) the Redemption Price, in immediately available funds, to each Member who exercised its Redemption Right under Article XIII-1 hereof, and each such Member shall execute and deliver (or cause to be
executed and delivered) an amendment to this Agreement to reflect (i) the transfer of the redeemed Company Interest to the Company and (ii) the withdrawal of the transferor Member from the Company as a Member thereof.

ARTICLE XIV
Dissolution and Termination of Company

1. The Company shall be dissolved upon the earliest to occur of the following events:

   (a) the retirement, withdrawal or complete liquidation and/or Bankruptcy of the Manager (a “Dissolution Event”); provided, however, that, in the event of a Dissolution Event, then a Majority in Interest, within ninety (90) days following the Dissolution Event, may elect to continue the Company and the Company business, in which event (i) the Company shall not be dissolved; (ii) the Company and the Company business shall be continued; (iii) the Majority in Interest shall designate a successor Manager who or which consents to and accepts such designation; and (v) this Agreement shall be amended to reflect such continuation; or

   (b) the unanimous written consent of the Members;

   (c) the expiration of the Term;

   (d) the entry of a decree of judicial dissolution under the Act;

   (e) sale or other disposition of the Shopping Center; or

   (f) dissolution of Borrower.

provided, however, that so long as the [Lender] Loan is outstanding, in no event shall the Company engage in any dissolution, liquidation, consolidation or merger or asset sale.

2. Upon a dissolution under this Article XIV, the Manager or the Majority in Interest (as the case may be) shall proceed with dispatch and without any unnecessary delay to sell or otherwise liquidate the Company Assets and, after paying or duly providing for all liabilities to creditors of the Company, to distribute the net proceeds therefrom and any other liquid or illiquid assets of the Company among the Members in the manner set forth in Article XIV-3 hereof.

3. The Company shall terminate when all the Company Assets have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid or illiquid assets of the Company, shall, after payment of or due provision for all liabilities to creditors of the Company (including loans, if any, to the Company from Members), have been distributed to the Members, pro rata, in proportion to their respective positive Capital Account balances (after the allocation of all items of Profit, Loss, gross income, gain, credit and/or basis under and pursuant to Article VI hereof).
ARTICLE XV

Fair Market Value

1. For purposes of this Agreement, the “Fair Market Value” of the Company Assets (or any portion thereof) shall be determined based on the price which would be paid by a willing buyer to a willing seller in an arms'-length transaction for the purchase of the Shopping Center and other assets of Borrower, free and clear of any option, call, contract, commitment, demand, lien, charge, security interest or encumbrance of any kind whatsoever, as such price may be mutually determined by the interested Members (or groups of interested Members) and the Company (as applicable), or, if the interested Members (or groups of interested Members) and the Company (as applicable) cannot mutually agree upon such price within fifteen (15) days after the event triggering a determination of Fair Market Value pursuant to this Article XV, the Fair Market Value of the Shopping Center and other assets of Borrower shall be determined as follows: each interested Member (or group of interested Member) and the Company (as applicable) shall promptly appoint a real estate broker, who or which shall determine mutually the Fair Market Value of the Shopping Center and other assets of Borrower, for purposes of an all-cash sale. If the two real estate brokers agree upon the fair market value of the Shopping Center and other assets of Borrower, they shall jointly render a single written report of their opinion thereon; provided, however, that, if the two real estate brokers cannot agree upon the fair market value of the Shopping Center and other assets of Borrower, they shall together appoint a third real estate broker, who or which shall determine the Fair Market Value of the Shopping Center and other assets of Borrower, and shall send written notice of such determination to each Member. All real estate brokers appointed shall be duly licensed and qualified by experience and ability to value the Shopping Center and other assets of Borrower; and the fees and other costs of each of the first two real estate brokers shall be borne by the Member (or group of Members) or the Company (as applicable) appointing each such real estate broker, with the fees and other costs of the third real estate broker (if applicable) being shared equally by the Company and the Members (or group of Members). The Fair Market Value determined by the first two (2) real estate brokers or the third (3rd) real estate broker (as the case may be) shall be used to determine the purchase price of the Shopping Center and other assets of Borrower; provided, however, that, if the Fair Market Value determined by the third (3rd) real estate broker is more than the higher of the first two (2) real estate brokers, the higher determination of the first two (2) real estate brokers shall govern; and provided, further, that if the Fair Market Value determined by the third (3rd) real estate broker is less than the lower determination of the first two (2) real estate brokers, the lower determination of the first two (2) real estate brokers shall govern.

2. In determining the Fair Market Value upon the purchase of a Company Interest pursuant to Article XIII hereof, the purchase price for such Company Interest shall be equal to the amount of Capital Proceeds or other assets such Member would have received pursuant to Article XI-4 hereof if the Shopping Center and other assets had been sold on the applicable date at the Fair Market Value thereof as determined in accordance with Article XV-1 hereof. For the avoidance of doubt, Fair Market Value shall not include any discounts for the (i) parent/subsidiary structure, (ii) minority, liquidity or lack of marketability discount or (iii) discount for the Management and Leasing Agreement or this Agreement.
ARTICLE XVI
Miscellaneous Provisions

1. Except for the required Capital Contributions under Article V hereof, no Member shall be liable to any other Member or to the Company by reason of its actions or omissions to act in connection with the Company, except for fraud or gross negligence of, or the willful breach of any material provision of this Agreement by, such Member.

2. Except as provided herein, nothing herein contained shall be construed to constitute any Member hereof the agent of any other Member hereof or to limit in any manner the Members in the carrying on of their own respective businesses or activities. Any Member may engage in and/or possess any interest in other business ventures of every nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, and whether or not directly competitive with the business of the Company; and neither the Company nor any Member hereof shall have any rights in or to any such independent ventures or the income or profits derived therefrom.

3. Unless otherwise provided herein, it is understood and agreed by and among the parties hereto that, as a condition precedent to any litigation with respect to any claim or controversy arising out of or relating to this Agreement, or a breach hereof, any such claim or controversy shall, upon the request of any party involved, be submitted to and settled by arbitration in accordance with the then-commercial arbitration rules of the American Arbitration Association (or any other form of arbitration mutually acceptable to the parties involved) in the State of Delaware. The decision made pursuant to such arbitration shall be final, binding and conclusive on all parties involved; and judgment upon such decision may be entered in the highest court of any forum, Federal or state, having jurisdiction, and shall not be subject to appeal.

4. (a) All notices provided for herein shall be in writing, hand delivered, with receipt therefor, or sent by certified or registered mail, return receipt requested, and first-class postage prepaid, or by overnight courier, to the address of the Member as shown in Exhibit A, unless notice of a change of address is given to the Company pursuant to the provisions of this Article XVI-4. Time periods shall commence on the postmarked date thereof. Any notice which is required to be given within a stated period of time shall be considered timely if delivered or postmarked before midnight of the last day of such period. Any notice made hereunder shall be deemed effective for all purposes and in all respects three (3) business days after such notice is sent (or caused to be sent) to any Member or other party at the address set forth in Exhibit A hereof, or at such other address specified by a Member or other party for which notice has been received by the Company in accordance with this Article XVI-4.

(b) Where the consent of any Member is required by this Agreement, the failure of such Member to respond (either affirmatively or negatively) in writing to any notice given by the Manager requesting such consent within thirty (30) business days after the date such notice was given shall be conclusively deemed the consent of such Member.
5. Each Member hereby irrevocably makes, constitutes and appoints the Manager as its true and lawful attorney-in-fact and agent with full power and authority in its name, place and stead to make, execute, sign, acknowledge, deliver, file and record with respect to the Company the following:

(a) All amendments to this Agreement and/or the Certificate and all other instruments and documents which the Manager deems appropriate to qualify or to continue the Company as a limited liability company in each jurisdiction in which the Company conducts business;

(b) All instruments which the Manager deems appropriate to reflect (i) any change or modification of the terms and conditions governing the relationship among the Members and the Company or (ii) an amendment of this Agreement and/or the Certificate, made in accordance with the express terms hereof, including, without limitation, the approval and substitution of assignees or transferees as Member(s);

(c) All conveyances and other instruments, certificates or documents which the Manager deems appropriate to effect, evidence and/or reflect any sales or transfers by, or the dissolution, termination and/or liquidation of, the Company, including any sales or transfer of interests in the Company pursuant to this Agreement;

(d) All such other instruments, documents and certificates which may from time to time be required by the Company, its mortgage lenders, the Internal Revenue Service, the State of Delaware, the United States of America, or any political subdivision within which the Company conducts its business, to effectuate, implement, continue and defend the valid and continuing existence of the Company as a limited liability company and to carry out the intention and purpose of this Agreement; and

(e) All amendments to this Agreement and any other documents, instruments and certificates which may be required to admit Members. If a Member assigns its interest in the Company under and pursuant to Article XII hereof, the foregoing power of attorney shall survive the delivery of the instruments effecting such assignment for the purpose of enabling the Manager to sign, swear to, execute, acknowledge and file any amendments to the Certificate and other instruments and documents in order to effectuate the substitution of the assignee as a Member. It is expressly intended that the foregoing power of attorney under this Article XVI-5 is a durable power of attorney which shall not be affected by the subsequent physical or mental disability or incapacity of a Member, and such power of attorney is coupled with an interest; provided, however, that the Manager shall exercise such power of attorney in accordance with fiduciary obligations imposed on the Manager under applicable law and shall not exercise the same in any manner which would (i) enlarge or expand any obligation or liability of a Member or (ii) affect any Company distributions in a manner materially adverse to the Members (or any of them), except to the extent each Member adversely affected thereby has previously consented thereto in writing.
6. Each Member hereby represents and warrants to the Company and each other Member that:

   (a) It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein);

   (b) It has full power and authority to enter into this Agreement and to perform its obligations hereunder and, if applicable, all necessary actions by the board of directors, shareholders, Members, trustees, or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by such Member have been duly taken, and does not conflict with any other agreement, indenture or arrangement to which such Member is a party or by which it is bound; and

   (c) It hereby confirms the truth, accuracy and effectiveness of (and, by this reference, hereby incorporates herein) each and every covenant, representation, warranty and statement delivered to the Company as a material inducement to the Manager to accept it as a Member and also confirms that there has been no material change in the facts supporting any statements therein since their delivery to the Company;

   (d) It or its representative(s), if any, understand and have evaluated the merits and risks of an investment in the Company and the purchase of a Company Interest and have been given the opportunity to obtain information and to examine all documents relating to the Company and the Shopping Center and have been given the opportunity to obtain information and to examine all documents relating to the Company, the Company business and the Shopping Center and to ask questions of, and to receive answers from, the Manager or any Person acting on its behalf concerning the Company, the Manager, and the terms and conditions of this investment, and to obtain any additional information, to the extent the Manager possesses such information or could acquire it without unreasonable effort or expense, to verify the accuracy of any information previously furnished. All such questions have been answered to its full satisfaction, and all information and documents, records and books pertaining to this investment which it has requested have been made available to it, as evidenced by the execution of this Agreement by such Member;

   (e) It is a Person who is able to bear the economic risks of an investment in the Company and the purchase of a Company Interest, in that, among other factors, it can afford to hold its Company Interest for an indefinite period and can afford a complete loss of an investment in the Company;

   (f) No material change in his or its financial condition has taken place during the past twenty-four (24) months, and he or it will have (or in good faith believes he or it will have) sufficient liquidity with respect to his or its net worth for the next twenty-four (24) months to provide for his or its needs and personal contingencies;

   (g) He or it is relying solely on the tax advice of his or its own tax advisor(s) with respect to an investment in the Company and the purchase of a Company Interest;
(h) He or it recognizes that an investment in real estate (or in an entity which will own real estate) involves certain risks in that, among other factors, (A) the Company has virtually no financial or operating history, (B) successful operation of the Company will depend on factors beyond the control of the Manager, (C) the investment in the Company is a speculative investment and involves a high degree of risk of loss, (D) anticipated Federal, state or local income tax benefits may not be available and, further, may be adversely affected by the adoption of new laws or regulations, or by interpretations of, amendments to or new or changed applications of existing laws, regulations or cases, (E) the Manager and the Members and/or their Affiliates may, in the future, be engaged in businesses that are in direct competition with that of the Company, some or all of which activities may give rise to conflicts of interest, (F) there are substantial restrictions on the transferability of, and there will be no public market for, the Company Interests and, accordingly, it may not be possible to liquidate an investment in the Company in case of imminent need of funds or any other emergency, if at all, (G) there is no assurance that the rental space in the Shopping Center acquired (directly or indirectly) by the Company can or will be leased at rents sufficient to carry the costs and expenses relating to the ownership and operation of such Shopping Center, (H) such Shopping Center will compete with similar existing projects in the same market area and additional projects may be constructed and developed in the future in the same market area, which may create further competition, and (I) the business of investing (directly or indirectly) in real estate (or in an entity which will own real estate) is highly competitive and subject to various inherent risks, including, without limitation, changes in general and local economic conditions, neighborhood Shopping Center values, interest rates, real estate tax rates, unanticipated operating expenses and government rules and fiscal policies. He or it and his or its representative(s), if any, have taken full cognizance of and understand such risks and have obtained sufficient information to evaluate the merits and risks of an investment in the Company and the purchase of a Company Interest;

(i) He or it acknowledges that any unaudited economic projections prepared by the Manager relating to the Company business reflect the good faith estimates of the Manager, based on information and assumptions as to income, expenses, Net Cash Flow and other non-tax related matters, which are described more fully in the assumptions and notes to such economic projections and that such assumptions concerning income, expenses, Net Cash Flow and other non-tax related matters, are subject to change due to factors which are beyond the control of the Manager;

(j) He or it confirms that neither the Manager nor any of its Affiliates or agents have made any representations or warranties concerning the profitability resulting from an investment in the Company, including, without limitation, any representations or warranties concerning tax consequences that may arise in connection with an investment in the Company or the anticipated financial results of the operations of the Company;

(k) He or it is acquiring a Company Interest solely for his or its own account, as principal, for investment and not for the interest of any other and not with a view to, or in connection with, any resale, distribution, subdivision or fractionalization. He or it has no agreement or other arrangement with any Person to sell, transfer or pledge any part of a Company Interest
subscribed for or which would guarantee him or it any profit or against any loss with respect to such Company Interest, and he or it has no plans to enter into any such agreement or arrangement;

(l) He or it is an “accredited” investor as such term is defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”);

(m) He or it is a resident and domiciliary of, or organized under the laws of, the state or jurisdiction stated below his or its name in Exhibit A and has no present intention of becoming a resident or domiciliary of any other state or jurisdiction;

(n) He or it understands that no Federal or state agency has passed on or made any recommendations or endorsements of the investment, nor has it been reviewed by the Attorney General of any state or jurisdiction, because of the Manager’s representations that this is intended to be a non-public offering pursuant to Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. He or it understands that any offering literature used in connection with this offering has not been prefilled with, or reviewed by, any Federal or state agency; and

(o) He or it understands that the Company Interests have not been registered under the Securities Act, and they are being offered and sold under an exemption from registration provided by the Securities Act and the rules and regulations thereunder. He or it must bear the economic risk of the investment for an indefinite period of time because it is not anticipated that there will be any market for the Company Interests and because the Company Interests cannot be resold unless subsequently registered under the Securities Act or unless an exemption from such registration is available. He or it also understands that the exemption provided by Rule 144 under the Securities Act will not be generally available because of the conditions and limitations of such Rule, that in the absence of the availability of such Rule any disposition by him or it of any portion of the Company Interest may require compliance with Regulation A or some other exemption under the Securities Act, and that the Company is under no obligation and does not plan to take any action in furtherance of making Rule 144 or any exemption so available. Further, he or it covenants and agrees that his or its Company Interest shall not be sold, assigned, transferred or otherwise disposed of unless (A) such sale, assignment, transfer or disposition is exempt from registration under the Securities Act and the applicable state securities or “Blue Sky” law or laws and, if the Manager reasonably believes that such transfer will have an adverse effect on the Company or any Member, the Manager may, prior to such transfer, require delivery of an opinion of counsel satisfactory to the Manager that such transfer is so exempt or (B) a registration statement covering the Company Interest is effective under the Securities Act. If either of the conditions set forth in the preceding sentence have been satisfied, the Manager will use reasonable efforts to assist in the transfer of such Company Interest.

7. This Agreement shall inure to, and bind all of, the parties, their estates, heirs, personal or legal representatives, members, managers, successors and, subject to Article XII of this Agreement, assigns.
8. This Agreement and the rights of the parties hereunder shall be governed by, interpreted and enforced in accordance with the laws of the State of Delaware (without regard to its laws relating to choice-of-law or conflicts-of-law).

9. This Agreement, the Certificate and Exhibits A, B and C attached hereto set forth all (and are intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to the Company, the Company business and the Company Assets, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, except as set forth herein.

10. The Members shall execute and deliver all documents (subject to the provisions of Article XVI-5 hereof), provide all information and take or refrain from all such action as may be reasonably necessary or appropriate to achieve the purposes of this Agreement and the Certificate.

11. If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

12. The preamble hereto is hereby incorporated in this Agreement and, by this reference, made a substantive part hereof. Similarly, Exhibits A, B and C attached to this Agreement and referenced herein are hereby incorporated in this Agreement and made a part hereof.

13. Time is of the essence for all purposes of this Agreement.

14. Each Member shall have the right to enforce this Agreement by specific performance.

15. The provisions of the Limited Liability Company Agreement of Borrower shall not be amended except as required by any lender in connection with any refinancing.

16. Delivery to the Members of the Certificate or any certificate of amendment, cancellation, termination or reinstatement of this Agreement or the Certificate shall not be required.

17. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

18. If any provision of this Agreement conflicts with the provisions of the Certificate, the provisions of this Agreement shall control.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]
IN WITNESS WHEREOF, the parties hereto have executed this Limited Liability Company Agreement as of the date first above written.

WITNESS:

MEMBER:

[Specified Member], LLC, a Virginia limited liability company

By: ______________________________________________________________________
    Smith, its Manager

By: ______________________________________________________________________

By: ______________________________________________________________________

By: ______________________________________________________________________

By: ______________________________________________________________________

By: ______________________________________________________________________
# EXHIBIT A

TO

LIMITED LIABILITY COMPANY AGREEMENT

OF

, LLC

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EXHIBIT B
TO
LIMITED LIABILITY COMPANY AGREEMENT
OF
_______, LLC

Allocation of Profit and Loss

1. The following terms have the indicated meanings ascribed to them when used herein. (Terms not defined in this Exhibit B shall have the same meaning set forth in the Agreement.)

(a) “Adjusted Capital Account Balance” shall, with respect to each Member, mean and refer to the balance in such Member’s Capital Account as of the end of the applicable Company Accounting Year, adjusted for the following:

(i) Such Capital Account shall be credited for any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in his Capital Account pursuant to Treasury Regulations §§1.704-1(b)(2)(ii)(b)(3) and 1.704-1(b)(2)(ii)(c), respectively, plus such Member’s share of liabilities of the Company for which any Member has individual and ultimate liability for repayment.

(ii) Such Capital Account shall be credited for any amounts which such Member is deemed to be obligated to restore to the Company pursuant to the next to last sentences of each of Treasury Regulation §1.704-2(g)(1) (that is, the Member’s share of the Company Minimum Gain) and Treasury Regulation §1.704-2(i)(5) (that is, the Member’s share of the minimum gain attributable to Member Nonrecourse Debt).

(iii) Such Capital Account shall be debited for any adjustment, allocation or distribution described in paragraph (4), (5) or (6) of Treasury Regulation §1.704-1(b)(2)(d).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation §1.704-1(b)(2)(d) and shall be interpreted consistently therewith.

(b) “Capital Account” shall, with respect to each Member, mean and refer to the separate “book” account for such Member to be established and maintained in all events in the manner provided under, and in accordance with, Treasury Regulation §1.704-1(b)(2)(iv), as amended, and in accordance with the other provisions of Treasury Regulation §1.704-1(b) that must be complied with in order for the Capital Accounts to be determined and maintained in accordance with the provisions of Treasury Regulation §1.704-1(b)(2) (iv). The initial Capital Account balance of the Members are set forth on Exhibit A to the Agreement.

(i) In furtherance of and consistent with the foregoing, a Member’s Capital Account shall include generally, without limitation, the Capital Contribution of a Member
(as of any particular date), (A) increased by the Member’s distributive share of “Profits”, income and gain of the Company (including, if such date is not the close of the Company Accounting Year, the distributive share of Profits and items in the nature of income and gain of the Company for the period from the close of the last Company Accounting Year to such date), and the amount of any liability assumed by such Member and (B) decreased by the Member’s distributive share of “Losses” and items in the nature of deductions or losses of the Company and distributions by the Company to such Member (including, if such date is not the close of the Company Accounting Year, the distributive share of Losses and items in the nature of deductions and losses of the Company and distributions by the Company during the period from the close of the last Company Accounting Year to such date) and the amount of liabilities of such Member that are assumed by the Company. For purposes of the foregoing, distributions of Shopping Center of the Company shall result in a decrease in a Member’s Capital Account equal to the Gross Asset Value of such Shopping Center distributed (less the amount of indebtedness, if any, of the Company which is assumed by such Member and/or the amount of indebtedness, if any, to which such Shopping Center is subject, as of the date of distribution) by the Company to such Member.

(ii) In the event that the Gross Asset Values of the Company Assets are adjusted under and pursuant to paragraphs 1(c)(ii), 1(c)(iii) or 1(c)(iv) of this Exhibit B, the Capital Accounts of all Members shall be adjusted simultaneously therewith in order to reflect the aggregate net adjustment which would have occurred if the Company had recognized Profit or Loss equal to the amount of such aggregate net adjustment upon the disposition of the Company Assets at a purchase price equal to their Gross Asset Values, and such Profit and Loss were allocated pursuant to this Exhibit B.

(iii) In the event that the provisions of Treasury Regulation §1.704-1(b)(2)(iv) fail to provide guidance on how adjustments to the Capital Accounts of the Members should be made to reflect particular adjustments to the capital on the books of the Company, then such Capital Account adjustments shall be made by the Authorized Person in its reasonable determination, with the review and concurrent of the Company’s certified public accountants and/or with the advice of the professional tax advisors of the Company in a manner that (A) maintains equality between (1) the aggregate Capital Accounts of the Members and (2) the amount of capital reflected on the Company’s balance sheet, as computed for book purposes in accordance with Treasury Regulation §1.704-1(b), (B) is consistent with the underlying economic arrangement among the Members, and (C) is based, wherever practicable, on Federal tax accounting principles.

(c) “Gross Asset Value” shall, with respect to any Company Asset, mean such asset’s adjusted basis for Federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any Company Asset at the time that it is contributed by a Member to the capital of the Company shall be an amount equal to the gross fair market value of such Company Asset (without regard to the provisions of I.R.C. Section 7701(g)), as determined by the Members;

(ii) The Gross Asset Value of any Company Asset distributed to a Member by the Company shall be the gross fair market value of such Company Asset on the date of distribution; and
The Gross Asset Value of all Company Assets may (as determined by the Members, in their reasonable discretion) be adjusted to equal their respective gross fair market values upon the occurrence of any of the following events:

(A) The acquisition of an additional Interest from the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(B) The distribution by the Company to a Member of more than a de minimis amount of money in liquidation of such Member’s Interest or any part thereof; or;

(C) The liquidation of the Company within the meaning of Treasury Regulation §1.704-1(b)(2)(ii)(g).

The Gross Asset Values of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company Assets pursuant to I.R.C. Sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation §1.704-1(b)(2)(ii)(m).

“Member Minimum Gain” shall mean an amount with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability (as defined in Treasury Regulation §1.704-2(b)(3)), determined in accordance with Treasury Regulation §1.704-2(i).

“Partnership Minimum Gain” shall mean and refer to the amount computed in accordance with Treasury Regulation §1.704-2(d).

“Member Nonrecourse Debt” shall have the same meaning as Member Nonrecourse Debt set forth in Treasury Regulation §1.704-2(b)(4).

“Member Nonrecourse Deduction” shall have the same meaning as “partner nonrecourse deductions” set forth in Treasury Regulation §1.704-2(i)(2).

“Nonrecourse Deductions” shall have the same meaning as set forth in Treasury Regulation §1.704-2(c).

“Target Capital Account” shall, with respect to each Member as of any particular date, mean and refer to the sum of (i) such Member’s Capital Account, increased by (ii) the amount such Member is deemed to be obligated to restore with respect to any deficit balance in its Capital Account pursuant to the next to last sentences of each of Treasury Regulation §1.704-2(g)(1) (that is, the Member’s share of the Company Minimum Gain) and Treasury Regulation §1.704-2(i)(5) (that is, the Member’s share of the minimum gain attributable to Member Nonrecourse Debt).

2. “Profit” and “Loss” shall, for purposes of this Agreement, mean, for each Accounting Year of the Company or other period, an amount equal to the Company’s taxable
income, gain, loss or deduction for such year or period, in accordance with I.R.C. Section 703(a), with the following adjustments:

(a) All income or gain of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Profit and Loss pursuant to this paragraph 2 of Exhibit B shall be added to such taxable income, gain, loss or deduction.

(b) Any expenditure of the Company described in I.R.C. Section 705(a)(2)(B) or treated as an expenditure described in such Section and not otherwise taken into account in computing Profit and Loss pursuant to this paragraph 2 of Exhibit B shall be subtracted from such taxable income, gain, loss or deduction.

(c) In the event any Company Asset has a Gross Asset Value which differs from its adjusted cost basis, gain or loss resulting from the disposition of such Company Asset shall be computed using the Gross Asset Value (rather than the adjusted cost basis) of such Company Asset.

(d) In lieu of depreciation, amortization or other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account book depreciation in accordance with Treasury Regulation § 1.704-1(b)(2)(iv)(g), and paragraphs 6 and 7 of this Exhibit B.

(e) Notwithstanding the provisions of this paragraph 2, any items which are specially allocated pursuant to paragraph 4 of this Exhibit B shall not be taken into account in computing Profit and Loss.

3. Subject to the provisions of paragraph 4 of this Exhibit B, Profit and Loss (or, if necessary, items thereof) for any Company Accounting Year or other period shall be allocated to each Member, to the extent of and in proportion to the amounts necessary to cause the respective Target Capital Account of each Member to be equal to the aggregate amount of distributions that each such Member would then have received if the Company’s remaining capital at such time were distributed in accordance with Article VI-4 of the Agreement.

For example, assume that the Borrower has a sale of the Shopping Center after one year which creates Capital Proceeds of $3,400,000; assume further that there is no Net Cash Flow, the Net Capital Investments of the Members were $3,000,000 and the Profit on the sale was $400,000. The Profit would be allocated to cause the Target Capital Accounts of each Member to equal the amount such Member would receive under Article XI-4 of the Agreement, as follows:

1. Capital Proceeds would be distributable to the Members as follows:

   (a) $300,000 (unpaid Preferred Return), pro rata, in proportion to their respective Capital Percentage Interests;
(b) $3,000,000, pari passu, based on Net Capital Investment of each Member; and
(c) $100,000 (remaining Capital Proceeds), pro rata, in proportion to their respective Residual Percentage Interests.

2. Profit of $400,000 would be allocated to the Members, pro rata, in proportion to their respective Residual Percentage Interest.

4. Notwithstanding anything to the contrary contained in this Agreement:

(a) (i) If, during any Company Accounting Year, there is a net decrease in the Company Minimum Gain, then each Member shall, prior to any other allocation pursuant to this Exhibit B, be specially allocated items of income and gain (including items of gross income, if necessary) for such Company Accounting 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 the Company Minimum gain during such Company Accounting Year determined in accordance with Treasury Regulation § 1.704-2(g)(1); provided, however, that a Member shall not be subjected to the allocation under this paragraph 4(a)(i) to the extent set forth in Treasury Regulations §§ 1.704-2(f)(2) through 1.704-2(f)(5). It is the intent of the parties hereto that any allocations pursuant to this paragraph 4(a)(i) shall constitute a “minimum gain chargeback” under Treasury Regulations §1.704-2(f).

(ii) After the application of paragraph 4(a)(i) of this Exhibit B (to the extent applicable), in the event that, during any Company Accounting Year, there is a net decrease in the Member Minimum Gain attributable to a Member Nonrecourse Debt (as determined in accordance with Treasury Regulation §1.704-2(i)(5)), then any Member with a share of such Member Minimum Gain attributable to such Member Nonrecourse Debt shall, prior to any other allocation pursuant to this paragraph 4 (other than an allocation pursuant to paragraph 4(a)(i)), be allocated items of income and gain (including items of gross income, if necessary) for such Company Accounting Year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to that portion of such Member’s share (as determined in accordance with Treasury Regulation §1.704-2(i)(5)) of the net decrease in the Member Minimum gain attributable to such Member Nonrecourse Debt during such Company Accounting Year; provided, however, that a Member shall not be subjected to the allocation under this paragraph 4(a)(ii) to the extent set forth in Treasury Regulation §1.704-2(i)(4). It is the intent of the parties hereto that any allocation pursuant to this subparagraph 4(a)(ii) shall constitute a “minimum gain chargeback attributable to Member Nonrecourse Debt” under Treasury Regulation §1.704-2(i)(4).

(iii) After the application of paragraphs 4(a)(i) and 4(a)(ii) of this Exhibit B (to the extent applicable), in the event that a Member unexpectedly receives any adjustment, allocation or distribution described in Section (4), (5) or (6) of Treasury Regulation §1.704-1(b)(2)(ii)(d) which results in such Member having or increasing a deficit Adjusted Capital Account Balance, such Member shall be specially allocated items of income and gain (including items of gross income, if necessary) for such Company Accounting Year in an amount and manner sufficient to eliminate such deficit Adjusted Capital Account Balance as quickly as possible. It is the intent of
the parties hereto that any allocations pursuant to this paragraph 4(a) (iii) shall constitute a “qualified income offset” under Treasury Regulation §1.704-(b)(2)(ii)(d).

(b) If the balance of the Adjusted Capital Account Balance of a Member is less than or equal to zero (0), Loss shall be allocated to such Member only to the extent that such Loss does not cause the Adjusted Capital Account Balance such Member to be reduced below zero (0). Any Loss not otherwise allocable to a Member as a result of the application of this paragraph 4(b) shall, except as otherwise provided in this paragraph 4, be allocated to the Members whose Adjusted Capital Account Balances are greater than zero (0), in accordance with the priorities of paragraph 3 hereof. To the extent an allocation of Loss would result in all Members having a deficit Adjusted Capital Account balance, such Loss shall be allocated to all Members, pro rata, in proportion to their Percentage Interests.

(c) (i) All Nonrecourse Deductions shall be allocated to the Members, pro rata, in proportion to their respective Percentage Interests. Further, the Members hereby elect that, for purposes of determining their interests in excess nonrecourse liabilities of the Company (excluding Member Nonrecourse Debt) within the meaning of Treasury Regulation § 1.752-3(a), such debt shall be allocated to the Members, pro rata, in proportion to their respective Percentage Interests.

(ii) All Member Nonrecourse Deductions shall be allocated solely to the Members who bear the economic risk of loss for the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable, in accordance with Treasury Regulation § 1.704-2(i)(1).

(d) The allocations set forth in this paragraph 4 (the “Special Allocations”) are intended to comply with certain requirements of Treasury Regulation §1.704-1(b). However, notwithstanding the good faith efforts and intentions of the parties to conform the Special Allocations to the economic agreements of the parties hereto, it is understood and acknowledged that the Special Allocations may not be consistent with the manner in which the Members intend to share distributions and allocations of Profit and Loss of the Company. Accordingly, notwithstanding anything contained in paragraph 3 of this Exhibit B to the contrary and except as otherwise required by this paragraph 4, the Members are hereby authorized, in their reasonable discretion, with the review and concurrence of the certified public accountants of the Company, to allocate the Profit, Loss and other partnership items among the Members so as to prevent the Special Allocations from distorting the manner in which Company distributions shall be shared among the Members pursuant to the Agreement.

5. If a Company Interest is transferred or assigned during a Company Accounting Year, that part of any item of Profit, Loss, income, gain, deduction, credit, basis or tax incidents allocated pursuant to this Exhibit B with respect to the Company Interest so transferred shall, in the reasonable discretion of the Members, either (i) be based on segmentation of the Company Accounting Year between the transferor and the transferee or (ii) be allocated between the transferor and the transferee in proportion to the number of days in such Company Accounting Year during which each owned such Company Interest, as disclosed by the Company books and records. The allocation required by this paragraph 5 shall be made without regard to the results of Company
operations during particular periods of such Company Accounting Year or to Company distributions made to the transferor or transferee who acquired such Interest.

6. (a) Income, gains, losses and deductions, as determined for income tax purposes, with respect to any Company Asset contributed by a Member to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Company Asset to the Company for Federal income tax purposes and its initial Gross Asset Value, in accordance with I.R.C. Section 704(c) and the Treasury Regulations thereunder using the “traditional method” in accordance with Treasury Regulation § 1.704-3(b).

(b) In the event that the Gross Asset Value of any Company Asset is adjusted under and pursuant to paragraph 1(c)(ii), 1(c)(iii) or 1(c)(iv) of this Exhibit B, subsequent allocations of income, gains, losses and deductions, as determined for income tax purposes, with respect to such Company Asset shall, solely for income tax purposes, take account of any variation between the adjusted basis of such Company Asset for Federal income tax purposes and its Gross Asset Value in the same manner as under I.R.C. Section 704(c) and the Treasury Regulations thereunder.

(c) Allocations pursuant to this paragraph 6 are solely for purposes of Federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member’s Capital Account.

(d) Except as otherwise set forth in this Agreement, any elections or other decisions relating to allocations under this paragraph 6 shall be made by the Members (in their reasonable discretion), with the review and concurrence of the Company’s certified public accountants, in such manner as reasonably reflects the purpose and intention of this Agreement.

(e) Any depreciation recapture recognized pursuant to I.R.C. Sections 1245 and 1250 or any other I.R.C. section and investment tax credit recapture recognized pursuant to I.R.C. Section 47 or any other I.R.C. section shall be allocated to the Members (to the fullest extent possible) in the same proportions that the depreciation deductions and investment tax credits giving rise to such recapture were allocated among such Members and their respective predecessors in interest.

(f) For purpose of allocating “excess non-recourse liabilities” under the third tier of Treasury Regulation §1.752-3(b)(3), the Company shall first allocate such liabilities to the Class B Member to the extent of any “built-in-gain” allocable to the Class B Member with respect to property contributed to the Company by the Class B Member to the extent such built-in-gain exceeds the gain described in Treasury Regulation §1.752-3(a)(2) with respect to such property.

7. (a) For purposes of computing depreciation, amortization and other cost recovery deductions for book purposes in accordance with Treasury Regulation §1.704-1(b) with respect to all Company Assets which have a Gross Asset Value which differs from its adjusted cost basis at the beginning of such year, such deductions shall be computed as the amount which bears
the same ratio to the Gross Asset Value as the Federal income tax deduction, amortization and other cost recovery deductions for such year or other period bears to such beginning adjusted tax basis.

(b) In furtherance of the foregoing provisions of this Exhibit B (including, specifically, paragraph 2(d) of this Exhibit B), if the Gross Asset Value of a Company Asset has been determined or adjusted in accordance with paragraph 2(c) of this Exhibit B, such Gross Asset Value shall thereafter be adjusted for depreciation, amortization or other cost recovery deductions and gain or loss, as computed for book purposes in accordance with Treasury Regulation §1.704-1(b), with respect to such Company Asset, and the Capital Accounts of all Members shall be adjusted, as determined in accordance with this Exhibit B, in the then-current Company Accounting Year and/or subsequent Company Accounting Years in order to reflect such depreciation, amortization or other cost recovery deductions and gain or loss.

(c) For purposes of computing depreciation, amortization and other cost recovery deductions for book purposes in accordance with Treasury Regulation §1.704-1(b) with respect to all Company Assets, such deductions shall be computed in accordance with a reasonable method selected by the Members which complies with Treasury Regulation §1.704-1(b)(2)(iv)(g)(3). All such depreciation, amortization and other cost recovery deductions shall be allocated to the Members in accordance with paragraph 3 of this Exhibit B.

8. The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company in each jurisdiction in which such filing is required. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of each Accounting year.
EXHIBIT C
TO
LIMITED LIABILITY COMPANY AGREEMENT
OF
Property Management and Leasing Agreement
LLC