

LIMITED LIABILITY COMPANY AGREEMENT
OF
XYZ, L.L.C.,
A DELAWARE LIMITED LIABILITY COMPANY

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XYZ, L.L.C.
LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement (as may be amended from time to time, this “**Agreement**”) of XYZ LLC (the “**Company**”) is entered into this ___ day of _____, ____, by and between INVESTOR, L.L.C. (“**Investor**”), with an address at _____ and OWNER, L.L.C. (“**Owner**”) with an address of _____.

WITNESSETH:

WHEREAS, the Certificate of Formation for the formation of the Company was filed with the Secretary of State of the State of Delaware on _____;

WHEREAS, AAA and Owner desire to enter into this Agreement to set forth their respective rights, duties, responsibilities, agreements and understandings with respect to the Company as set forth below in this Agreement.

WHEREAS, Investor is the manager of Owner and the Developer of the Project.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), the mutual promises, covenants, conditions, obligations, and agreements, herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the undersigned parties agree as follows:

Article I
Defined Terms

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

“**Accrued Preferred Return**” means, as of any date and with respect to any Member, an amount equal to the amount of interest that would have accrued at the Initial Hurdle Rate, compounded monthly, on such Member’s Capital Contribution from the date of contribution to such date as if such Member’s Capital Contribution were a loan.

“**Acquisition Lender**” means _____.

“**Acquisition Loan**” means a [revolving] loan made by _____ in the amount of \$_____ dated _____ for the purpose of acquisition of the Property as the same may be amended, modified or supplemented from time to time.

“**Acquisition Loan Documents**” means those documents that evidence, secure, govern or otherwise are required in connection with the Acquisition Loan.

“**Additional Capital Contributions**” means any capital contributed to the Company in accordance with Section 3.2 hereof.

“Affiliate” means, (i) with, respect to any Member, any Person: (a) which owns more than 50% of the voting interests in the Member; or (b) in which the Member owns more than 50% of the voting interests; or (c) in which more than 50% of the voting interests are owned by a Person who has a relationship with the Member described in clause (a) or (b) above or who otherwise controls, is controlled by, or under common control with, another Person and (ii) with respect to the Company, (w) any member, (x) any Affiliate of a Member, (y) any Person in which the Company owns more than 50% of the voting interests or (z) in which more than 50% of the voting interests are owned by a Person who has a relationship with the Company described in clauses (w), (x) or (y) above or who otherwise controls, is controlled by, or under common control with, another Person.

“Aggregate Capital Contributions” means the total of all Initial Capital Contributions, Additional Capital Contributions and Total Conversion Amounts contributed (or deemed contributed) to the Company by all of the Members.

“Agreement” means this Limited Liability Company Agreement, as amended from time to time.

“Bona Fide Contract” means a contract to purchase one or more of the Units, in writing, signed by the purchaser, who must be one or more persons (including corporations, partnerships, trusts, limited liability companies, pension funds and joint ventures) financially capable of carrying out the terms of the contract, and not an Affiliate of the Developer or Owner. The Bona Fide Contract must be in form legally enforceable against the purchaser and must be accompanied by a good faith deposit equal to at least five percent (5%) of the purchase price for the Unit(s) contemplated for sale in such contract.

“Bona Fide Offer” means an offer to purchase the Project, in writing, signed by the purchaser, not an Affiliate of the Members, who must be one or more persons (including corporations, partnerships, trusts, limited liability companies, pension funds and joint ventures) financially capable of carrying out the terms of the contract. The Bona Fide Offer must be in form legally enforceable against the purchaser and must be accompanied by a good faith deposit equal to at least five percent (5%) of the purchase price for the Project.

“Building Shell Completion Date” means the Substantial Completion date set forth in the Development Project Schedule, as extended due to delays caused by Force Majeure.

“Building Shell Completion” means the following conditions have been satisfied: (i) a certificate of shell and core completion for the Building in substantial accordance with the Development Plan subject to “Punchlist Items” (as defined in the Construction Loan Documents) has been issued by the Project’s architect and (ii) all core inspections for the Building have been satisfactorily completed by the appropriate jurisdictional authority.

“Buyer” has the meaning ascribed to it in Section 9.2 hereof.

“Buy-Out Amount” has the meaning ascribed to it in Section 9.1.1 hereof.

“Capital Account” means an account to be maintained by the Company for each Member in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv).

“**Capital Call**” means the written demand made to the Members to make an Additional Capital Contribution to the Company in accordance with Section 3.2 hereof.

“**Capital Contribution**” means the total amount of cash, as determined under Sections 3.1 or 3.2, contributed to the Company by each Member.

“**Capital Event**” means any sale or final disposition of all or any portion of the Property or any refinancing of any loan made by a Person other than a Member or an Affiliate of a Member (other than _____ Real Estate Finance in the event that _____ Real Estate Finance is the Construction Lender hereunder) and which is secured by the Property.

“**Cause**” means the grounds upon which Investor may remove the Manager, which shall be limited to (i) a breach of, or default under, this Agreement that is intentional, committed in bad faith, the result of active or deliberate dishonesty, or the result of gross negligence, (ii) any intentional act by Manager that results in the receipt by the Manager of an improper benefit in money, property, or services, (iii) the instigation of felony criminal proceedings against the Manager, or (iv) the instigation of civil proceedings against the Manager by a Person other than Investor or an Affiliate which results in, (A) a decision adverse to the Manager, or (B) a settlement of the civil proceedings by the Manager in excess of Five Hundred Thousand Dollars (\$500,000), if in either event, the subject matter thereof pertains to fraud or the improper use of funds in Manager’s role as a fiduciary.

“**Closing Date**” has the meaning ascribed to it in Section 9.2 hereof.

“**Closing**” has the meaning ascribed to it in Section 9.2 hereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

“**Company**” means the limited liability company formed in accordance with this Agreement.

“**Construction Lender**” means the lender on the Construction Loan.

“**Construction Loan Documents**” means those documents that evidence, secure, govern or otherwise are required in connection with the Construction Loan, as the same may be amended, modified or supplemented from time to time.

“**Construction Loan Interest Rate**” means the interest rate set forth in the Construction Loan Documents.

“**Construction Loan**” means a loan to be made by _____ or such other lender as approved by the Members in accordance with the provisions hereof for the purpose of construction and development of the Property.

“**Contributing Member**” means a Member who makes an Additional Capital Contribution on behalf of a Delinquent Member in accordance with Section 3.3.1 hereof.

“**Conversion Option Event**” has the meaning ascribed to it in Section 10.1 hereof.

“**Owner Offer to Purchase**” has the meaning ascribed to it in Section 6.1.5 hereof.

“**Delinquent Member**” means a Member who fails to make an Additional Capital Contribution in accordance with Sections 3.2 and 3.3 hereof.

“**Developer**” means initially AAA.

“**Development Phase**” means that period of time beginning on the day following the Pre-Development Phase Completion and ending on the date of dissolution of the Company, during which time the Company shall develop, construct and sell the Units and the Parking Units.

“**Development Plan**” shall mean the development plans for the development of the Project, as approved by the Members and the Construction Lender, which shall include (i) the Development Summary; (ii) the Development Project Budget; (ii) the Development Project Schedule; and (iv) the Project Documents, including without limitation, all plans, specifications, blueprints, schematic renderings, architect’s drawings, written descriptions and similar items and all related drawings, plans, specifications, and data (and all supplements and amendments thereto) relating to the design, construction, equipping and furnishing of the Project.

“**Development Project Budget**” means the budget for the financing, development, construction and sale or lease of improvements on the Property, including all hard and soft costs in connection with any or all of the foregoing, which shall be attached to this Agreement as Exhibit C, and as the same may thereafter be revised from time to time pursuant to Section 6.1.3 hereof.

“**Development Project Schedule**” means the schedule for the financing, development, construction and sale or lease of improvements on the Property, which shall be attached to this Agreement as Exhibit D, and as may thereafter be revised from time to time pursuant to Sections 6.1.3 and 6.1.4 hereof.

“**Development Services Agreement**” means the Development Services Agreement to be entered into by and between the Company and Investor as Developer prior to the commencement of the Development Phase, as such agreement is amended, modified and supplemented from time to time.

“**Development Summary**” means the development summary for the Project as is set forth in Exhibit B, attached hereto and made a part of this Agreement.

“**Economic Interest**” shall have the meaning set forth in Section 7.1.1.

“**Emergency**” means an event requiring action to be taken prior to the time that required approvals could reasonably be obtained from the Members (i) in order to comply with a governmental order, applicable law, any insurance requirement of this Agreement or other agreement to which the Company is a party or to preserve the Property (or any part thereof) or (ii) for the safety of any workers, tenants, occupants, customers or invitees thereof, or (iii) to avoid the suspension of any services necessary to the tenants, occupants, licensees or invitees thereof.

“Force Majeure” shall mean act of god, unusual governmental delays, city or county delays in issuing the appropriate permits (including without limitation, any delays in issuing blasting permits) or conducting inspections, design approvals (which delays are beyond the control of Developer), restrictions or moratoria, strikes, war, civil unrest, rioting, unavailability of labor or material (other than due to price) despite reasonable diligence, unusually inclement weather, interruption of utility services, the inability to obtain easements, dedications, approvals or title required for utilities, fire, flood or any other circumstances beyond the reasonable control of the party asserting a delay or inability to perform due to Force Majeure (other than the failure to perform of a third party with whom the party seeking the benefits of this provision has contracted), provided that the party claiming the benefit of a delay or excuse shall use reasonable and diligent efforts to minimize the delay and/or perform the obligation being hindered or frustrated by such Force Majeure, and shall not be permitted to invoke Force Majeure as an excuse for delay to the extent such party fails to use such diligent efforts.

“GMP Contract” means the guaranteed maximum price contract to be entered into with the general contractor of the Project.

“Indemnitee” shall have the meaning set forth in Section 6.4.1.

“Initial Hurdle IRR Amount” with respect to any Member, the amount that would have to be distributed to the Member on that date to produce an Internal Rate of Return equal to the Initial Hurdle Rate.

“Initial Hurdle Rate” means a rate equal to seventeen and one-half percent (17.5%).

“Internal Rate of Return” means the annual discount rate that results in a net present value equal to zero (0) when the discount rate is applied to (a) contributions made by any Member to the Company, consisting of (i) the initial Capital Contribution by that Member pursuant to Section 3.1 hereof, (ii) any Additional Capital Contributions contributed by that Member pursuant to Section 3.2 hereof and (iii) any deemed Capital Contributions made by such Member under Section 3.3.2 hereof, less (b) distributions or payments made by the Company to that Member in accordance with Article IV hereof. The Internal Rate of Return shall be calculated with the methodology prescribed by the 1997 Microsoft Excel Software, and shall at all times be computed using the XIRR function so as to take into account all distributions to a Member on and prior to the date of determination.

“Investor” shall have the meaning set forth in the first paragraph hereof.

“Involuntary Withdrawal” means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(iv) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);

(vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is a partnership, the dissolution or commencement of winding up of the partnership; and

(ix) if the Member is a corporation or a limited liability company, the dissolution or commencement of winding up of the Member or the revocation of its charter.

“Law” means the Delaware Limited Liability Company Act, as amended from time to time.

“Loan Documents” mean the Acquisition Loan Documents, the Construction Loan Documents and any other documents that evidence, secure, govern or otherwise are required in connection with any other third-party loan made to the Company.

“Manager” shall initially mean AAA, subject to the terms of this Agreement.

“Member Loans” means the amount advanced by a Contributing Member for a Delinquent Member in accordance with Section 3.3.1 hereof.

“Member” means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

“Membership Interest” means all of the rights of a Member in the Company, including a Member's: (i) share of the Profits and Losses of, and the right to receive distributions from, the Company; (ii) right to inspect the Company's books and records; (iii) to the extent provided in the Certificate of Formation or this Agreement, the right to participate in the management of and vote on matters coming before the Company; and (iv) to the extent provided in the Certificate of Formation or this Agreement, the right to act as an agent of the Company.

“**Negative Capital Account**” means a Capital Account with a balance of less than zero.

“**Net Cash Flow**” means all cash funds derived from operations of the Company, including interest received on reserves but not including Net Sales Proceeds or other proceeds from any Capital Event, without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt and interest payments (including current payments on any third-party debt, the Acquisition Loan or the Construction Loan), capital improvements, and replacements as determined by the Members.

“**Net Sales Proceeds**” means an amount equal to the gross proceeds from a Capital Event, less all reasonable and customary closing costs, customary prorations and adjustments actually incurred by the Company in connection with such Capital Event and repayment of any indebtedness on the assets sold as determined under the Loan Documents.

“**Notice**” shall have the meaning set forth in Section 13.4.

“**Notice of Conversion**” has the meaning ascribed to it in Section 10.1 hereof.

“**Notice of Election**” has the meaning ascribed to it in Section 9.1.1 hereof.

“**Offeree**” has the meaning ascribed to it in Section 9.1.1 hereof.

“**Offeror**” has the meaning ascribed to it in Section 9.1.1 hereof.

“**Overrun and Balancing Payments**” means the aggregate payments by Owner for cost overruns and to “balance” the Construction Loan, required pursuant to Section 3.5 hereof.

“**Parking Units**” means any of the currently-projected to be approximately one hundred fifty-seven (157) parking units to be built in connection with the Project.

“**Percentage Interest**” means, as to any Member, the Percentage Interest set forth beside the Member’s name on Exhibit A to this Agreement under the column captioned “Percentage Interest”, as further defined in Section 3.1.5 and subject to adjustment as set forth in Section 3.3.2.

“**Permitted Transferee**” means a Person who is (i) a Member, or (ii) with respect to whom Mr. Owner owns or controls more than fifty percent (50%) of the voting interests of such Person.

“**Person**” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

“**Pre-Development Phase Completion Date**” means [2 years from the date of the execution of this Agreement]; however, such date shall be extended for up to two (2) additional sixty (60) day periods provided the Manager has submitted to Investor a written request for each extension supported by evidence of delays in the project approval process which are beyond Manager’s reasonable control.

“Pre-Development Phase Completion” means (x) approval by the Members of the Development Project Budget and the Development Project Schedule, (y) execution of a GMP Contract which is consistent with the approved Development Project Budget and the Development Project Schedule, and (z) consummation of the closing of the Construction Loan, all in accordance with the provisions hereof.

“Pre-Development Phase” means that period of time from _____ until the date of Pre-Development Phase Completion.

“Profits” and **“Losses”** mean, for each taxable year of the Company (or other period for which Profits or Losses must be computed), the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 5.2 hereof shall not be taken into account in computing Profits or Losses.

“Project” has the meaning set forth in Section 2.3.

“Project Documents” means the Purchase Agreement, all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Property, and all amendments and modifications thereof and all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, unit purchase agreements and commitments, maintenance agreements, management agreements, service contracts, permits licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property and shall include those documents listed in Exhibit E hereto.

“Property” has the meaning set forth in Section 2.3.

“**Purchase Agreement**” means the Purchase and Sale Agreement between _____, and _____ dated _____, attached hereto as Exhibit H.

“**Regulation**” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“**Sale Notice**” has the meaning ascribed to it in Section 10.3 hereof.

“**Sale Proposal**” has the meaning ascribed to it in Section 10.3 hereof.

“**Seller**” has the meaning ascribed to it in Section 9.2 hereof.

“**Target Final Balances**” shall have the meaning set forth in Section 5.7.

“**Tax Matters Member**” shall have the meaning set forth in Section 11.6.

“**12% IRR Amount**” with respect to any Member, the amount that would have to be distributed to the Member on that date to produce an Internal Rate of Return of twelve percent (12%).

“**20% IRR Amount**” means, with respect to any Member, the amount that would have to be distributed to the Member on that date to produce an Internal Rate of Return of twenty percent (20%).

“**Total Conversion Amount**” means the amount of Member Loans converted to capital, in accordance with Section 3.3.2 hereof.

“**Transfer**” means-when used as a noun-any sale, hypothecation, pledge, assignment, attachment, or other transfer-and, when used as a verb-means to sell, hypothecate, pledge, assign, or otherwise transfer.

“**Units**” means any of the currently projected to be approximately ninety-eight (98) residential condominium units comprising the Project, together with all common areas associated therewith and appurtenant thereto.

“**Unpaid Preferred Return**” means, as of any date on which a distribution pursuant to Section 4.1(i) occurs, and with respect to any Member, the amount of Accrued Preferred Return as of such date, reduced by all distributions to such Member pursuant to Section 4.1(i) hereof prior to such date.

“**Valuation Amount**” has the meaning ascribed to it in Section 9.1.1 hereof.

“**Voluntary Withdrawal**” means a Member’s disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

“**Withdrawn Member**” means a member who withdraws from the Company as a result of an Involuntary Withdrawal.

Article II
Formation and Name; Office; Purpose; Term

2.1 Organization. The parties have organized a limited liability company pursuant to the Law and the provisions of this Agreement and, for that purpose, have caused a Certificate of Formation to be prepared, executed, and filed with the Secretary of State of the State of Delaware on _____.

2.2 Company Name. The name of the Company shall be XXX, L.L.C. The Company may do business under that name and under any other name or names upon which the Members agree. The Company is currently doing business under the name “XXX”. If the Company does business under a name other than that set forth in its Certificate of Formation (as amended), then the Company shall file a certificate as required by Law.

2.3 Purpose. The Company is organized to purchase, demolish, develop, construct, redevelop, sell, subdivide, own, trade in, hold, lease, manage, impose a condominium regime upon, and otherwise deal in and with respect to the real property and improvements located or to be located at the intersection of _____, containing approximately ____ square feet of land, which is to be known as _____ (the “**Property**”), and to do any and all things necessary, convenient, or incidental to that purpose, including the borrowing of funds and granting of collateral security for borrowing in any and all Company property as required for the ownership and development of the Project, and to construct and sell the Units and the Parking Units in a nine-story building (the “**Project**”). Notwithstanding anything contained herein to the contrary, the Company shall not engage in any business, and it shall have no purpose, unrelated to the ownership, development and sale of the Property and shall not acquire any real property or own assets other than the Property or enter into any loan documents or other than as related to the Property.

2.4 Duration. The duration of the Company began upon the filing of the Company’s Certificate of Formation with the Secretary of State of the State of Delaware and shall continue until its existence is terminated pursuant to Article VIII of this Agreement.

2.5 Members. The name, present mailing address and taxpayer identification number of each Member are set forth on Exhibit A.

2.6 Tax Partnership. The Members intend that the Company be classified for federal income tax purposes (and, as appropriate, state and local income tax purposes) as a partnership in which the Members are partners. The characterization of the Company as a partnership solely for tax purposes does not create or imply a general partnership among the Members for any other purpose.

Article III
Members; Capital; Loans; Capital Accounts

3.1 Capital Contributions and Percentage Interests.

3.1.1 Initial Capital Contributions. The initial capital of the Company shall be _____ Million Dollars (\$_____), which has been or shall be contributed to the Company

by the Members upon the request of the Manager, in the manner and subject in all respects to the provisions set forth in Section 3.1.3 hereof. “**Initial Capital Contribution**” means, with respect to each Member, the Capital Contributions required by this Section 3.1 as hereinafter set forth.

(a) During the Pre-Development Phase, Investor shall have a Capital Commitment of _____ Million Dollars (\$_____) and Owner shall have a Capital Commitment of _____ Million Dollars (\$_____) (each, a “**Pre-Development Phase Capital Commitment**”). Subject to the terms of Section 3.1.2 hereof, during the Pre-Development Phase, each Member shall contribute an amount up to its respective Pre-Development Phase Capital Commitment in cash to the capital of the Company in such amounts and at such times as requested by the Manager in accordance with and subject in all respects to the provisions of Section 3.1.3 hereof.

(b) Following the Pre-Development Phase Completion, the Capital Commitment of each Member shall be adjusted such that Investor shall have a Capital Commitment of _____ Million Dollars (\$_____) and Owner shall have a Capital Commitment of _____ Million Dollars (\$_____) (each, a “**Development Phase Capital Commitment**”). Subject to the terms of Section 3.1.2 hereof, from and after the Pre-Development Phase Completion, each Member shall contribute an amount up to its respective Development Phase Capital Commitment, less the aggregate amount of Capital Contributions actually made by such Member during the Pre-Development Phase, in cash to the capital of the Company in such amounts and at such times as requested by the Manager in accordance with and subject in all respects to the provisions of Section 3.1.3 hereof.

3.1.2 Preformation Expenditures. Prior to the date hereof, Owner and its Affiliates have incurred certain expenses in connection with the Project and have advanced funds on behalf of the Project, which expenses and advances are set out in more detail on Exhibit K, attached hereto (the “**Preformation Expenditures**”). The Members hereby covenant and agree that, notwithstanding the provisions of Section 3.1.1(a) hereof to the contrary, any and all Preformation Expenditures set out on Exhibit K hereto and funded by Owner and/or its Affiliates prior to the date hereof shall be treated as Capital Contributions made by Owner to the Company on the date hereof for all purposes of this Agreement and shall reduce, dollar for dollar, Owner’s Capital Commitments hereunder.

(a) Notwithstanding the terms of Article IV hereof, in the event that the amount of Preformation Expenditures set out on Exhibit K hereto exceeds Owner’s Pre-Development Phase Capital Commitment, the Company shall make a distribution to Owner, as soon as reasonably practical after the date hereof, in an amount equal to any such excess.

(b) Notwithstanding the terms of Article IV hereof, in the event that (i) the amount of Preformation Expenditures set out on Exhibit K hereto minus (ii) the distribution, if any, made to Owner pursuant to Section 3.1.2(a) hereof, exceeds Owner’s Development Phase Capital Commitment, the Company shall make a distribution to Owner, as soon as reasonably practical after the Pre-Development Phase Completion, in an amount equal to any such excess.

3.1.3 The Manager shall call for Capital Contributions from the Members, up to each Member's Pre-Development Phase Capital Commitment and Development Phase Capital Commitment, as the case may be, from time to time but not more frequently than monthly. All calls for Capital Contributions shall be made in writing, shall be in an amount equal to the reasonably foreseeable capital requirements of the Company in accordance with the Development Project Budget and Development Project Schedule for the thirty (30) day period beginning on the date that is ten (10) days following the provision of such notice to the Members, and shall provide a detailed description of the manner in which such Capital Contributions will be used. Each Member shall make any Capital Contribution called upon by the Manager pursuant to the terms of this Section 3.1.3 within ten (10) days following the Manager's written request therefore. All Capital Contributions shall be applied in a manner consistent with the Development Project Budget, the Development Project Schedule and the written notice provided to the Members under the preceding sentence. Notwithstanding the foregoing, the Manager may be permitted to call for Capital Contributions up to each Member's Pre-Development Phase Capital Commitment and Development Phase Capital Commitment, as the case may be, at such other times and in such other manner as may be authorized by the unanimous consent of the Members.

3.1.4 Coincident with the execution hereof, XXX, LLC, an Affiliate of _____, hereby irrevocably and unconditionally contributes and assigns to the Company its entire right, title and interest in, to and under each of the Project Documents. Owner and each of its Affiliates agrees to execute, acknowledge, deliver, file, record and publish such further certificates, amendments to certificates, instruments and documents, and do all such other acts and things as may be required to give effect to the contribution and assignment of the Project Documents to the Company.

3.1.5 Effective as of the date hereof, each Member has been given an interest in the Company expressed as a percentage of the whole ("**Percentage Interest**"), with the initial Percentage Interest of Investor being ninety percent (90%) and the initial Percentage Interest of Owner being ten percent (10%).

3.2 Additional Capital Contributions. At any time that, after the Pre-Development Phase Completion and after the Initial Capital Contributions have been funded in full, the Company requires funds not available from Initial Capital Contributions to pay obligations of the Company before they come past due and delinquent, the Manager shall give notice (a "**Capital Call Notice**") in writing to the Members that additional capital is required by the Company. Notwithstanding the foregoing, the Manager shall not be permitted to give a Capital Call Notice for any costs or expenses for which, (i) Owner, on behalf of the Developer, is responsible under the Development Services Agreement or any guaranty or indemnity delivered to the Construction Lender (except as provided in Section 3.4.1 below); or (ii) Owner is solely responsible under Section 3.5.2 of this Agreement. The Manager's Capital Call Notice shall specify the amount of the Capital Call, the amount of each Member's share of the Capital Call, the purpose of the Capital Call, and the date by which such additional Capital Contributions ("**Additional Capital Contributions**") are needed (which shall be no less than twenty-one (21) days after the date of the Capital Call Notice). Notwithstanding the foregoing, if Investor, in its reasonable, good faith discretion, determines that a Capital Call is required pursuant to and in accordance with the provisions of this Section 3.2, then Investor may send a notice to the Manager describing the

reasons why Investor has determined that such Capital Call is required. If the Manager does not make such Capital Call within fifteen (15) days after receiving such notice from Investor, then Investor shall have the right, but not the obligation, to institute the Additional Capital Contribution procedure under this Section 3.2 by delivering a Capital Call Notice complying with the provisions set forth in the preceding sentence to the other Members and the Manager, which shall have the same force and effect as if made by the Manager hereunder. The Additional Capital Contributions required by Investor and Owner under this Section 3.2 shall be made by the Members in accordance with their Percentage Interests.

3.3 Remedies for Failure to Make Additional Capital Contributions.

3.3.1 In the event that any Member (a “**Delinquent Member**”) shall fail for any reason to provide all or any part of the Additional Capital Contributions required to be paid by such Member under Section 3.2 hereof within twenty-one (21) days after the request for same is made pursuant to Section 3.2 hereof, the non-delinquent Member (the “**Contributing Member**”) shall have the right (but not the obligation) to advance all or any part of such amounts to the Company and treat such advance as a Member Loan to the Delinquent Member followed by a deemed contribution by the Delinquent Member of such amount to the Company. Any Member Loan deemed advanced to the Delinquent Member pursuant to the preceding sentence shall bear interest at the rate of twenty-five percent (25%) per annum until repaid in full or converted in accordance with Section 3.3.2 below. Pursuant to the terms of Section 4.2.2 hereof, to the extent that any Member Loans are outstanding, all amounts otherwise distributable to the Delinquent Member under Sections 4.1 and 4.2.1 hereof shall instead be distributed directly to the Contributing Member as deemed distributions to the Delinquent Member followed by deemed payments of accrued interest and principal on all outstanding Member Loans by the Delinquent Member to the Contributing Member until all such Member Loans have been repaid in full. At any time prior to repayment in full, any Member Loans may be converted, at the election of the Contributing Member, into Company capital, such conversion to be made in accordance with the provisions of Section 3.3.2 hereof. The making of a Member Loan, whether or not followed by a conversion exercise pursuant to Section 3.3.2, shall have the effect of curing a Delinquent Member’s default if all sums owed by such Delinquent Member are so satisfied. Nothing contained in this Section 3.3.1 is intended, nor shall it be construed or deemed, to confer any benefit whatsoever upon any third party, the provisions hereof being intended solely for the benefit of the Contributing Member.

3.3.2 In the event of the exercise by the Contributing Member of an election to convert a Member Loan made to a Delinquent Member pursuant to Section 3.3.1 hereof, the entire principal balance of, and all accrued but unpaid interest on, the converted indebtedness (the “**Total Conversion Amount**”) shall be deemed to be a Capital Contribution and shall be credited to the Contributing Member’s Capital Account. Upon conversion, the Percentage Interests of the Members shall be re-calculated as follows: the Percentage Interest of the Contributing Member shall be equal to the amount determined by (1) multiplying such Member’s existing Percentage Interest by the Aggregate Capital Contributions made by all Members (but not including the Additional Capital Contribution currently being contributed, and the Total Conversion Amount deemed to be currently contributed, by such Contributing Member), (2) adding to the amount determined under clause (1) hereof the total of such Contributing Member’s Additional Capital Contribution and two hundred percent (200%) of the Total Conversion Amount, and (3) dividing

the sum of the amount determined under clause (2) hereof by the Aggregate Capital Contributions (including, for this purpose, the Additional Capital Contribution and Total Conversion Amount through the date of such determination). The Percentage Interest of the Delinquent Member shall be the amount equal to the difference between 100% and the Contributing Member's Percentage Interest as determined under the previous sentence.

The following numerical example demonstrates the manner in which the Members intend the provisions of this Section 3.3.2 to operate: (a) Assume that Owner has made Capital Contributions of \$100 and has a Percentage Interest of 10% and Investor has made Capital Contributions of \$900 and has a Percentage Interest of 90%. Further, assume that a \$20 Capital Call is made and Owner fails to fund its \$2 share while Investor funds its \$18 share of the Capital Call and elects to make a Member Loan for Owner's \$2 share of such Capital Call which Investor then elects to convert into a Capital Contribution (for a \$2 Total Conversion Amount). As a result, Investor has made Aggregate Capital Contributions of \$920, but its Percentage Interest is $(\$900 + \$18 + (2 \times \$2)) / (\$900 + \$100 + \$20) = 90.392\%$ (rounded). Owner's Percentage Interest is the arithmetic difference between 100% and Investor's Percentage Interest (i.e. $100\% - 90.392\%$), or 9.608% (rounded). (b) Assume that after the previous determination of Percentage Interests, a second Capital Call for \$20 is made. Based on the Members Percentage Interests at such time, the Capital Call should be funded ($90.392\% \times 20 = \$18.078$) by Investor and ($9.608\% \times 20 = \1.922) by Owner. If Investor would fund its share of the Capital Call and would elect to make a Member Loan for Owner's share of such Capital Call which Investor would then convert into a Capital Contribution, then Investor would have a Percentage Interest, applying clauses 1-3 above, determined as follows: (i) $90.392\% \times 1020$ (which would be the Aggregate Capital Contributions made prior to the date of the second Capital Call) = \$921.9984, plus (ii) $(18.078 + (1.922 \times 2)) = 943.9204$ and (iii) divided by 1040 (the Aggregate Capital Contributions made after the date of the second Capital Call) = 90.762%. Owner's Percentage Interest would be $100\% - 90.762\% = 9.238\%$.

All Members will, no later than forty-five (45) days after any adjustment of Percentage Interest in accordance with this Section 3.3, amend this Agreement and all other instruments or documents required by the Act to reflect such adjustment.

3.4 Development Loans.

3.4.1 Construction Loan; Indemnification and Construction Loan Guaranty. The Company shall seek a non-recourse construction loan from one or more third-party lenders for at least seventy-seven percent (77%) of total Project costs, upon such terms and conditions as may be approved by the Members. _____ shall supply all necessary and customary guarantees as may be required by the Construction Lender. The Company shall seek a loan, to the extent available, which will not require any pre-sales of the Units. The Construction Loan is anticipated to be secured by a first priority deed of trust and security interest in the Property and/or the Members' ownership interest in the Company. If the proposed lender does not offer financing on the above-described terms, and the Company, acting by unanimous consent of the Members, is not prepared to accept the terms offered by the proposed lender, the Company shall seek financing from other third party lenders. The Company agrees to indemnify and hold Owner, Owner or Developer harmless, to the extent such party's liability exceeds Owner's liability to the Company pursuant to Section 3.5.2, from all costs, expenses and liability,

including reasonable attorneys' fees in connection with any such party's guaranty to the Construction Lender arising directly or indirectly from such guaranties, provided however, the Company shall not be obligated to indemnify or hold Owner, Owner or Developer harmless to the extent such party's liability arose as a result of such party's willful misconduct, gross negligence, knowing violation of a criminal law. Any indemnity payment to be made by the Company under the terms of this Section 3.4.1 shall be funded, to the extent required, as Additional Capital Contributions to be made by the Members following the receipt of a Capital Call Notice delivered by the Manager pursuant to the terms of Section 3.2 hereof and subject to the terms of Section 3.3 hereof. The Members hereby acknowledge and agree that Investor and its Affiliates shall have no obligation to provide any guaranties or other credit support to the Construction Lender in connection with the Construction Loan.

3.4.2 222 Finance, an Affiliate of Investor, shall be given the opportunity to offer construction financing at competitive market rate and terms, provided, however, that the Company shall be under no obligation to accept any such financing unless the unanimous consent of the Members with respect thereto is obtained.

3.5 Manager Obligations/Owner Guaranty of Completion.

3.5.1 The Members intend that the Company borrow a commercially reasonable amount to finance development and construction of the Project, as set forth in the Development Project Budget and in Section 3.4 hereof. A preliminary budget, including project schedule and sales revenue (the "**Preliminary Budget**") has been agreed upon by the Members and is attached hereto as Exhibit F. The Preliminary Budget shall serve as the Development Summary, Development Project Budget and Development Project Schedule until revised in accordance with the provisions of Sections 6.1.3 and 6.1.4 hereof. The Development Project Budget (as such may be revised in accordance with the foregoing) accurately reflects Owner's good faith estimate of the amount necessary to complete the development, construction and sale of the Project. _____, as Manager, accepts the responsibility under this Agreement to implement the Development Plan and agrees to act with prudence and diligence in performing its duties and responsibilities hereunder and in good faith and in the best interest of the Company; provided, however, that neither _____ nor Owner shall be liable or accountable in damages or otherwise to the Company or any Member of the Company for any act or omission hereunder except for the obligations of Owner as expressly set forth in Section 3.5.2 below, or elsewhere in this Agreement. The Members acknowledge and agree that _____ is an Affiliate of Owner and that Owner is guarantying certain obligations which are the responsibility of _____, as Manager under this Agreement.

3.5.2 Owner hereby guarantees to and for the benefit of Company (but not any assignee of Company) to cause Building Shell Completion in accordance with the Development Project Budget and the Development Project Schedule, subject to any and all delays caused by Force Majeure, and in so doing, to the extent any costs are incurred on matters which represent identified budget categories 1-18 in the Development Project Budget, to the extent such costs exceed the amount allocated for such budget category in the Development Project Budget, then Owner, and not the Company, shall and hereby covenants and agrees to pay such cost overruns, including, without limitation, any payments or deposits required to "balance" the Construction

Loan (payments of the cost overruns and balancing of the Construction Loan being collectively referred to herein as, “**Overrun and Balancing Payments**”), except:

(a) to the extent of any realized savings in any budget category of the Development Project Budget or to the extent of reserves or insurance proceeds or contingencies which the Construction Lender permits to be reallocated (all of which savings or reserves or insurance proceeds or contingencies may be used by Owner to offset its obligations to make Overrun and Balancing Payments, but limited in the case of budget category savings or reserves to the extent the Construction Lender permits such amounts to be reallocated), subject to the following limitations:

(i) any such reallocations will only be made from “hard cost” budget categories to “hard costs” budget categories or from “soft costs” budget categories to “soft costs” budget categories; and

(ii) such reallocations may not be made from those budget categories which are the responsibility of the Company under Section 3.5.2(b) to budget categories which are not the responsibility of Company under Section 3.5.2(b);

or

(b) for the following budget categories or line items, which shall be the responsibility of the Company:

(i) Company imposed construction costs (including architectural and engineering costs), which shall mean any increase in construction costs over the amounts budgeted therefor in the Development Project Budget, which increase is due solely as a result of elective changes in the approved Development Plan which are approved by the Members, as opposed to legally required changes (which shall be the responsibility of Owner, unless the change arises out the requirements of a law which is passed or enacted or becomes effective after the date hereof, in which event such cost shall be paid by the Company);

[BUDGET CATEGORY NAMES AND LINE NUMBERS TO BE REVISED TO CONFORM WITH BUDGET.]

(ii) overruns in the “Interest Reserve” budget category (Budget Category #17) unless such overruns arise out of a failure to achieve the Building Shell Completion Date (as such may be extended by an event of Force Majeure);

(iii) overruns in the “Legal Costs” budget category (Budget Category #9);

(iv) overruns in the “Selling Costs” budget category (Budget Category #18);

(v) overruns in the “Marketing” budget category (Budget Category #11) which accrue one hundred eighty days (180) or more after the Building Shell Completion Date;

(vi) overruns in the “Insurance and Taxes – Real Estate/Property Taxes – During Construction” line item (Line Item #15.6), unless such overruns arise out of a failure to achieve the Building Shell Completion Date (as such date shall be extended by an event of Force Majeure);

(vii) overruns in the “Administration - Accounting” line item (Line Item #10.2);

(viii) overruns in any budget categories specified for or relating to construction, remediation or other costs and expenses related to or incurred as a result of the environmental condition of the Property (excluding such conditions of which Owner had actual knowledge as of the date of this Agreement and which were not disclosed to Investor, which shall be the responsibility of Owner under this Section 3.5.2);

(ix) overruns resulting from a Force Majeure;

(x) operating expenses of the Project following Building Shell Completion (including insurance, taxes and condominium fees);

(xi) overruns in the “Site Utilities” line item (Line Item #7.5);

(xii) overruns in the “Pepco Inspection/Punch List” line item (Line Item #8.2); and

(xiii) overruns in the Architectural and Engineering line item which were the result of unforeseen field conditions.

The Overrun and Balancing Payments due from Owner hereunder shall be made as and when required to fund such overruns, but in no event later than the date the Construction Lender requires such payment to be made, expressly including when the Construction Lender requires such payment to be made to achieve a balancing under the Construction Loan Documents. After the Building Shell Completion Date, if there are any realized savings in any budget categories of the Development Project Budget which the Construction Lender permits to be distributed to the Company from the Construction Loan, the Company will reimburse Owner upon demand for Overrun and Balancing Payments made by Owner to the extent of such realized savings, provided however, the Company will not be obligated to reimburse Owner to the extent Owner’s Overrun and Balancing Payments were due as a result of Owner’s or _____’s willful misconduct, gross negligence or knowing violation of a criminal law. Any Overrun and Balancing Payments funded by Owner that are not due as a result of Owner’s or _____’s willful misconduct, gross negligence or knowing violation of a criminal law and that are not reimbursed to Owner pursuant to the preceding sentence, shall be reimbursed to Owner solely and exclusively in accordance with the provisions of Section 4.2 hereof. The Overrun and Balancing Payments will earn interest at the Construction Loan Interest Rate from the date such payments are made. The Members hereby acknowledge and agree that any Overrun and Balancing Payments funded by Owner under the terms of this Section 3.5.2 shall not be treated as a Capital Contribution to the Company for any purposes of this Agreement, specifically including, but not limited to, the

calculation of Owner's IRR Amounts and determining the Aggregate Capital Contributions of the Members.

3.5.3 Monetary Responsibility. Except for the Overrun and Balancing Payments for which Owner is responsible under Section 3.5.2 above, the Company shall be responsible for payment of all other costs of the Project, and neither Owner nor Manager shall have such responsibilities or duties, except for Owner's responsibilities as a Member as set forth herein, and _____'s responsibilities as Developer as set forth in the Development Services Agreement.

3.5.4 In the event that Owner does not make all or any portion of the Overrun and Balancing Payments that it is required to fund under Section 3.5.2 hereof when due, Owner shall be deemed a Delinquent Member and Investor shall have the right, but not the obligation, to advance all or any part of such amounts on behalf of Owner, and such amounts shall be treated as a Member Loan in accordance with Section 3.3.1 above. If Owner does not repay in full (with interest) any Member Loan made by Investor pursuant to the terms of this Section 3.5.4 on or prior to the date that is ninety (90) days after the date that such Member Loan was made by Investor, then Investor shall have the right, but not the obligation, at any time after such date, to convert such Member Loan into a Capital Contribution to the Company, in which case (i) the provisions of Section 3.3.2 hereof shall apply, (ii) the entire principal balance of, and all accrued but unpaid interest on, the Member Loan shall be deemed to be the "Total Conversion Amount" and (iii) Investor's and Owner's Percentage Interest shall be adjusted as determined under Section 3.3.2 hereof. Nothing contained in this Section is intended, nor shall it be construed or deemed, to confer any benefit whatsoever upon any third party, the provisions hereof being intended solely for the benefit of the Members hereof.

3.6 No Interest on Capital Contributions. No interest shall be paid on the Capital Contributions of Members.

3.7 Form of Return of Capital. If a Member is entitled to receive a return of a Capital Contribution, the Company shall distribute cash to the Member in return of same.

3.8 Capital Accounts. A separate Capital Account shall be maintained for each Member.

3.9 Limited Liability of Members. No Member shall have any personal liability for any obligation of the Company except as otherwise agreed by such Member in connection with its execution of any Loan Documents.

3.10 Representations and Warranties of Owner and _____. To induce Investor to agree to form the Company, to enter into this Agreement and to consummate the transactions contemplated hereunder, each of Owner and _____ hereby represents and warrants to Investor and agrees with Investor as follows:

3.10.1 Owner has received and reviewed the environmental reports described on Exhibit 3.10.1 and neither Owner nor its Affiliates have any current, actual knowledge of any information which would render such report untrue, incomplete or inaccurate. Except for the foregoing report, as of the date hereof, to the current, actual knowledge of Owner and its Affiliates, there has not been any environmental report issued with respect to the Property.

3.10.2 Owner has received and reviewed the documents relating to the financing of the Property described on Exhibit 3.10.2. To Owner's and/or its Affiliate's knowledge, (i) such financing documents are valid and binding on the respective parties thereto and are in full force and effect, (ii) upon consummation of the transactions contemplated by this Agreement, such financing documents shall continue in full force and effect without penalty or other adverse consequence and (iii) neither Owner nor any of its Affiliates have received a written notice of default with respect to any of such financing documents.

3.10.3 Owner, its representatives and/or Affiliates, have delivered or made available to Investor all documents and information in their possession relating to the Property. To the best knowledge of Owner and its Affiliates the documents and information delivered or made available to Investor do not contain any untrue statements and neither Owner nor any of its Affiliates have withheld any material fact or document or agreement from Investor the absence of which would make any of the documents or information delivered or made available to Investor misleading.

3.11 Survival of Representations and Warranties; Indemnifications. Owner hereby covenants and agrees that the representations and warranties set forth herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder and Owner further agrees that the representations and warranties shall not be limited or vitiated by the fact that Investor may have performed independent due diligence. In addition to the other remedies which may be available, Owner hereby agrees to indemnify, hold harmless and protect Investor and the Company from and against any and all damages, costs, expenses, claims, liabilities and obligations (including professional fees and other reasonable costs) attributable to or resulting from a breach of any representation or warranty made by Owner and/or its Affiliates herein.

Article IV **Payments and Distributions**

4.1 Payments and Distributions out of Net Cash Flow. Within fifteen (15) days following the close of each calendar quarter, the Company shall distribute to the Members Net Cash Flow, to the extent available, in the following order of priority:

- (i) first, ratably among each of the Members, in proportion to each Member's Unpaid Preferred Return, until each Member's Unpaid Preferred Return has been reduced to zero (0); and
- (ii) second, to the Members in proportion to their Percentage Interests.

4.2 Distribution of Net Sales Proceeds.

4.2.1 Provided the Company has paid the Acquisition Loan, in full, and all amounts required to be paid under the Construction Loan and any other third-party loans in accordance with their terms, the Net Sales Proceeds shall be distributed on or about the fifth (5th) day following receipt thereof, in the following order of priority:

(i) first, among the Members in proportion to their Percentage Interests, until at least one Member has received its Initial Hurdle IRR Amount;

(ii) second, if the Members have not simultaneously received the Initial Hurdle IRR Amount pursuant to Section 4.2.1(i) hereof, to the Member that has not yet received its Initial Hurdle IRR Amount, until such Member has received its Initial Hurdle IRR Amount ;

(iii) third, 88.8889% among the Members in accordance with their Percentage Interests, and 11.1111% to Owner, until Investor has received the 20% IRR Amount;

(iv) fourth, to Owner in the amount of any Overrun and Balancing Payments having then been made by Owner (other than Overrun and Balancing Payments that were due as a result of Owner's or _____'s willful misconduct, gross negligence or knowing violation of a criminal law), plus interest accrued thereon equal to the Construction Loan Interest Rate, to the extent that such amounts have not been previously reimbursed to Owner pursuant to the terms of Section 3.5.2, this Section 4.2.1(iv) or otherwise;

(v) fifth, if, following the distributions made to the Members under clause (iii) of this Section 4.2.1, Owner had not received its 20% IRR Amount, to Owner, until Owner has received its 20% IRR Amount (excluding for the purposes of determining the 20% IRR Amount for the purposes of this clause (v), the distributions made to Owner under clause (iv) of this Section 4.2.1); and

(vi) thereafter, 55.5556% among the Members in accordance with their Percentage Interests, and 44.4444% to Owner.

4.2.2 To the extent that any Member Loans are outstanding at the time that a distribution is made pursuant to the terms of Sections 4.1 and 4.2.1 hereof, then all amounts otherwise distributable to a Delinquent Member under Sections 4.1 and 4.2.1 hereof shall be distributed directly to the Contributing Member and deemed to constitute distributions to the Delinquent Member followed by deemed payments of accrued interest and principal on all outstanding Member Loans by the Delinquent Member to the Contributing Member until such time as all Member Loans have been repaid in full. All amounts paid to a Contributing Member in satisfaction of a Member Loan pursuant to the terms of this paragraph shall be deemed to have been distributed to the Delinquent Member for all purposes of this Agreement (including, but not limited to, the determination of the Delinquent Member's IRR and Capital Account balance).

4.3 Liquidation and Dissolution.

4.3.1 If the Company is liquidated pursuant to Section 8.2, the assets of the Company, including any undistributed Net Cash Flow otherwise distributable pursuant to Section 4.1, shall be distributed to the Members in accordance with Section 4.2. Immediately before such distribution, the Company shall adjust each Member's Capital Account to reflect allocations of profit or loss pursuant to Section 5.7.

4.3.2 No Member shall be obligated to restore a Negative Capital Account.

4.4 General. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Members.

4.5 Distributions in Kind. Any property distributed in kind to one or more Members shall be valued and treated as though the property were sold at its gross fair market value, net of any liabilities to which such property may be subject, and the cash proceeds were distributed.

4.6 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any foreign, state or local tax law with respect to any payment, distribution or allocation to the Members shall be treated as amounts distributed to the Members pursuant to this Article IV for all purposes under this Agreement. The Manager is authorized to withhold from distributions, or with respect to allocations, to the Members, and to pay over to any Federal, foreign, state or local government, any amounts required to be so withheld pursuant to the Code or any provisions of any other Federal, foreign, state or local law and shall allocate such amounts to the Members with respect to which such amount was withheld.

4.7 Minimum Distributions. Notwithstanding any provision in this Agreement, if any Member is allocated Income which exceeds, on a cumulative basis, the amount of Losses previously allocated to such Member for tax purposes (the “**Excess Income Allocation**”), then such Member shall be entitled to receive a “**Minimum Distribution**”. The Minimum Distribution is the amount, if any, by which (i) the Excess Income Allocation multiplied by the combined maximum individual Federal and state income tax rates applicable to an individual resident in the State of _____ (reduced to reflect the maximum individual Federal tax benefit from the deduction of state income taxes), exceeds (ii) the amount of cash previously distributed to such Member under this Article IV. The Minimum Distribution shall be payable before any other distributions under Sections 4.1 and 4.2.1. Any Minimum Distribution received by a Member shall be credited against and reduce the amount of distributions that such Member shall be entitled to receive in the future under Sections 4.1 and 4.2.1.

Article V Profit and Loss

5.1 Allocation of Profits and Losses.

5.1.1 Allocation of Profits (other than Profits attributable to a Capital Event). For any taxable year, after giving effect to any special allocations pursuant to Section 5.2 hereof, Profits (other than Profits attributable to a Capital Event) shall be allocated to the Members as follows:

(i) first, to the extent of Losses previously allocated pursuant to Sections 5.1.3(ii) and 5.1.3(iii) hereof and not previously offset by allocations of Profit under this Section 5.1.1(i) or Section 5.1.2(i), between the Members in proportion to and in the reverse order of priority of Losses previously allocated to them pursuant to Sections 5.1.3(ii) and 5.1.3(iii) hereof;

(ii) second, between the Members, in proportion to the Accrued Preferred Return of the Members, until the cumulative Profit allocated to each

Member pursuant to this Section 5.1.1(ii) equals the Accrued Preferred Return that has accrued with respect to such Member as of such date; and

(iii) third, between the Members in proportion to their Percentage Interests.

5.1.2 Allocation of Profits Attributable to a Capital Event. For any taxable year, after giving effect to the allocations pursuant to Section 5.2 hereof, Profits attributable to a Capital Event shall be allocated to the Members as follows:

(i) first, to the extent of Losses previously allocated pursuant to Sections 5.1.3(ii) and 5.1.3(iii) hereof and not previously offset by allocations of Profit under this Section 5.1.2(i) or Section 5.1.1(i), between the Members in proportion to and in the reverse order of priority of Losses previously allocated to them pursuant to Sections 5.1.3(ii) and 5.1.3(iii) hereof;

(ii) second, between the Members in proportion to their Percentage Interests, until such time as each Member's Capital Account balance is equal to such Member's Initial Hurdle IRR Amount;

(iii) third, 88.8889% among the Members in accordance with their Percentage Interests, and 11.1111% to Owner, until such time as each Member's Capital Account balance is equal to such Member's 20% IRR Amount; and

(iv) thereafter, thereafter, 55.5556% among the Members in accordance with their Percentage Interests, and 44.4444% to Owner.

5.1.3 Allocation of Losses. After giving effect to the special allocations pursuant to Section 5.2 hereof, Losses shall be allocated to the Members as follows;

(i) first, to the extent of Profit previously allocated pursuant to Sections 5.1.1(ii), 5.1.1(iii), 5.1.2(ii), 5.1.2(iii), and 5.1.2(iv) hereof and not previously offset by allocations of Losses pursuant to this Section 5.1.3(i), between the Members in proportion to and in the reverse order of priority of Profit previously allocated to them pursuant to Sections 5.1.1(ii), 5.1.1(iii), 5.1.2(ii), 5.1.2(iii), and 5.1.2(iv) hereof;

(ii) second, among the Members in proportion to the relative balances in the Members' Capital Accounts; and

(iii) third, between the Members in proportion to their Percentage Interests.

5.2 Special Allocations.

5.2.1 Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement, if there is a net decrease in Company minimum gain (as defined in Regulations Section 1.704-2(d)(2)), items of income and gain shall be allocated to all Members in accordance

with Regulations Section 1.704-2(f), and such allocations are intended to comply with the minimum gain chargeback requirements of Regulations Section 1.704-2 and shall be interpreted consistently therewith.

5.2.2 Section 704(c) Allocation. Solely for Federal, state, and local income tax purposes and not for book or Capital Account purposes, depreciation, amortization, gain, or loss with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for federal income tax purposes shall be allocated in accordance with the principles and requirements of Code Section 704(c) and the Regulations promulgated thereunder, and in accordance with the requirements of the relevant provisions of the Regulations issued under Code Section 704(b). For Capital Account purposes, depreciation, amortization, gain, or loss with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for tax purposes shall be determined in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv)(g).

5.2.3 Risk of Loss Allocation. Any item of Member Nonrecourse Deduction (as defined in Regulation Section 1.704-2(i)(2)) with respect to a Member Nonrecourse Debt (as defined in Regulation Section 1.704-2(b)(4)) shall be allocated to the Member or Members who bear the economic risk of loss for such Member Nonrecourse Debt in accordance with Regulations Section 1.704-2(i)(1).

5.2.4 Allocation of Excess Nonrecourse Liabilities. For the purpose of determining each Member's share of Company nonrecourse liabilities pursuant to Regulations Section 1.752-3(a)(3), and solely for such purpose, each Member's interest in Company profits is hereby specified to be such Member's Percentage Interest.

5.2.5 Unexpected Allocations and Distributions. No allocation may be made to a Member to the extent such allocation causes or increases a deficit balance in such Member's Adjusted Capital Account. Notwithstanding any other provision of this Agreement except Subsections 5.2.1 and 5.2.2 hereof, in the event that a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which results in such Member having a negative Adjusted Capital Account balance (as determined above), then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, such negative balance in such Member's Adjusted Capital Account as quickly as possible. This provision is intended to satisfy the "qualified income offset" items of the Code.

5.3 Capital Accounts of Transferred Membership Interest. Upon the transfer of all or any part of a Membership Interest as permitted by this Agreement, the Capital Account (or portion thereof) of the transferor that is attributable to the transferred interest (or portion thereof) shall carry over to the transferee, as prescribed by Regulations Section 1.704-1(b)(2)(iv)(1).

5.4 Transfers During Taxable Year. All income, gain, loss and deductions allocable pursuant to Section 5.1 hereof for a fiscal year with respect to any Membership Interest which may have been transferred during such year shall be allocable between the transferor and transferee based upon the number of days that each was recognized by the Company as the owner of such Membership Interest, without regard to the results of Company operations during

the particular days of such fiscal year and without regard to which cash distributions were made to the transferor or transferee; provided, however, that all income, gain, loss and deductions so allocated as the result of a Capital Transaction shall be allocated to the recognized owner of the Membership Interest for the day on which the Capital Transaction giving rise to such gain occurred.

5.5 Time of Allocation. The allocations set forth above shall be made as of the end of each fiscal year.

5.6 Right to Use Alternative Method of Calculations. Notwithstanding anything else in this Article V (other than Section 5.7), the Company shall have the right to use a different method of allocating Company income and loss if it is advised by the Company accountant or tax counsel that the method of allocation provided herein violates the Code or Regulations.

5.7 Adjustment of Capital Accounts. After all allocations for a taxable year are made, Capital Accounts shall be adjusted by the Company to the extent necessary to comply with applicable laws, regulations and administrative pronouncements. The tax allocation provisions of this Agreement are intended to produce final Capital Account balances that are at levels (“**Target Final Balances**”) which permit liquidating distributions that are made in accordance with Section 4.3.1 hereof to be equal to the distributions that would occur if such liquidating distributions were made in accordance with the balances in the Members’ Capital Accounts. To the extent that the tax allocation provisions of this Agreement would not produce the Target Final Balances, the Members agree to take such actions as are necessary to amend such tax allocation provisions to produce such Target Final Balances. Notwithstanding the other provisions of this Agreement, allocations of income, gain, loss and deduction (including items of gross income, gain, loss and deduction) shall be made prospectively as necessary to produce such Target Final Balances (and, to the extent such prospective allocations would not effect such result, the prior tax returns of the Company shall be amended to reallocate items of gross income, gain, loss and deductions to produce such Target Final Balances).

5.8 Change in Economic Arrangement. Notwithstanding any other provision of this Agreement, if the Percentage Interest of any Member is adjusted at any time pursuant to the terms of this Agreement, the Member whose Percentage Interest is increased pursuant to such adjustment shall have the right to amend this Agreement to take into account the revised economic arrangement of the Members, but only to the extent required to satisfy the tax allocation rules of Section 704 of the Code and the Regulations thereunder based on the opinion of legal counsel selected by such Member.

5.9 General.

The Members are hereby authorized, upon the advice of the Company’s tax counsel, to amend this Article V to the extent required to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to a Member without the Member’s prior written consent.

Article VI
Management: Rights, Powers, and Duties

6.1 Management.

6.1.1 General Authority. Except as otherwise expressly provided herein, the management and control of the Company shall be vested in the Members, who shall jointly have authority to manage the Company, and shall have all of the rights, powers and authority conferred under applicable law to carry out any and all objects of the Company and to perform all acts and enter into and perform all contracts and undertakings which are necessary, advisable or incidental thereto. No Member shall have authority to bind the Company through its action or inaction in connection with any matter except in conformity with this Agreement.

6.1.2 Manager; Specific Authority of Manager. Subject to any limitations expressly set forth in this Agreement, Manager shall manage the development and construction of the Project and shall perform or cause to be performed, at the Company's expense and in its name, in a commercially reasonable manner, consistent with the interests of the Company, and with usual customs and practices found in the development, management and operation of properties similar to the Project in the area in which the Project is located, the negotiation and coordination of all contracts and all subcontracts and the coordination of all management, administrative and operational functions relating to the Project and the other business of the Company. Manager shall have the power and authority to make decisions with respect to the day-to-day business and affairs of the Company and to take such action for and on behalf of the Company as it deems necessary or appropriate to enable the Company to carry out its purposes as set forth herein, subject to the provisions of Section 6.1.4, the Development Project Budget and the Development Project Schedule, as applicable, and the Development Plan. The Manager covenants and agrees to perform the following duties in the management, operation, and control of the Company:

(i) negotiate, execute and deliver on behalf of and in the name of the Company any and all documents deemed necessary or desirable by Manager to consummate and close the Construction Loan upon such terms and conditions as approved by the Members in accordance with Section 3.4.1;

(ii) execute and deliver on behalf of the Company the Development Agreement in the form agreed to by the Members prior to the commencement of the Development Phase.

(iii) to the extent obtainable, procure and maintain, at the Company's cost and expense, from companies approved by the Members and pursuant to policies approved by the Members, insurance policies, as required by the Loan Documents. Any liability insurance procured shall name as insureds or additional insureds, respectively, the Company, each of the Members and the Acquisition Lender and Construction Lender, as their respective interests may appear, together with such other party or parties as may be designated by the Company, as its or their interests may appear. In addition, to the extent not required by the Loan Documents, the Manager shall procure and maintain, at the Company's cost and expense, from companies approved by the Members and pursuant to policies approved by the Members, commercial general liability insurance on

an occurrence form for bodily injury, property damage and personal injury with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate (per location) within each policy year and an umbrella/excess liability (following form) in the minimum amount of \$25,000,000. Any liability insurance procured shall name as insureds or additional insureds, respectively, the Company, each of the Members and any lender, as their respective interests may appear, together with such other party or parties as may be designated by the Company, as its or their interests may appear. All such insurance shall be issued by a financially responsible company or companies licensed to do business in the District of Columbia, having an A.M. Best's rating of at least A:X and authorized to issue such policy or policies, and shall contain an endorsement providing that any such insurance shall not be subject to cancellation, termination or change except after 30 days' prior written notice by registered mail to the Company by the insurance company, with a copy thereof to all named parties in interest. Notwithstanding anything to the contrary contained herein, all insurance shall be maintained in full compliance with the documents evidencing and documenting any loan to the Company. The original policy or policies, or duly executed certificates for the same, together with satisfactory evidence of payment of the premium thereof, shall be delivered by the Manager to Members simultaneously with the execution hereof, and upon renewals of such policies, not less than 30 days' prior to the expiration of the term of any such coverage. Finally, in connection with the abatement or removal of any hazardous substances or any action of environmental remediation taken by or on behalf of the Company, Manager shall receive the prior approval of Investor as to the sufficiency of insurance coverage of any party relating to such action and, at Investor's direction, shall procure additional insurance coverage (or cause such additional coverage to be procured) prior to taking such action (or allowing such action to be taken);

(iv) protect and preserve the titles and interests of the Company with respect to the Project and other assets now or hereafter owned by the Company;

(v) unless otherwise agreed to by the Members, pay from the funds of the Company in the normal course of business, before delinquency and prior to the addition thereto of interest or penalties, all taxes, assessments, rents and other impositions applicable to the Project and other assets now or hereafter owned by the Company, all insurance premiums, debts and other obligations of the Company, including, without limitation, amounts due under the Acquisition Loan, the Construction Loan and the costs of construction, operation and maintenance of the Project;

(vi) monitor, supervise and coordinate the planning, pre-development, development and construction of the Project and submission of the Project to a condominium regime, subject in all respects to the provisions of Article X hereof. These responsibilities shall include the following specific duties, subject to the Development Project Budget, the Development Project Schedule and the Development Plan:

- Independent Contractors. Negotiate, enter into and supervise the performance of contracts with architects, engineers, planners, designers, subcontractors, vendors and other suppliers and services utilized in the demolition, development and

construction of the Project; all such contracts shall be in the name of the Manager on behalf of the Company;

- Employees. Employ, supervise the performance of and compensate all full or part time on-site employees required in the demolition, development and construction of the Project. Such personnel shall be the employees of Manager or an Affiliate of Manager's, or of independent contractors and not of the Company;

- Loan Disbursements. Prepare and submit to the Construction Lender all draw requests required under the Construction Loan, disburse all funds to subcontractors, vendors and others as specified in the draw requests, and prepare and submit to Construction Lender all draw requests required under the Construction Loan and requests for application of contingency amounts to Development Project Budget categories as approved by the Company;

- Compliance with Laws. Make application for and obtain all necessary governmental approvals and permits and perform such acts as shall be necessary to effect compliance by the Company with all laws, rules, ordinances, statutes, and regulations of any governmental authority applicable to the demolition, development and construction and sale of the Project and submission of the Project to a condominium regime, including, but not limited to, obtaining utility bonds or similar performance bonds (and any indemnities associated therewith, which shall be provided by Manager at its sole cost and expense) in favor of local municipalities;

- Supplies. Arrange for the purchase of all necessary supplies and materials required for the demolition, development, construction and management of the Project, such purchases which shall be made by, and in the name of, the Manager;

- Utilities. Coordinate the preparation of all applications for, or otherwise arrange for, and pay all charges imposed necessary to obtain commitments for, water, sewer, electric, gas, telephone and other utility services necessary for the construction and operation of the Project. All such applications shall be executed by the Company;

(vii) solicit, bid and negotiate the GMP Contract on behalf of the Company with a general contractor approved by the Members and within the constraints of the Development Project Budget and the Development Project Schedule, subject in all respects to the provisions of Section 6.1.3 hereof;

(viii) negotiate, enter into in the name of the Company and close purchase agreements with respect to individual Units and Parking Units on, or substantially in the form of, the standard form purchase agreement on terms and conditions consistent with and not less than the Unit Price Schedule, attached to this Agreement as Exhibit I. Manager shall cause Developer to construct and deliver individual Units, and Parking Units, as applicable, in accordance with the specifications in each unit purchase agreement and the plans and specifications of the Project;

(ix) keep all books of account and other records required by the Company, including vouchers, statements, receipted bills and original invoices and all

other records, covering all collections, disbursements and other data in connection with the Project;

(x) when permitted or required by this Agreement pursuant to Sections 4.1 and 4.2 and/or otherwise approved by the Members, make distributions periodically to the Members in accordance with the provisions of this Agreement;

(xi) during the term of this Agreement, comply promptly with all present and future laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments, courts, departments, commissions, boards and officers;

(xii) attempt in good faith to maintain, manage and operate the Project in an efficient manner and in accordance with the Development Project Budget, Development Project Schedule and the Development Plan, provide the Company and the Members with the technical support needed to accomplish the goals of the Company and keep the Members informed of the status of the Development Project Budget, and performance within it; and

(xiii) to the extent within Manager's control, obtain zoning approvals, building permits, and all other approvals and consents necessary to achieve Pre-Development Phase Completion, subject in all respects to the provisions of Section 6.1.3 hereof.

6.1.3 Preparation of Development Plan; Implementation of Development Plan by the Manager.

(a) Attached hereto as Exhibit F is the Preliminary Budget. The Preliminary Budget shall serve as the Development Summary, Development Project Budget and Development Project Schedule until such date as the Company has secured an acceptable GMP Contract pursuant to the provisions of this Section 6.1.3 hereof. The Preliminary Budget shall be updated by the Manager from time to time during the Pre-Development Phase to reflect (i) the terms and conditions of the approved Construction Loan and (ii) the terms and conditions of the approved GMP Contract, provided, however that any such revision to the Preliminary Budget shall require the prior written consent of Investor.

(b) Upon eighty percent (80%) completion of construction drawings, Manager will cause the Company to solicit guaranteed minimum price ("GMP") bids from at least two reputable general contractors that have been approved in writing by Investor. The Members acknowledge and agree that _____ and _____ are both pre-approved as general contractors. If no acceptable bid that falls within the approved Preliminary Budget is submitted within _____ days of the request for bids, the Manager will seek to negotiate, "value engineer", and/or re-bid the Project to the same and/or additional approved general contractors in order to achieve an acceptable GMP Contract that falls within the Preliminary Budget. Alternatively, the Company may accept a GMP Contract that exceeds the Preliminary Budget, but only with the prior written consent of the Members, which consent may be granted or withheld by any

Member in its sole discretion. Owner hereby acknowledges and agrees that Investor may require the consent and approval of certain of its direct and indirect parent companies prior to its granting of its consent to enter into a GMP Contract that exceeds the Preliminary Budget.

(c) The parties hereto hereby acknowledge and agree that the current Development Plan calls for the construction of a nine-story, 153,782 square foot luxury residential condominium building, of which 145,480 square feet is intended to constitute saleable residential space and 8,302 square feet of which is intended to constitute saleable ground floor retail space. The Project is currently intended to consist of approximately 98 residential units with an average size of approximately 1,484 saleable square feet and approximately 157 parking spaces on four levels below grade. Should the market study undertaken by the Company recommend changing the unit size and count, then the Development Plan may, with the mutual consent of the Members, be revised accordingly.

(d) Under no circumstances shall the Company commence construction of the Project unless and until each of the following have occurred, to the satisfaction of each of the Members:

(i) An acceptable resolution, approved by each of the Members, each in its sole and absolute discretion, of all matters set forth in or otherwise relating to the Exxon Agreements;

(ii) Receipt of an acceptable, executed GMP Contract, pursuant to the provisions of Section 6.1.3(b) hereof, which is approved by both Members and consistent with the construction loan commitment;

(iii) Receipt of an acceptable binding construction loan commitment for no less than seventy-seven percent (77%) of total Project costs pursuant to the provisions of Section 3.4.1 hereof, which is approved by both Members and consistent with the Preliminary Budget; and

(iv) Receipt of all building permits from the District of Columbia necessary to commence construction of the Project in accordance with the Development Plan.

(e) During the Pre-Development Phase, the Manager will cause the Company to acquire the Property pursuant to the Purchase Agreement, retain architects, engineers, and other professionals to prepare plans for the development of the Property, seek permits and approvals from appropriate government agencies, obtain construction bids, solicit proposals for a construction loan, and finalize the Development Plan for approval by the Members, all in accordance with the provisions hereof.

(f) During the Development Phase, the Company will operate on the basis of the Development Plan. The Manager shall, subject to the limitations contained herein and the availability of capital, loan proceeds, operating revenues and other Net Cash Flow, oversee the day-to-day administration, operation and implementation of the Development Plan. The Manager shall promptly advise and inform the Members of any

transaction, notice, event or proposal directly relating to the management and operation of the Project which does or could materially affect, either adversely or favorably, the Project or the Company or cause any material change in the Development Plan, Development Project Schedule or the Development Project Budget, including, but not limited to, any material delay in the time schedule for the Project or a cost overrun. No material change in the Development Plan, Development Project Schedule or the Development Project Budget may be made without the prior written approval of all of the Members, which will not be unreasonably withheld, except for changes in the Development Project Schedule due to delays which are within Manager's reasonable control, in which event approval will be in each Member's sole discretion. Notwithstanding the immediately preceding sentence, no approval of the Members is required for: (i) a change in the Development Project Schedule which results from a Force Majeure; or (ii) a re-allocation of the Development Project Budget in accordance with the Construction Loan Documents and this Agreement (including without limitation, re-allocations contemplated in Section 3.5.2(a) hereof).

6.1.4 Unanimous Approval. Except as provided in Sections 6.1.2, 6.1.3, 6.1.5, 6.6 and Articles IX and X, all decisions on the part of the Company shall be made by the unanimous vote of the Members. Such actions requiring the approval of all of the Members of the Company include the following:

- (i) sell, exchange or dispose of all or a portion of the Property or the Project (or any interest therein) (or enter into any contract for any such sale, exchange or disposition);
- (ii) lease all or any portion of the Property or the Project prior to a Notice of Conversion (as defined below);
- (iii) vote or take any other action in connection with any homeowners' association in which the Company is a member by virtue of ownership of all or a portion of the Property which would have a material monetary impact on the Project;
- (iv) specify the budget for the Pre-Development Phase and the Development Phase;
- (v) intentionally omitted;
- (vi) make a distribution of Net Cash Flow or Net Sales Proceeds other than in strict conformity with Sections 4.1 and 4.2 hereof;
- (vii) consent to the distribution of any property other than cash from the Company;
- (viii) except as specifically allowed herein, obtain from any third party any secured financing or any refinancing which increases, consolidates, extends or otherwise materially modifies any of the terms of the indebtedness of the Company, or obtain any unsecured financing;

(ix) approve the selection of the Construction Lender and the terms of the Construction Loan;

(x) amend, modify or terminate the Construction Loan Documents, once approved, except for non-material changes in the Development Plan in the normal course of construction, or refinance the Construction Loan;

(xi) amend or modify the Development Project Budget or Development Project Schedule, except for re-allocation of the budget pursuant to the Construction Loan Documents and this Agreement;

(xii) make or allow to be made any capital expenditures not specifically authorized in the Development Project Budget, except in the event of an Emergency;

(xiii) cause the Company to consent to any guaranty by the Company of any obligation;

(xiv) amend this Agreement;

(xv) except as specifically allowed herein, enter into, amend, modify or terminate any agreements relating to the Property with any Member or Affiliate of any Member;

(xvi) except as specifically allowed herein, in the Development Project Budget, or the Loan Documents, pay any fee or any compensation to any Member or any Affiliate of any Member;

(xvii) commence any litigation or arbitration proceeding;

(xviii) admit any member to the Company;

(xix) elect any officer of the Company pursuant to Section 6.5;

(xx) consent to the withdrawal of any Member from the Company except as provided under the terms of this Agreement;

(xxi) consent to the Transfer of the interest of any Member, other than Transfers specifically permitted under this Agreement;

(xxii) file for bankruptcy, appoint a receiver or trustee or make a transfer for the benefit of creditors, or initiate any dissolution, liquidation or reorganization of the Company; or

(xxiii) select the accountant for the Company;

(xxiv) approve the Development Plan or make any change thereto;

(xxv) approve the selection of the architect, the design of the Project, any structural changes to the Project, capital improvements to the Project, changes to the facade of the Project, or any changes with respect to access to the Project;

(xxvi) approve the selection of the general contractor and the terms of the GMP Contract;

(xxvii) during the Development Phase, authorize or consent to any zoning, rezoning variance, modification of development rights or other change in the ordinances which govern the Property and the Project and the use thereof;

(xxviii) authorize the grant of any easement over all or any part of the Property or the Project, other than reasonable utility easements required to provide or maintain utility service at the Project;

(xxix) settle any claim for insurance proceeds, or any claim for payment or awards or damages arising out of the exercise of eminent domain by any public or governmental authority;

(xxx) make, execute or deliver on behalf of the Company any assignment for the benefit of creditors or any guarantee, indemnity bond or surety bond, or any equivalent thereof;

(xxxi) except as required to obtain bonds in favor of the municipality for development of the Project, obligate the Company as a surety, guarantor or accommodation party to any obligation whatsoever (either of the Company or otherwise);

(xxxii) lend funds belonging to the Company to either Member or any third party, or extend to any Person credit on behalf of the Company; and

(xxxiii) approve the condominium regime for the Project.

Notwithstanding anything herein to the contrary, the Members shall consent to an action recommended by the Manager in order to comply with the terms of the Loan Documents. Any Member which does not respond to the Manager's or other Member's request for approval for any decision requiring a unanimous vote pursuant to this Section 6.1.4 within fifteen (15) business days after receipt of written notice from such requesting party will be deemed to have denied approval of such request in accordance with this section.

6.1.5 Approval by Investor. Notwithstanding other provisions of this Agreement, Investor, in its sole discretion, may cause the Company to:

(i) take all actions on behalf of the Company to enforce the terms of the Development Agreement, including the amendment, modification or termination of such Development Agreement in the event that (a) there is an Involuntary Withdrawal with respect to _____, Inc. or any event occurs with respect to the Developer which would have resulted in an Involuntary

Withdrawal of such Developer if such Developer were a Member of the Company; (b) Developer fails to observe any monetary covenant or obligation in the Development Agreement for a period of ten (10) days after notice by Investor to Developer of such failure; (c) Developer fails to observe any covenant or obligation other than a monetary covenant or obligation in the Development Agreement for a period of thirty (30) days after notice by Investor to Developer of such failure or such longer period as may be required to cure such failure if Developer commences the cure within such thirty (30) days and thereafter diligently proceeds to cure such failure; (d) _____ is removed as the Manager in accordance with the terms of this Agreement; or (e) Owner and/or its Affiliates no longer hold a Membership Interest in the Company. Upon any termination of the Development Agreement under this Section 6.1.5(i), Investor may enter into a Development Agreement on substantially the same terms and conditions as contained in the Development Agreement in effect upon such termination with such other Person as Investor in its sole discretion may select;

(ii) remove the Manager for Cause;

(iii) remove or replace the Manager in the event Pre-Development Phase Completion has not occurred prior to the Pre-Development Phase Completion Date;

(iv) cause the sale of the Property in the event Pre-Development Phase Completion has not occurred prior to the Pre-Development Phase Completion Date, provided such sale is on arms-length fair market terms;

(v) remove or replace the Manager in the event that Owner loses its voting rights under the terms of Section 6.6 hereof;

(vi) take all actions on behalf of the Company to enforce the terms of Section 3.5; and

(vii) take all actions on behalf of the Company to enforce any guaranty of Owner or its Affiliates in connection with this Agreement, the Construction Loan or the Development Services Agreement.

Investor's right set forth in Section 6.1.5(iv) shall be exercised as follows:

- (a) Investor shall provide written Notice to Owner of its intent to exercise its right to sell the Property.
- (b) Owner shall have a period of thirty (30) days, from the date Investor issues Notice (the "**Commitment Period**"), to submit to Investor an Owner Offer to Purchase for the purchase of Investor's Membership Interest. An "**Owner Offer to Purchase**" shall be a written offer to purchase Investor's Membership interest which (i) provides that the purchase price of Investor's Membership Interest shall be an amount equal to Investor's 12% IRR Amount (the "**Purchase Price**"), (ii) is accompanied by a

deposit of not less than five percent (5%) of the Purchase Price, (iii) contains a binding, unconditional agreement to consummate the purchase of Investor's Membership Interest (the "**Closing**") within thirty (30) days of delivery of the Owner Offer to Purchase to Investor (the "**Closing Period**"); and (iv) acknowledges that the purchase of Investor's Membership Interest is an "as-is" purchase, with no surviving obligations by Investor except for representations that Investor has the requisite authority to convey its Membership Interest free and clear of all encumbrances.

- (c) In the event that an Owner Offer to Purchase is not delivered to Investor prior to expiration of the Commitment Period or the Closing has not occurred prior to the expiration of the Closing Period, then Investor shall have the unilateral right without the consent of Owner to cause the Company to sell the Property on arms-length fair market terms and distribute the proceeds of any such sale pursuant to the provisions of Section 4.2 hereof; provided, however, that, at any time prior to Investor's acceptance of a sales contract for the Property, Owner may deliver an Owner Offer to Purchase to Investor and Investor shall be obligated to accept the Owner Offer to Purchase and sell its Membership Interest in accordance with its terms.

6.2 Related Parties.

6.2.1 Affiliate Contracts and Fees.

(a) Development Services.

(i) The Company shall initially engage _____ as Developer, pursuant to the Development Services Agreement, attached hereto as Exhibit J. The Development Services Agreement sets forth the terms and conditions of Developer's service to the Company and provides for payment of a Development Fee to _____ in the aggregate amount of _____ Dollars (\$_____), to be paid, subject to the terms of the following sentence, monthly on a proportionate basis, based on thirty-six (36) equal monthly installments beginning on the date hereof. Notwithstanding the terms of the preceding sentence, the Members hereby acknowledge and agree that the aggregate Development Fee due and payable to the Developer during the Pre-Development Phase shall not exceed \$_____ (the "**Initial Development Fee**"). In the event that the Initial Development Fee has been paid by the Company in full prior to the Pre-Development Phase Completion, then (y) the Company shall have no further obligation to pay the remaining portion of the Development Fee unless and until the date that the Pre-Development Phase Completion occurs and (z) the remaining portion of the Development Fee shall be paid monthly on a proportionate basis, based on twenty-four (24) equal monthly installments beginning on the date of the occurrence of the Pre-Development Phase Completion. During the Pre-Development Phase, the Development Fee shall be paid in a manner consistent

with the Preliminary Budget; provided, however, that any accrued and unpaid portion of the Development Fee shall (subject to the terms of the preceding sentence) be paid upon the closing of the Construction Loan, to the extent permitted by the Construction Lender, from the initial proceeds of the Construction Loan.

(ii) The Company shall pay Investor and/or its Affiliates in the aggregate the amount of _____ Dollars (\$_____), to be paid monthly on a proportionate basis, based on thirty-six (36) equal monthly installments beginning on the date hereof. The Investor fee is intended to be net to Investor without deduction, reduction, cost or hold-back for services performed by Investor in connection with the development of the Project. Notwithstanding the foregoing, Investor shall have no obligations to perform any services under the Development Services Agreement, unless expressly contained therein. During the Pre-Development Phase, the Investor fee shall be paid in a manner consistent with the Preliminary Budget; provided, however, that any accrued and unpaid portion of the Investor fee shall be paid upon the closing of the Construction Loan, to the extent permitted by the Construction Lender, from the initial proceeds of the Construction Loan.

(b) In the event that Owner elects to cause an Affiliate of Owner to provide marketing services with respect to the Project, the Members hereby covenant and agree to negotiate in good faith a Marketing Agreement between such Affiliate of Owner and the Company with third-party arm's length terms and conditions to be approved by each of the Members, each in its sole and absolute discretion. The Members hereby covenant and agree that in the event that the Company enters into a Marketing Agreement with an Affiliate of Owner, such Marketing Agreement shall, unless otherwise determined by the Members in their sole and absolute discretion, (i) provide that such Affiliate shall receive a sales commission not to exceed 1.80% of the gross sales price of each Unit sold, (ii) provide that the Company shall reimburse such Affiliate for the support personnel of a customary sales office (not to exceed two full-time employees and a third part-time employee for peak staffing periods), (iii) require such Affiliate to hire at least one salesperson whose sole function will be to work exclusively on the Project and (iv) permit Owner or its Affiliate to draw a maximum amount of \$10,000 per month (\$120,000 per year) from the Company to fund the salary or other expenses relating to the employment of one salesperson whose sole function will be to work exclusively on the Project, provided, however, that any such advances taken by Owner and/or its Affiliate shall be reimbursed to the Company out of the first available commissions payable to such Affiliate of Owner under the terms of the Marketing Agreement.

6.2.2 Personal Service. No Member shall be required to perform services for the Company solely by virtue of being a Member. Subject to the terms of Section 6.2.1(b) hereof, unless approved by the Members, no Member shall be entitled to compensation for services performed for the Company, except pursuant to the Development Agreement. However, upon substantiation of the amount and purpose thereof, the Members shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

6.3 Duties of Parties.

6.3.1 The Members shall devote such time to the business and affairs of the Company as is necessary to carry out the Members' duties set forth in this Agreement.

6.3.2 Nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates (except as may be subject to prior agreement among each Member's Affiliates).

6.4 Liability and Indemnification.

6.4.1 Except as specifically set forth elsewhere in this Agreement or the Loan Documents to the contrary, or as otherwise required by law, no Member nor any of its members, partners, officers, directors, advisors or agents (each of whom is an "Indemnitee") shall be liable, responsible or accountable in damages or otherwise to any of the other Members or the Company for any act performed by Indemnitee within the scope of the authority conferred upon him or it by this Agreement, or for any failure or refusal by Indemnitee to perform any act, unless such act or failure or refusal to act constitutes willful misconduct, gross negligence, knowing violation of a criminal law, breach of this Agreement or breach of fiduciary duty in the performance of Indemnitee's obligations to the Company or the Members. The doing of any act or the failure to do any act by any Indemnitee, the effect of which may cause or result in loss or damage to the Company or the other Members, shall not subject Indemnitee to any liability under this Agreement if done or omitted pursuant to a favorable opinion of law issued by counsel of recognized standing engaged by the Company and experienced in the matters at issue.

6.4.2 Except as set forth in Section 6.4.3, to the full extent permitted by the Law, the Company shall indemnify, defend and hold harmless each Indemnitee from and against any direct claim, action, suit or proceeding brought or threatened against such Indemnitee, and from and against any direct loss or damage incurred by such Indemnitee by reason of any act performed, or failure or refusal to act, by him or it for and on behalf of the Company within the scope of his or its authority under this Agreement or any agreement assumed by the Company or for any act which is later ratified by the Company, provided that such Indemnitee acted, or failed or refused to act, in good faith and reasonably believed that such act or inaction was in the best interests of the Company, and, in the case of a criminal proceeding, provided that such Indemnitee had no reasonable cause to believe its conduct was unlawful, and provided further that in each case the act or failure or refusal to act did not constitute willful misconduct, gross negligence, knowing violation of a criminal law. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he or it reasonably believed to be in or not opposed to the best interests of the

Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or its conduct was unlawful. Expenses (including reasonable out-of-pocket attorneys' fees and direct expenses) incurred by an Indemnitee in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he or it is not entitled to be indemnified by the Company as authorized in this section.

6.4.3 Notwithstanding the indemnity stated in Section 6.4.2 hereof, (i) the Manager shall not be classified as an Indemnitee, nor shall the Manager receive the benefit of the provisions of Sections 6.4.1 and 6.4.2 hereof, in the event Manager fails to procure or maintain the insurance required under Section 6.1.2(iii) hereof, and (ii) Owner shall not be classified as an Indemnitee, nor shall Owner receive the benefit of the provisions of Sections 6.4.1 and 6.4.2 hereof, for any claims against the Company or the Members for actions arising out of events which transpired prior to Investor's admission to the Company. It is the intent of the Members that the result of this Section 6.4.3 shall be to make the Manager solely responsible for costs pertaining to (i), above, and Owner solely responsible for costs pertaining to (ii), above.

6.5 Officers. The Members may, but need not, appoint persons as officers of the Company with such powers, duties and responsibilities as the Members may designate.

6.6 Termination of Voting Rights. In the event (a) of the removal of the Manager pursuant to Section 6.1.5 hereof; (b) that Owner's Membership Interest or Economic Interest in the Company is ever reduced to or below a five percent (5%) Percentage Interest; or (c) of the failure by Owner to make any Overrun and Balancing Payments required under Section 3.5.2 hereof (subject to the cure rights provided in Section 6.7 hereof), Investor shall have the right to declare, through written notice to Owner, that Owner shall no longer have the right to vote on any matter before the Company and the consent of Owner shall not be necessary for any action described in Section 6.1.4 or otherwise with respect to the business and affairs of the Company. Notwithstanding such termination of voting rights, Owner shall have the rights of a holder of the Economic Interest in the Company. In the event Investor takes control of the Company or its assets as provided herein, Investor will have a fiduciary duty to operate the Company for the interests of all of the Members of the Company. In the event that Owner loses its voting rights under this Section 6.6 due to a failure to make any Overrun and Balancing Payments required under Section 3.5.2 hereof, such voting rights shall be reinstated if Owner makes such Overrun and Balancing Payments (or, if Investor made a Member Loan to fund such Overrun and Balancing Payments under Section 3.5.4 hereof, Owner repays in full the outstanding principal and accrued interest on such Member Loan) within the period ending on the date that is ninety (90) days after such Overrun and Balancing Payments were originally due and payable by Owner.

6.7 Notice and Cure Rights. Except to the extent otherwise expressly set forth in this Agreement, neither Owner nor Manager shall be deemed in default under this Agreement, and Investor shall have no right to exercise any rights or remedies hereunder for a default by either Owner or Manager, unless Owner or Manager has failed to observe any monetary covenant or obligation set forth in this Agreement for a period of ten (10) days after written notice by Investor to Owner of such failure by Owner or Manager, or Owner or Manager has failed to

observe any covenant or obligation set forth in this Agreement other than a monetary covenant or obligation for a period of thirty (30) days after written notice by Investor to Owner of such failure by Owner or Manager, or such longer period as may be reasonably required to cure such failure if Owner or Manager, as the case may be, commences to cure within such thirty (30) days and thereafter diligently proceeds to cure such failure.

Article VII

Transfer of Interests, Withdrawal of Members

7.1 Transfers.

7.1.1 No Member may voluntarily Transfer all, or any portion of, or any interest or rights in, the Membership Interest owned by the Member without the prior written consent of the Members as provided in Section 6.1.4, provided, however, that a Member may grant a security interest in or collaterally transfer its Membership Interest pursuant to the Loan Documents or a third party loan approved by the Members. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The voluntary Transfer of any Membership Interests in violation of the prohibition contained in this Section shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Interests are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Interests. Notwithstanding the foregoing, or any other provision to the contrary in this Agreement, but subject to Sections 7.1.2 and 7.1.3 below, Owner shall have the right to transfer to any Person Owner's share of Profit and Losses and the right to receive distributions from the Company ("**Economic Interest**") without Investor's prior consent, provided that Owner shall use any proceeds received in consideration of such transfer to fund Additional Capital Contributions or Overrun and Balancing Payments from Owner in accordance with this Agreement and provided further that such transfer comply with all of the provisions of Section 7.1. Owner shall retain full control with respect to its Membership Interest in the Company, including the right to act on behalf of the Company or vote on matters coming before the Company without the consent of a holder of Owner's Economic Interest. Such assignee of Owner's Economic Interest shall not be admitted to the Company as a Member and shall not have or exercise any rights or powers of a Member.

7.1.2 Notwithstanding anything to the contrary in this Agreement, Owner may not transfer more than 4.9% of its Economic Interest. For purposes of this Section 7.1, the Percentage Interest allocated to Owner as of the date of this Agreement as set forth in Exhibit A equals the Economic Interest of Owner as of such date. For example, if Owner owns a 10% Percentage Interest as of the date of this Agreement, it also owns a 10% Economic Interest as of such date. Thereafter, if Owner transfers a 3% Economic Interest as provided in Section 7.1.1, after such transfer Owner will own a 10% Percentage Interest, but retain only a 7% Economic Interest.

7.1.3 Owner acknowledges and agrees that, in the event Investor exercises its rights to repurchase Owner's Membership Interest as set forth in Section 9.3 below, such repurchase

rights include all of the Economic Interest of Owner's Membership Interests, whether or not Owner has transferred such Economic Interest pursuant to Section 7.1.1 above. Owner agrees that a condition precedent to the effectiveness of any transfer by Owner of its Economic Interest will be the receipt by the Company of an acknowledgement for the benefit of the Company by the transferee of such Economic Interests agreeing to transfer such Economic Interests or any portion thereof, without additional consideration, to Investor upon notice from Investor that it has elected to exercise its right to repurchase Owner's Membership Interest pursuant to Section 9.3 of this Agreement. Investor agrees that Owner may assign its rights to receive Owner's Buy-Out Amount from the exercise of Investor's rights in Section 9.3 to a third party without the consent of Investor.

7.2 Voluntary Withdrawal. No Member shall have the right or power to make a Voluntary Withdrawal from the Company. Any withdrawal in violation of this Agreement shall entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

7.3 Involuntary Withdrawal. Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall not become a Member, but such successor shall be entitled to the Withdrawn Member's Economic Interest. If the Company is continued as provided in Section 8.1.3, the successor of the Withdrawn Member shall have all the rights of a holder of an Economic Interest, but shall not be entitled to receive in liquidation of the Economic Interest, the fair market value of the Withdrawn Member's Economic Interest as of the date the Member involuntarily withdrew from the Company.

7.4 New Members. No additional members not a party to this Agreement shall be admitted to the Company except as provided in this Article VII.

7.5 Restrictions on the Transfer of Interests in Manager. Notwithstanding anything to the contrary set forth in this Agreement, the Manager may not transfer any membership, economic or voting interest in Manager to any party other than a Permitted Transferee without the written consent of Investor. In the event of the death or disability of Owner, the Members agree that Investor will become the Manager of the Company.

Article VIII

Dissolution; Liquidation; Termination of the Company

8.1 Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

8.1.1 the Transfer of all portions of the Property;

8.1.2 the written agreement of all of the Members; or

8.1.3 the occurrence of an Involuntary Withdrawal, unless the remaining Member within ninety (90) days after the occurrence of the Involuntary Withdrawal, elect to continue the business of the Company pursuant to the terms of this Agreement and the Company admits an at least one additional Member.

8.2 Procedure for Winding Up and Distribution. If the Company is dissolved, the remaining Members shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including holders of Economic Interests who are creditors, in satisfaction of the liabilities of the Company, and then to the Members in accordance with Section 4.2 of this Agreement.

8.3 Filing of Articles of Dissolution. If the Company is dissolved, the Members shall promptly file Articles of Dissolution with the Secretary of State of the State of Delaware. If there are no remaining Members, the Articles shall be filed by the last Person to be a Member; if there are no remaining Members, or a Person who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

Article IX **Buy-Sell/Right to Purchase**

9.1 Buy-Sell Option.

9.1.1 At any time after twelve (12) months following the Building Shell Completion Date, Owner or Investor may elect to make a purchase offer pursuant to the provisions of this Section 9.1.1(a), provided that the exercise of such right does not cause a breach of or a default under the Acquisition Loan, the Construction Loan or any other financing, unless waived by the applicable lender (but only to the extent such purchase does not provide for the repayment of the Acquisition Loan, the Construction Loan or other such financing) and such Member is not then in default under this Agreement. The party desiring to exercise such right (the “**Offeror**”) shall do so by giving written notice of such election (the “**Notice of Election**”) to the other parties hereto (the “**Offeree**”). The Notice of Election shall state the aggregate dollar amount (the “**Valuation Amount**”) which the Offeror would be willing to pay for the assets of the Company as of the Closing Date (as hereinafter defined), free and clear of all liabilities (including, without limitation, debts owed to the Members by the Company), and shall set forth a calculation of the amounts which each Member would receive, respectively, if the assets of the Company were to be sold at such price and on such date (including, without limitation, amounts due to the Members, in such event, pursuant to Section 4.2) (the net amount each Member would so receive, a “**Buy-Out Amount**”). The Notice of Election shall also describe all offers or inquiries regarding the Project, whether written or oral, which were received by the Offeror during the immediately preceding twelve (12) month period. After receipt of such notice, the Offeree shall either (A) sell all of their Membership Interest to the Offeror for an amount equal to the amount which the Offeree would have been entitled to receive if the Company had sold all of its assets for the Valuation Amount on the Closing Date and the Company had immediately distributed the proceeds of such sale in accordance with the provisions of Section 4.2, or (B) purchase all of the Membership Interest of the Offeror for an amount equal to the amount which the Offeror would have been entitled to receive if the Company had sold all of its assets for the Valuation Amount on the Closing Date and the Company had immediately distributed the proceeds of such sale in accordance with the provisions of Section 4.2. The Offeree shall have forty-five (45) days from the giving of the Offeror’ notice in which to exercise either of the foregoing options by giving written notice of such election to the Offeror. If the Offeree does not exercise the option to

purchase set forth in clause (B) above by giving written notice of such election within such time period, then the Offeree shall be deemed to have elected to sell all of their Membership Interest to the Offeror. Within ten (10) days after the Offeree have made their election, the Members thereafter obligated to acquire the Membership Interest of the selling Members shall deposit with such selling Members a non-refundable earnest money deposit equal to ten percent (10%) of the amount which the selling Members are entitled to receive for their Membership Interest pursuant to this Section 9.1.1(a), which amount shall be applied to the purchase price at closing. If the acquiring Members should thereafter fail to consummate the transaction for any reason other than a default by the selling Members (or a failure of a condition to closing), such amount shall be retained by the selling Members, free of all claims of the acquiring Members, as liquidated damages, which shall be the sole remedy available to the selling Members because of a default by the acquiring Members.

9.1.2 Notwithstanding anything to the contrary herein contained in this Article IX, the terms and conditions of this Article IX shall be subject to the terms and conditions of the Construction Loan Documents.

9.2 Closing.

9.2.1 The closing of an acquisition pursuant to this Article IX (the “**Closing**”) shall be held at the principal place of business of the Company on a mutually acceptable date (the “**Closing Date**”) not later than thirty (30) days after the date of the Offeree’s election (whether deemed or otherwise) under Section 9.1. At the Closing, the following shall occur:

(a) The selling Members (“**Seller**”) shall transfer and assign to the acquiring Members, free and clear of all liens, claim and encumbrances, with covenants of general warranty, the Membership Interest being disposed of, and shall execute and deliver to the acquiring Members (“**Buyer**”) all documents which may be required to give effect to the acquisition of such Membership Interest;

(b) The Buyer shall pay to the Seller the consideration therefor in cash;

(c) If Seller (or any Affiliate thereof) is personally liable (whether by virtue of being a guarantor, posting additional collateral, or otherwise) for any liabilities or obligations of the Company, the obligation of Seller to deliver the documents of transfer referred to in clause (a) of this Section 9.2 shall be subject to the condition precedent that the Seller (and any such Affiliate with personal liability) shall have received a written release with respect to all such Company liabilities and obligations becoming due and payable after the date of such transfer, other than those then due and payable, in form and substance reasonably satisfactory to the Seller (and any such Affiliate), from the party or parties to whom such Company liabilities and obligations are owed, and as to those Company liabilities and obligations then due and payable, that such liabilities and obligations are satisfied in full; and

(d) Any and all required consents to such transaction from the Company’s lenders shall have been obtained and delivered by the Offeror to the Offeree.

9.2.2 Seller's Failure. In the event that Seller fails to make conveyance of its Membership Interest pursuant to its obligations herein, then Buyer shall have the option:

(a) to demand and receive specific performance of the Seller's obligations to convey its Membership Interest as provided for herein; or

(b) to terminate the obligations of the parties to proceed with the sale of the Membership Interest, whereupon the position of the parties shall revert to the status quo ante as if no notice to purchase from either party to the other had been given under the provisions of Section 9.1.1.

If the Buyer elects the option described in subparagraph 9.2.2(b) above, any deposit furnished by the Buyer shall be promptly returned to the Buyer.

9.2.3 Buyer's Failure. In the event that the Buyer defaults in the closing of a sale of a Membership Interest as herein provided, then the Seller shall have the option:

(a) to elect to purchase the Buyer's Membership Interest on the terms and conditions otherwise set forth herein, by notice to the Buyer of the Seller's intention so to do, given within fifteen (15) days after such default in which event the Seller shall become the Buyer and the Buyer shall become the Seller, and all the applicable terms, conditions and provisions of Sections 9.1 and 9.2 with respect to such sales shall govern, except that the closing thereof shall take place thirty (30) days after such date of notice from the Seller (now the Buyer) to the Buyer (now the Seller) and except that the purchase price shall be ten percent (10%) less than the price which the Seller (now the Buyer) would have had to pay had such Buyer (now the Seller) originally elected to sell its Membership Interest; or

(b) to terminate the Seller's obligation to convey its Membership Interest to the Buyer by notice to the Buyer, wherein the Seller shall have the right to retain any deposits given by the Buyer as security for the Buyer's obligations, and to retain the proceeds thereof as the Seller's own property, as liquidated damages on account of the Buyer's default (all Members hereby acknowledging and agreeing that it is extremely difficult and impracticable to ascertain the amount of damages which would be incurred by the Seller as a result of the Buyer's default and that the amounts of such deposits shall be determined, when such transactions are proposed, as reasonable estimates of the damages the Seller would incur in such event), but otherwise the position of the parties shall revert to the status quo ante as if no notice from either party to the other had been given under the provisions of Section 9.1.1.

Where the Seller (now the Buyer) elects the options described in subparagraph 9.2.3(a) above, any deposits theretofore paid by the Buyer (now the Seller) shall be returned to the Buyer after performance by the Buyer of the Buyer's obligations thereunder.

9.3 Investor Right to Purchase. In the event that either Owner's Membership Interest or Economic Interest in the Company is ever reduced to or below a five percent (5%) Percentage Interest, Investor shall have the right to purchase Owner's Membership Interest in accordance with the terms of this Section 9.3 provided that the exercise of such right does not cause a breach

of or a default under the Acquisition Loan, the Construction Loan or any other financing, unless waived by the applicable lender. In the event Investor elects to exercise its rights hereunder, Investor shall send to Owner a Notice of Election in compliance with the requirements of Section 9.1.1, stating the Valuation Amount and Owner's Buy-Out Amount.

Owner shall have the right, within fifteen (15) Business Days after receipt of the Notice of Election, to either approve in writing the Valuation Amount or elect in writing to obtain an appraisal to determine the Valuation Amount as provided below. If Owner fails to respond within such fifteen (15) Business Day period, then Owner shall be deemed to have approved the Valuation Amount set forth in Investor's Notice of Election. If Owner elects to obtain an appraisal, then Owner shall nominate and appoint, at its sole cost and expense, an appraiser to determine the fair market value of the Project (the "**Owner Appraisal**") in accordance with generally accepted professional appraisal standards within ten (10) days of the election to appraise. If the Owner Appraisal is not greater than one hundred two percent (102%) of the Valuation Amount set forth in Investor's Notice of Election, the parties agree that the average between the Valuation Amount and the Owner Appraisal will be used to calculate Owner's Buy-Out Amount.

If the Owner Appraisal is greater than one hundred two percent (102%) of the Valuation Amount, Investor shall have the right, within fifteen (15) Business Days after receipt of the Owner Appraisal, to either approve in writing the Owner Appraisal or elect in writing to obtain its own appraisal to determine the fair market value of the Project. If Investor fails to respond within such fifteen (15) Business Day period, then Investor shall be deemed to have approved the Owner Appraisal. If Investor elects to obtain an appraisal, then Investor shall nominate and appoint, at its sole cost and expense, an appraiser to determine the fair market value of the Project ("**Investor Appraisal**") in accordance with generally accepted professional appraisal standards within ten (10) days of the election to appraise. If the Investor Appraisal is not less than ninety-eight percent (98%) of the Owner Appraisal, the parties agree that the average between the Owner Appraisal and the Investor Appraisal will be used to calculate Owner's Buy-Out Amount. If the Investor Appraisal is less than ninety-eight percent (98%) of the Owner Appraisal, the two appraisers shall, within five (5) days after the Investor appraiser has made its determination, appoint in writing a third appraiser and give written notice of such appointment to Investor and Owner. In the event the two appraisers fail to appoint or agree upon such third appraiser within such five-day period, a third appraiser shall be selected by Investor and Owner within a further period of five (5) days; provided however that if Investor and Owner shall be unable to agree upon a third appraiser within such five-day period, then Investor or Owner may apply to the American Arbitration Association in Washington, D.C. for the appointment of such appraiser. The third appraiser's determination of value shall be controlling unless such determination (i) is higher than the higher determination of value of the original two appraisers, or (ii) is lower than the lower determination of value of the original two appraisers, in which event the previous high determination, if clause (i) is applicable, or the previous low determination, if clause (ii) is applicable, will be controlling and binding upon Investor and Owner. The value as so determined shall be treated as the Valuation Amount and the transaction shall continue as provided in this Section, and Investor's Notice of Election shall be deemed to be received on the date the Members are notified of the final appraised value of the Project.

Investor and Owner shall each pay the fees and expenses of the appraiser it appoints, and the expenses of the third appraiser shall be shared equally by the Investor and Owner. In the event any appraiser appointed as aforesaid shall thereafter die or become unable or unwilling to act, such appraiser's successor shall be appointed in the same manner as provided in this Section 9.3. Any appraiser appointed hereunder shall be designated M.A.I. by the Appraisal Institute and shall have no less than ten (10) years' experience in the appraisal of industrial projects in the _____ area. Upon a final determination of the Valuation Amount and Buy-Out Amount, Investor and Owner shall proceed to Closing in accordance with Section 9.2 above.

9.4 Investor Right to Sell. At any time on or prior to _____, Investor shall have the right, to be exercised in its sole and absolute discretion, to provide notice to Owner that Investor has determined to exercise its rights under this Section 9.3 to require Owner to purchase Investor's entire Membership Interest in the Company (the "**Investor Sale Notice**"). Effective immediately upon the receipt of the Investor Sale Notice by Owner, Investor shall have no further obligation to make any Capital Contributions to the Company under Sections 3.1 and 3.2 hereof. In the event that Investor exercises its rights under this Section 9.3, Owner shall be required to purchase Investor's entire Membership Interest in the Company for an amount, to be paid in cash, equal to the 12% IRR Amount determined as of the date of the closing of the purchase of Investor's Membership Interest in the Company under this Section 9.3. The closing on the purchase of Investor's Membership Interest in the Company under this Section 9.3 shall occur on or prior to _____; provided, however, that in the event that the date for the payment of the final installment under the Purchase Agreement is extended on commercially reasonable terms, the closing date on the purchase of Investor's Membership Interest in the Company under this Section 9.3 may be postponed, day for day, by the number of days that the date of payment of such final installment under the Purchase Agreement is postponed. Notwithstanding the provisions of the preceding sentence to the contrary, the closing date for the purchase of Investor's Membership Interest in the Company under this Section 9.3 shall not be extended beyond _____. The obligation of Owner to purchase Investor's Membership Interest in the Company under this Section 9.3 shall be guaranteed by Owner and shall be secured by Owner's Membership Interest in the Company.

9.5 Enforcement. It is expressly agreed that the remedy at law for breach of the obligations of the Members set forth in this Article IX is inadequate in view of (a) the complexities and uncertainties in measuring the actual damage to be sustained by reason of the failure of a Member to comply fully with such obligations, and (b) the uniqueness of the Company business and the Member's relationship. Accordingly, each of such obligations shall be enforceable by specific performance.

Article X

Conversion Option

10.1 Investor's Project Conversion Option. In the event the Company fails to enter into binding Bona Fide Contracts for forty percent (40%) of the Projected Sales Revenue (the "**Conversion Option Event**"), as set forth in Exhibit L, attached hereto and made a part hereof, by the Building Shell Completion Date, Investor shall have the right, provided the Conversion Option Event shall be continuing at the time Investor exercises the Project Conversion Option as hereinafter defined, to replace _____ as Manager and take certain actions as set forth

below without the consent of the Members (the “**Project Conversion Option**”). Owner will in good faith give Notice to Investor (the “**Conversion Option Notification**”) of the occurrence of the Conversion Option Event within five (5) business days of such occurrence. Investor’s election to exercise its Project Conversion Option shall be made by giving Notice to Manager (the “**Notice of Conversion**”) within fifteen (15) business days of receipt of the Conversion Option Notification. If Owner fails to give Investor the Conversion Option Notification as provided herein, Investor may give Owner its Notice of Conversion at any time after Investor in good faith believes that a Conversion Option Event has occurred, but in no event more than fifteen (15) business days after actual receipt of a Conversion Option Notification.

10.2 Project Conversion Rights. Effective immediately upon Investor’s issuance of Notice of Conversion, Investor may, in its sole discretion, take any or all of the following actions (each of which, individually, and all of which, collectively, shall be known as Investor’s “**Project Conversion Rights**” if exercised in the context of this Article X):

(a) within the first six (6) months immediately after the Notice of Conversion, remove the Manager and cause the Company to appoint a successor Manager, provided however, if forty percent (40%) of the Projected Sales Revenue is achieved after the Notice of Conversion, but prior to the removal of the Manager, this Section 10.2(a) will no longer have force or effect; or

(b) (i) determine how any unsold Units in the Project will be sold and (ii) expand the purpose of the Company to include the leasing of Units in the Project, and take any and all action necessary to convert the Project into a residential rental property; provided, however, that notwithstanding the exercise by Investor of its Project Conversion Rights hereunder, the Company shall be required to settle and close on any and all Bona Fide Contracts entered into by or on behalf of the Company on or prior to the date upon which Investor exercises its Project Conversion Rights.

10.3 Investor Authority to Sell the Project/Owner Right of First Offer. At any time after Investor elects to convert the Project in accordance with Section 10.2 of this Agreement, Investor may propose terms for the sale of the Project by written notice to Owner (the “**Sale Notice**”), which Sale Notice shall include the terms and conditions of the sale (the “**Sale Proposal**”). For a period of thirty (30) days after delivery of the Sale Notice, Owner shall have the option to purchase the Project at the price and on the same terms set forth in the Sale Proposal by giving notice of such election to Investor within such thirty (30) day period. If Owner does not exercise its option to purchase within the aforementioned thirty (30) day period, Investor shall have the authority to cause the Company to sell the Project, in which event Owner agrees to cooperate fully with Investor to achieve a sale of the Project pursuant to a Bona Fide Offer upon terms and conditions that are most advantageous to the Members. In the event the price stated in the Bona Fide Offer is less than the Sale Proposal, then the offer and sale procedure set forth in this Section 10.3 shall be reinstated. In the event Owner does not exercise its option to purchase within such reinstated thirty (30) day period, then Investor, in its sole discretion, may cause the Company to sell the Project in accordance with the terms of the Bona Fide Offer. If, however, such sale is not consummated, the sale procedure set forth in this Section 10.3 shall be reinstated.

Article XI
Books, Records, Accounting, and Tax Elections

11.1 Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name, unless otherwise required by the Loan Documents. The Members shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

11.2 Books and Records. The Members shall keep or cause to be kept complete and accurate books and records of the Company as required under the Law as well as supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained on a Federal income tax basis. The books, records and all supporting documentation shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

11.3 Annual Accounting Period. The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Members, subject to the requirements and limitations of the Code.

11.4 Interim Reports. Within thirty (30) days after the end of each calendar quarter, the Manager shall send to each Member an interim financial statement comparing budgeted and actual revenue and expenditures for such calendar quarter and for the fiscal year to date and a narrative report of the activities of the Company during such calendar quarter. The interim report shall show the Capital Contributions made by the Members, both for the calendar quarter and cumulatively from the inception of the Company and the amounts distributed to the Members, both for the calendar quarter and cumulatively from inception of the Company.

11.5 Annual Reports. Within forty-five (45) days after the end of each taxable year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended, such accounting which shall also include the information set forth in Section 11.4, above, as applicable to the entire taxable year. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Members shall cause to be sent to each Person who was a holder of an Economic Interest at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the income tax returns of the holder of the Economic Interest for that year.

11.6 Tax Matters Member. The Members designate Owner to be the Company's tax matters Member ("**Tax Matters Member**"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, *et seq.* The Tax Matters Member shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even

though it relates to the Company. The Tax Matters Member shall not compromise or settle any dispute with the Internal Revenue Service without the approval of the Members.

Article XII Separateness

The Company shall at all times observe the applicable legal requirements for the recognition of the Company as a legal entity separate from any Affiliates, including, without limitation, the following:

12.1 The Company shall maintain its records, books, including bank accounts, and payrolls accounts separate from those of any Affiliate or any other Person.

12.2 The Company shall hold itself out to the public (including any Affiliate's creditors) under the Company's own name and as a separate and distinct entity and not as a department, division or otherwise of any Affiliate.

12.3 All customary formalities for the Company required under Law and the laws of the District of Columbia shall be observed.

12.4 The Company shall act solely in its own name and through the Members, the officer of the Company, if any or any agent of the Company duly appointed hereunder.

12.5 Investments shall be made in the name of the Company directly by the Company or on its behalf by brokers engaged and paid by the Company or its agents.

12.6 The Company shall not guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of any Affiliate, nor shall it make any loan.

12.7 The Company is and will be solvent and shall pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets.

12.8 Assets of the Company shall be separately identified, maintained and segregated. The Company's assets shall at all times be held by or on behalf of the Company and if held on behalf of the Company by another Person, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by the Company. This restriction requires, among other things, that Company funds shall not be commingled with those of any Affiliate, and the Company shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate.

12.9 The Company shall not take any action if, as a result of such action, the Company would be required to register as an investment company under the Investment Company Act of 1940, as amended.

12.10 All data and records (including computer records) used by the Company or any Affiliate in the collection and administration of any loan shall reflect the Company's ownership interest therein.

12.11 None of the Company's funds shall be invested in securities issued by any Affiliate.

Article XIII General Provisions

13.1 Owner Guaranty. The parties hereto hereby acknowledge and agree that Owner hereby unconditionally and irrevocably guarantees to Investor any obligation of Owner to make a payment to Investor arising under Section 9.3 hereof, as, if and when such provision may become applicable.

13.2 _____ Guaranty. The parties hereto hereby acknowledge and agree that _____, an Affiliate of Investor ("Guarantor"), hereby unconditionally and irrevocably guarantees to Owner any obligation of Investor to make its share of any Additional Capital Contributions to the Company under Section 3.2 hereof, solely to the extent that such Additional Capital Contributions are required to be made in order to reimburse Owner and/or its Affiliate for payments made by Owner and/or such Affiliate under any guaranty or indemnity delivered to the Construction Lender for an obligation which is a Company responsibility as set forth in Section 3.4.1; provided, however, that the maximum aggregate amount that Guarantor shall be obligated to fund to the Company under this Section 13.2 shall not exceed _____ Dollars (\$_____).

13.3 Assurances. Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

13.4 Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "**Notice**") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested or by facsimile transmission, provided that the sender of such transmission can produce evidence of electronic confirmation that such notice was received by the Member or Member's Agent to whom it was transmitted. A Notice must be addressed to a Member at the Member's last known address on the records of the Company. A Notice to the Company must be addressed to the Company's principal office. A Notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A Notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. A Notice sent by facsimile is deemed given when receipt is confirmed.

13.5 Specific Performance. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or

permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach. The non-prevailing party in any such action shall reimburse the prevailing party upon demand for any and all reasonable attorneys' fees and expenses so incurred by the prevailing party.

13.6 Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty.

13.7 Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware.

13.8 Article and Section Titles. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

13.9 Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

13.10 Exclusive Jurisdiction and Venue. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the District of Columbia or any District of Columbia Court having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

13.11 Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

13.12 Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

13.13 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

13.14 Third Party Reliance. This Operating Agreement is entered into by and between the Members hereunder, and is intended solely for the benefit of such Members and any subsequently admitted member. This Operating Agreement is not being entered for the benefit of any third party, including any third party creditor of the Company, and shall not be relied upon to create any right in such person.

13.15 Power of Attorney. The parties hereto hereby grant to Investor an irrevocable power of attorney, which is coupled with an interest, to take any and all action (and to execute any and all documents) on behalf of the Company as shall be deemed by Investor to be necessary or advisable, in the sole discretion of Investor, to effect the exercise of its unilateral rights under Section 6.1.5 hereof.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

MEMBER:

OWNER, L.L.C.

By: _____

Name: _____

Title: _____

MEMBER:

INVESTOR, L.L.C.

By: _____

Name: _____

Title: _____

Acknowledged and agreed as pertaining to the Manager,

MANAGER:

AAA

By: _____

Name: _____

Title: _____

Exhibits

A	List of Members and Percentage Interests
B	Development Summary
C	Development Project Budget
D	Development Project Schedule
E	Project Documents
F	Preliminary Budget
G	Exxon Agreements
H	Purchase Agreement
I	Unit Price Schedule
J	Development Services Agreement
K	Preformation Expenditures
L	Projected Sales Revenue
3.10.1	Environmental Reports
3.10.2	Financing Agreements

Exhibit A

(List of Members and Percentage Interests)

Name, Address
And taxpayer
I.D. Number

Percentage
Interest

Exhibit B

(Development Summary)

Exhibit C

(Development Project Budget)

Exhibit D

(Development Project Schedule)

Exhibit E

(Project Documents)

Exhibit F
(Preliminary Budget)

Exhibit H

(Purchase Agreement)

Exhibit I

(Unit Price Schedule)

Exhibit J

(Development Services Agreement)

Exhibit K

(Preformation Expenditures)

Exhibit L

(Projected Sales Revenue)

Exhibit 3.10.1

(Environmental Reports)

Exhibit 3.10.2

(Financing Agreements)

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