

LIMITED LIABILITY COMPANY AGREEMENT

OF

XYZ, LLC,

A _____ LIMITED LIABILITY COMPANY

Date: _____

**LIMITED LIABILITY COMPANY AGREEMENT
OF
XYZ, LLC,
A _____ LIMITED LIABILITY COMPANY**

This LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is made as of the ____ day of _____ by XYZ Holdings LLC, a _____ limited liability company (the "Managing Member").

WITNESSETH:

WHEREAS, pursuant to that certain Certificate of Formation of XYZ, LLC filed with the Office of the Secretary of State of the State of _____ on _____, the Company was formed as a limited liability company under the laws of the State of _____ for the purposes of (i) acting as managing member of XYZ Associates LLC, a _____ limited liability company that owns unimproved land located in the City of _____, County of _____, State of _____ and will develop a project to be known as _____ which will consist of a _____ with approximately _____ rentable square feet, approximately _____ rentable square feet of ground floor retail space and a parking facility for approximately _____ vehicles (the "Improvements"); and (ii) directly or indirectly own, finance, hold for investment, operate, lease, mortgage or otherwise encumber, sell, exchange or dispose of the Project (as hereinafter defined);

NOW, THEREFORE, the Managing Member hereby agrees as follows:

1. DEFINED TERMS

The following words and terms, when used in this Agreement, shall have the respective meanings ascribed to them below unless the context otherwise requires:

1.1 "Act"

"Act" means the _____ Limited Liability Company Act, _____ Code, as from time to time amended.

1.2 "Agreement"

"Agreement" means this Limited Liability Company Agreement, as amended, modified or supplemented from time to time. Words such as "herein," "hereafter," "hereof," "hereto," "hereby" and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context requires otherwise.

1.3 "Capital Account"

"Capital Account" means, as to any Member, a book account maintained for each Member in accordance with Treasury Regulations section 1.704-1 (b).

1.4 **"Capital Contributions"**

"Capital Contributions" means the amount of money and the initial Gross Asset Value (as defined in the Project Company Agreement) of any property (other than money) contributed to the Company.

1.5 **"Certificate of Formation"**

"Certificate of Formation" means the certificate of formation of the Company pursuant to which the Company became a _____ limited liability company, as filed with the Office of the Secretary of State of the State of _____ on _____, as the same may be amended from time to time.

1.6 **"Code"**

"Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of succeeding law).

1.7 **"Company"**

"Company" means XYZ, LLC, the _____ limited liability company which is the subject of this Agreement.

1.8 **"Interest"**

"Interest" means the entire limited liability company interest of the Managing Member in the Company, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under law, together with the obligations of such Member to comply with all the terms and provisions set forth in this Agreement and in the Act.

1.9 **"Liquidating Event"**

"Liquidating Event" means the occurrence of any of the events described in Section 7.1.

1.10 **"Liquidation"**

"Liquidation" has the meaning set forth in Treasury Regulations section 1.704-1(b)(2)(ii)(g).

1.11 **"Managing Member"**

"Managing Member" means XYZ Holdings LLC, a _____ limited liability company.

1.12 **"Person"**

"Person" means any individual, partnership, joint venture, corporation, trust, limited liability company or other entity.

1.13 **"Project"**

"Project" means the Land and the Improvements.

1.14 **"Project Company"**

"Project Company" means XYZ Associates LLC, a _____ limited liability company.

1.15 **"Project Company Agreement"**

"Project Company Agreement" means that certain Limited Liability Company Agreement for XYZ Associates LLC dated as of _____.

1.16 **"Property"**

"Property" means all real and personal property owned by the Project Company, including, without limitation, any fee simple ownership interest or leasehold interest in real property and tangible and intangible personal property.

1.17 **"Treasury Regulations"**

"Treasury Regulations" means the income tax regulations promulgated under the Code, as such regulations may be amended from time to time, including, without limitation, temporary regulations and corresponding provisions of succeeding regulations.

2. **NAME; PURPOSE; TERM; COMPLIANCE WITH LAW; DESIGNATION OF REPRESENTATIVES; REPRESENTATIONS AND WARRANTIES OF MEMBERS**

2.1 **Name; Place of Business and Office; Registered Agent; Registered Office.**

The Company shall be conducted under the name of XYZ, LLC, a _____ limited liability company. The principal place of business of the Company, where the books and records of the Company shall be kept, shall be _____ . The Managing Member may at any time change the location of the principal office of the Company and establish additional offices. The name and address of the Company's registered agent in the State of _____ is _____ . The address of the Company's registered office in the State of _____ is _____ .

2.2 **Purpose.**

The Company's business and purpose shall consist solely of the following: to acquire a membership interest in and act as the managing member of the Project Company, which is engaged solely in the ownership, operation, maintenance and management of the Property, pursuant to and in accordance with this Agreement, the Project Company's Certificate of Formation and the Project Company Agreement.

2.3 **Restrictions on Powers and Duties.**

Notwithstanding any other provision of the Company's Certificate of Formation, this Agreement, or similar organizational documents, or any provision of law that otherwise so empowers the Company, so long as any obligations secured by a first mortgage/deed of trust lien ("First Lien") on the Property ("Security Instrument") remain outstanding and not discharged in full, the Company shall not do any of the following with respect to the Company or the Project Company, nor shall it cause the Project Company to do any of the following:

(a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing and managing and maintenance of the Property, and entering into the loan made in connection with any Security Instrument ("Loan") and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the consent of any holder of a First Lien on the Property (the "Lender");

(d) (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the State where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of the Project Company's Certificate of Formation or the Project Company Agreement or similar organizational documents, or the Company's Certificate of Formation or this Agreement or similar organizational documents, as the case may be;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

(f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity, participate in a cash management system with any other entity or person or fail to use its own separate stationery, invoices and checks;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, (iii) does not exceed in the aggregate four percent (4%) of the outstanding principal balance of the note evidencing the indebtedness secured by any Security Instrument ("Note"), and (iv) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances;

(h) fail to pay its debts and liabilities (including, without limitation, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;

(i) (i) fail to maintain its records (including, without limitation, financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of the Project Company, the affiliates of a member, general partner or principal of the Project Company, and any other person or entity, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other entity or person, or (iii) include the assets or liabilities of any other person or entity on its financial statements;

(j) enter into any contract or agreement with any member, general partner, principal or affiliate of the Project Company, any guarantor of the Loan, or any member, general partner, principal or affiliate thereof (other than a business management services agreement with an affiliate of the Project Company, provided that (i) such agreement is acceptable to Lender, (ii) the manager or equivalent thereof, under such agreement holds itself out as an agent of the Project Company, and (iii) the agreement meets the standards set forth in this subsection (j) following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the Project Company or any guarantor of the Loan, or any member, general partner, principal or affiliate thereof;

(k) fail to correct any known misunderstandings regarding the separate identity of the Project Company or any member, general partner, principal or affiliate thereof or any other person;

(l) guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another person;

(m) make any loans or advances to any third party, including any member, general partner, principal or affiliate of the Project Company, or any member, general partner, principal or affiliate thereof, and shall not acquire

obligations or securities of any member, general partner, principal or affiliate of the Project Company, or any member, general partner, or affiliate thereof;

(n) except as permitted by law, fail to file its own tax returns or, if part of a consolidated group, fail to be shown as a separate member of such group;

(o) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Project Company is responsible for the debts of any third party (including, without limitation, any member, general partner, principal or affiliate of the Project Company, or any member, general partner, principal or affiliate thereof);

(p) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(q) share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of the Project Company, (ii) any affiliate of a general partner, principal or member of the Project Company, or (iii) any other person or entity;

(r) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including, without limitation, paying for office space and services performed by any employee of an affiliate;

(s) pledge its assets for the benefit of any other person or entity, other than with respect to the Loan;

(t) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(u) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of all the members of the Company or the affirmative vote of all the members of the Project Company, as the case may be;

(v) fail to hold its assets in its own name;

(w) fail to consider the interests of its creditors in connection with all Company actions to the extent permitted by applicable law;

(x) have any of its obligations (other than the Loan) guaranteed by an affiliate;

(y) amend Sections 2.2, 2.3, 2.6, 5.4, 6.2 or 9.5 of this Agreement or approve an amendment to Section 12.28 (captioned "SPE Provisions") or Exhibit I (captioned "SPE Provisions") of the Project Company Agreement; or

(z) withdraw as a member or managing member of the Project Company.

2.4 **Term.**

The term of the Company shall be perpetual, until the Company is dissolved in accordance with the provisions of this Agreement or the Act. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Act.

2.5 **Compliance with Law.**

2.5.1 The Managing Member shall take any and all actions necessary to perfect, maintain and continue the status of the Company as a limited liability company under the Act. The Managing Member shall execute and cause to be filed amendments to the Certificate of Formation to be executed and filed as required by the Act.

2.5.2 The Managing Member shall (i) execute and cause to be filed original or amended certificates; and (ii) use its best efforts to take any and all other actions, as may be necessary, to perfect, maintain and continue the status of the Company as a foreign limited liability company authorized to do business in the State where the Project is located and in any other States or jurisdictions in which the Company may be deemed to engage in business.

2.5.3 The Managing Member shall execute and cause to be filed and published for the Company appropriate fictitious business name and like statements under the name set forth in Section 2.1 or such other name as the Company may have or use in any State or other jurisdiction from time to time.

2.5.4 Upon the dissolution and completion of winding-up of the Company, the Managing Member shall promptly execute and cause to be filed a certificate of cancellation of the Certificate of Formation in accordance with the provisions of the Act, and shall file all certificates required to be filed by the laws of any other State or jurisdiction in which the Company may be deemed to engage in business.

2.6 **Separateness: Operations Matters.**

The Company shall:

(a) maintain books and records and bank accounts separate from those of any other person;

(b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

(c) hold regular meetings, as appropriate, to conduct the business of the Company, and observe all customary organizational and operational formalities;

(d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(e) except as permitted by law, prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;

(f) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates and maintain a sufficient number of employees in light of its contemplated business operations;

(g) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements;

(h) conduct business in its own name, and use separate stationery, invoices and checks;

(i) not commingle its assets or funds with those of any other person;

(j) not assume, guarantee or pay the debts or obligations of any other person;

(k) pay its own liabilities out of its own funds;

(l) not acquire obligations or securities of its members or the Project Company";

(m) not pledge its assets for the benefit of any other entity or make any loans or advances to any entity;

(n) correct any known misunderstanding regarding its separate identity;

(o) maintain adequate capital in light of its contemplated business operations; and

(p) maintain all required qualifications to do business in the state in which the Property is located.

3. MEMBERS AND CAPITAL

3.1 Capital Contributions.

The Managing Member shall cause the Land to be contributed to the Company and shall make Capital Contributions to the Company in the amounts and at the times that it receives capital contributions from its members.

3.2 Assignment to Company.

To the extent not already assigned to the Project Company, the Managing Member shall, and it does hereby assign to the Project Company all of its right, title and interest, if any, in, to, and under the following:

3.2.1 All plans, specifications, engineering studies, working drawings, and any other work product prepared or obtained in connection with the Project;

3.2.2 All contracts with architects, contractors, and supervisory architects with respect to the development, construction, operation and maintenance of the Project;

3.2.3 All licenses, permits, consents, approvals, or other evidences of authorization to construct, own, occupy and/or operate the Project issued by or received from any applicable governmental authorities having jurisdiction over or otherwise affecting the Project;

3.2.4 All ownership interest in and all other rights, options, or interests, if any, as to the Project and/or the construction, development, operation and maintenance of the Improvements; and

3.2.5 All leases, commitments for leases, security deposits (including, without limitation, letters of credit), tenant lead lists, and any other document, account, right, or instrument pertaining to tenants or prospective tenants of the Project and the lease-up of the Project.

3.3 Liability of Managing Member. To the fullest extent permitted by the Act, the Managing Member shall not be liable for the debts, liabilities, contracts, or any other obligations of the Company, whether arising in contract, tort, or otherwise. The Managing Member shall be liable only to make Capital Contributions required hereby and shall not be required to (i) lend any funds to the Company; (ii) guaranty or provide any security for the payment of the debts or obligations of the Company; (iii) other than as expressly required hereby, to make any contributions to the capital of the Company; or (iv) to repay to the Company or any creditor of the Company all or any portion of any negative amount of its Capital Account. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs shall not be grounds for imposing personal liability on the Managing Member for liabilities of the Company.

4. **DISTRIBUTIONS TO MEMBERS AND ALLOCATES OF TAXABLE INCOME AND TAX LOSS**

4.1 **Distributions of Cash.**

All cash received by the Company shall, after payment of the Company's expenses as determined by the Managing Member, be distributed and paid to the Managing Member promptly after its receipt thereof.

4.2 **Allocation of Net Income and Net Loss.**

All taxable income and loss allocated to the Company shall be allocated to the Managing Member.

4.3 **Characterization for Income Tax Purposes.**

For so long as the Managing Member holds all of the economic interests in the Company, the Company shall be disregarded as an entity separate from the Managing Member for federal income tax purposes and, to the extent consistent with applicable law, for all applicable state and local income tax purposes.

4.4 **Restricted Distributions.**

Notwithstanding any provision to the contrary contained in this Agreement, the Company and the Managing Member, on behalf of the Company, shall not make any distribution if such distribution would violate the Act or other applicable law.

5. **RIGHTS, POWERS, AND DUTIES OF MEMBERS; ADDITIONAL COVENANTS OF MANAGING MEMBER; INDEMNIFICATION.**

5.1 **Rights, Powers, and Duties of Members.**

The business and affairs of the Company shall be managed by the Managing Member, who, in such capacity, shall have full right, authority, power, and responsibility to act in all Company matters, and shall be responsible for the overall management and conduct of the business, operations, and affairs of the Company. All decisions made for and on behalf of the Company by the Managing Member consistent with the foregoing provisions shall be binding upon the Company.

5.2 **Additional Covenants of Managing Member.**

The Managing Member shall use diligent efforts in good faith to cause the Company to carry out its obligations under the Project Company Agreement in a timely manner and in compliance with each of the terms, conditions and covenants set forth therein.

5.3 **Indemnification.**

The Company shall, to the fullest extent permitted by law, defend, indemnify and hold the Managing Member harmless from and against, all claims, losses, damages and liabilities,

including all costs, fees and attorneys' expenses in connection therewith, arising out of any acts or omissions by the Managing Member in good faith on behalf of the Company, and in a manner reasonably believed by the Managing Member to be within the scope of the authority granted to such Managing Member by this Agreement and in the best interests of the Company or the Managing Member, as the case may be; provided, however, that the satisfaction of any indemnification shall be from and limited to Company assets and the Managing Member shall not have any personal liability on account thereof, except as expressly provided in this Section 5.3.

5.4 **Subordination of Indemnification Provisions.**

Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under the Company's Certificate of Formation, this Agreement or the laws of the State of _____ shall be fully subordinate to any obligations of the Company arising under the Security Instrument or any other Loan Document, and shall only constitute a claim against the Company to the extent of, and shall be paid by the Company in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Security Instrument and the other Loan Documents.

6. **TRANSFERABILITY OF MEMBERS' INTERESTS; EFFECT OF BANKRUPTCY, DEATH OR WITHDRAWAL OF MEMBER.**

6.1 **Restrictions on Transfers of Interests.**

No sale, assignment, transfer, conveyance, pledge, encumbrance or hypothecation shall be made by the Managing Member of its Interest unless all of the members of the Managing Member consent thereto.

6.2 **Effect of Bankruptcy, Death or Withdrawal of Member.**

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such member shall have all the rights of such member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Interest shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent member. In the event that the Company has only one member, such member may not withdraw as a member of the Company without the prior written consent of the Lender, which consent may be granted, withheld or conditioned in the Lender's sole discretion, including, without limitation, the condition that a succeeding member acceptable to Lender in Lender's sole discretion exist and succeed the withdrawing member so that the operations and existence of the Company continue. The foregoing shall apply to the fullest extent permitted by applicable law.

7. **DISSOLUTION, LIQUIDATION, WINDING UP AND TERMINATION OF THE COMPANY.**

7.1 **Events Causing Dissolution.**

The Company shall dissolve and commence winding up and liquidating upon the happening of any one of the following events ("Liquidating Events"):

7.1.1 the sale or other disposition of all, or substantially all, of the Property by the Project Company or the sale or other disposition by the Company of all its assets;

7.1.2 the Consent of the Managing Member to the dissolution, winding up and liquidation of the Company;

7.1.3 at any time there are no members, unless the business of the Company is continued without dissolution in a manner permitted by this Agreement or the Act; or

7.1.4 the entry of a decree of judicial dissolution pursuant to the Act.

7.2 **Winding Up and Liquidation**

7.2.1 Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and members. The Managing Member shall not take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. Upon the occurrence of a Liquidating Event, the Managing Member shall liquidate the assets of the Company and apply and distribute the proceeds thereof in the following order:

7.2.1.1. First, to the satisfaction (whether by payment or the making of reasonable provisions for payment) of all of the Company's debts and liabilities to creditors other than the Managing Member;

7.2.1.3. Second, to the satisfaction (whether by payment or the making of reasonable provisions for payment, but only to the extent such debts and liabilities were incurred in accordance with the terms hereof) of all of the Company's debts and liabilities to the Managing Member; and

7.2.1.3. The balance, if any, to the Managing Member.

7.2.2 The Managing Member shall act as the Person winding up the Company's affairs and shall determine the time, manner and terms of any sale or sales of all or any part of the Company assets.

7.2.3 The Managing Member shall cause the cancellation of the Certificate of Formation following the liquidation and distribution of all of the Company's assets.

7.3 **Notice of Dissolution.**

If a Liquidating Event occurs or another event occurs that would result in a dissolution of the Company, the Managing Member shall, within thirty (30) days thereafter, provide written notice thereof to all other parties with whom the Company regularly conducts business (as determined in the reasonable discretion of the Managing Member).

8. **BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS.**

8.1 **Books and Records; Reports.**

8.1.1 The books and records of the Company shall be maintained in accordance with generally accepted accounting principles consistently applied. The books and records shall be kept at the principal office of the Company and shall be available upon reasonable notice for inspection by any member or its designated representatives during reasonable business hours.

8.1.2 The Company's accountants (i) shall prepare for execution by the Managing Member all tax returns of the Company that are required to be filed, and (ii) shall certify, in accordance with accounting methods followed by the Company for federal income tax purposes, a balance sheet and a profit and loss statement.

8.2 **Accounting and Taxable Year.**

The books of the Company shall be kept according to generally accepted accounting principles, consistently applied. The taxable year of the Company shall be January 1 through December 31, unless otherwise determined by the Managing Member.

8.3 **Bank Accounts and Investments.**

The bank and cash management accounts of the Company (including any accounts being maintained by the property management firm engaged by the Company) shall be maintained in a financial institution selected by the Managing Member. The funds of the Company shall not be commingled with the funds of any other Person.

9. **MISCELLANEOUS PROVISIONS.**

9.1 **Modifications.**

This Agreement may not be modified, discharged or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Managing Member.

9.2 **Notifications.**

Any notice, demand, consent, authorization, request, approval or other communication given or required hereunder shall contain a clear and concise statement of the purpose of such notice, shall reference this Agreement and shall be effective and valid only if in writing, signed by the party giving such notice and delivered in person by a commercial messenger service regularly retaining receipts for such delivery, a reputable express courier or delivery service from

whom a receipt is obtained or, if mailed, sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or such other Person(s) or address(es) as the Managing Member may, from time to time pursuant to written notice to the Company direct):

Attn: _____

With mandatory copies to:

Attn: _____

and

Attn: _____

All such notices shall be considered given on the date when delivered (refusal of delivery shall constitute delivery), or if mailed, upon the date of receipt of such notice as evidenced by the return receipt with respect to such notice received by the sender thereof.

9.3 **Partition.**

The Project is not and will not be suitable for partition. Accordingly, each member hereby irrevocably waives any and all rights that such member may have to maintain any action for partition of the Project.

9.4 **Binding Provisions.**

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

9.5 **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of _____ without regard to conflicts of law.

9.6 **Counterparts.**

This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose.

9.7 **Severability.**

The invalidation or unenforceability in any particular circumstances of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

9.8 **Captions and References.**

The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope, meaning or intent of this Agreement. Unless otherwise expressly provided, any reference in this Agreement to any section, paragraph, exhibit or schedule is a reference to a section, paragraph, exhibit or schedule of this Agreement.

9.9 **Negotiated Documents.**

The Company and the Managing Member acknowledge and agree that the provisions and the language of this Agreement have been negotiated by commercially sophisticated parties, and that no provision of this Agreement shall be construed against any such Person by reason of such Person having drafted such provisions of this Agreement.

9.10 **Prevailing Parties.**

In the event that any of the parties to this Agreement undertakes any action to enforce the provisions of this Agreement against any other party, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses incurred in connection with such enforcement, including reasonable attorneys' fees and paralegals' fees at the investigative, pretrial, trial and appellate levels.

9.11 **Exhibits.**

All recitals and all exhibits referred to in this Agreement are incorporated herein by reference and shall be deemed part of this Agreement for all purposes as if set forth at length herein.

9.12 **Entire Agreement.**

This Agreement contains the complete and entire agreement between the parties relating to the continuation of the Company, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

9.13 **No Third Party Beneficiary.**

Nothing contained in this Agreement, express or implied, is intended to, or shall be construed to confer upon any Person other than the parties hereto any rights or remedies under or by reason of this Agreement.

9.14 **Effect of Inconsistencies with Act.**

It is the express intention of the Managing Member that this Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended to the smallest degree possible in order to make this Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

9.15 **Governing Provisions.**

In the event of any conflicts between the terms and conditions of Sections 2.2, 2.3, 2.6, 5.4, 6.2 and 9.5, on the one hand, and any other term or condition of Operating Agreement, the Company's Certificate of Formation or similar organizational documents, on the other hand, the terms and conditions of Sections 2.2, 2.3, 2.6, 5.4, 6.2 and 9.5 of this Agreement shall govern, but only to the extent of such conflicts.

[signature page follows]

