L09000051186

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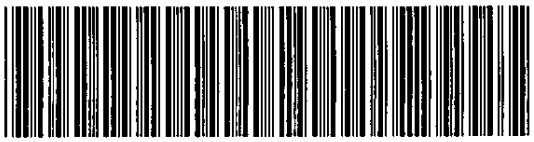

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AUG 10 2009

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Vayiheor, LLC
(Name of Surviving Party)

The enclosed Certificate of Merger and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

Charles A. Bruder, Esq.
(Contact Person)

Norris McLaughlin & Marcus PA
(Firm/Company)

721 Route 202/206 P.O. Box 5933
(Address)

Bridgewater, New Jersey 08807
(City, State and Zip Code)

For further information concerning this matter, please call:

Charles A. Bruder, Esq. at (908) 252-4165
(Name of Contact Person) (Area Code and Daytime Telephone Number)

☐ Certified copy (optional) $30.00

STREET ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

MAILING ADDRESS:
Registration Section
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

FLORIDA DEPARTMENT OF STATE
Division of Corporations

June 12, 2009

CHARLES A. BRUDER, ESQ
NORRIS MCLAUGHLIN & MARCUS PA
721 ROUTE 202/206 P.O. BOX 5933
BRIDGEWATER, NJ 08807

SUBJECT: VAYIHEOR, LLC
Ref. Number: L09000051186

We have received your document for VAYIHEOR, LLC and your check(s) totaling $155.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The merger has no dates filled in and schedule A is blank.

The plan of merger must contain the terms and conditions of the merger.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6094.

Agnes Lunt
Regulatory Specialist II

Letter Number: 909A00019919

Norris
McLaughlin
& Marcus, P.A.
ATTORNEYS AT LAW

August 7, 2009

VIA OVERNIGHT MAIL
Registration Section
Division of Corporations
ATTN: Brenda Tadlock
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Re: Mackler Family Partnership, L.P. & Vayiheor, LLC

Dear Ms. Tadlock:

In accordance with our discussions, we enclose an executed Certificate of Merger of Partnership for the Mackler Family Partnership, L.P.; and (ii) an amended first page of the Articles of Merger of Vayiheor, LLC, changing "Articles" to "Certificate" in the document title as we discussed.

We trust that the enclosed documents will finally resolve any issues precluding the filing of the previously submitted documents and that all filing fees have been paid. However, please contact us if you should have any questions regarding same. Thank you.

Very truly yours,
Norris, McLaughlin & Marcus PA

Laura Shamy

Laura Shamy
Legal Assistant to Charles A. Bruder

CAB/lls
enclosures

CERTIFICATE OF MERGER

OF

VAYIHEOR, LLC, a New Jersey limited liability company

INTO

VAYIHEOR, LLC, a Florida limited liability company

Pursuant to the provision of Section 42:2B-20 of the New Jersey Limited Liability Company Act and Sections 608.4381 and 608.4382 of the Florida Limited Liability Company Act, the undersigned limited liability companies adopt the following Articles of Merger for the purpose of merging VAYIHEOR, LLC, a New Jersey limited liability company ("*Vayiheor NJ*"), into VAYIHEOR, LLC, a Florida limited liability company. ("*Vayiheor FL*") also referred to herein as the "*Surviving Entity*", located at 6030 Benjamin Road, Tampa, Florida 33634.

L09-51186 NR

I. The merger is permitted under the respective laws of New Jersey and Florida and is not prohibited by the articles of organization of any limited liability company that is a party to the merger.

II. The following Agreement and Plan of Merger was adopted, approved and executed by the respective Managers and Members of both Vayiheor NJ and Vayiheor FL by unanimous resolution in the manner prescribed by Section 42:2B-20 of the New Jersey Limited Liability Company Act and Sections 608.4381 and 608.4382 of the Florida Limited Liability Act.

1. Merger/Surviving Entity. Vayiheor NJ shall be merged into Vayiheor FL, which shall be the surviving entity.

2. Terms and Conditions of Merger. On the Effective Date of the merger of Vayiheor NJ into Vayiheor FL, as defined below:

   1.1. The separate existence of Vayiheor NJ shall cease and Vayiheor FL shall continue in existence as the Surviving Entity;

   1.2. Vayiheor FL shall thereupon and thereafter possess all the rights, privileges, powers, immunities, purposes and franchises, both public and private, of each of Vayiheor NJ and Vayiheor FL;

   1.3. All real and personal property, tangible and intangible, of every kind and description belonging to each of Vayiheor NJ and Vayiheor FL shall be vested in Vayiheor FL without further act or deed, and the title to any real estate, or any interest therein, vested in Vayiheor NJ and Vayiheor FL shall not revert or be in any way impaired by reason of the merger;

1.4. Vayiheor FL shall be liable for all of the obligations and liabilities of Vayiheor NJ and any claim existing or action or proceeding pending by or against Vayiheor NJ may be prosecuted to judgment by Vayiheor FL as if the merger had not taken place or Vayiheor FL may be substituted in place of Vayiheor NJ. The merger shall impair neither the rights of the creditors nor any liens on the property of Vayiheor NJ;

1.5. Vayiheor FL shall take the assets and liabilities of Vayiheor NJ onto its books, as of the effective date of the merger, at the amounts at which they are carried on the books of Vayiheor NJ; and

1.6. The Manager of Vayiheor FL shall continue to be Manager of the Surviving Entity for the terms for which he was elected and qualified as provided by law and the Operating Agreement of the Surviving Entity, and all persons who shall be executive or administrative officers of the Surviving Entity on the effective date of the merger shall continue to hold the same such offices until their respective successors are chosen and qualified by the Manager of the Surviving Entity.

3. Membership Interests/Cancellation of Vayiheor NJ Membership Interests. As of the date of the merger all Vayiheor NJ membership interests shall be converted into a like number of membership interests in Vayiheor FL and all membership interests in Vayiheor FL shall be canceled and retired.

4. Abandonment Provision. This Agreement and Plan of Merger may be abandoned at any time prior to the filing of the Certificate of Merger with the Secretary of State of New Jersey and Articles of Merger with the Department of State of Florida by mutual consent of the parties. In the event of abandonment of this Agreement and Plan of Merger, this Agreement shall become null and void and there shall be no liability or obligation on the part of any party.

5. Further Assurances. If at any time the Surviving Entity determines that additional conveyances, documents or other actions are necessary to carry out the provisions of this Agreement and Plan of Merger, it is understood and agreed by the parties that the Surviving Entity shall have the authority to execute such conveyances or documents and take such actions on behalf of Vayiheor NJ as may be required as agent and attorney-in-fact, with full power of substitution, to take any and all action on behalf of Vayiheor NJ as may be required to carry out the purposes and provisions of this Agreement and Plan of Merger.

6. Foreign Entity Registration/ Service of Process. The Surviving Entity shall not maintain a registration as a foreign limited liability company in

the State of New Jersey. The Surviving Entity agrees that it may be served with process, delivered to its registered agent in New Jersey, in any proceeding for enforcement of any obligation of Vayiheor NJ. Vayiheor FL hereby makes an irrevocable appointment of the Secretary of State of New Jersey as its agent to accept service of process in any such proceeding in New Jersey. The Secretary of State thereof shall mail a copy of the process in such proceeding to Vayiheor FL at the address first set forth in the preamble to this Agreement.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until each of the parties named below shall have duly executed or caused to be executed a counterpart of this Agreement.

8. Management. The Surviving Entity is a limited liability company and shall be managed by one Manager, Harvey Macker, 6030 Benjamin Road, Tampa, Florida 33634.

III. Effective Date. This merger shall be effective upon the latter to occur of the due filing of these Articles of Merger with the New Jersey Department of Treasury and the Florida Department of State, as required (the *"Effective Date"*).

IV. Applicable Law. The Articles of Merger comply and were executed in accordance with the laws of both New Jersey and Florida.

[Signature page follows]

IN WITNESS WHEREOF, Vayiheor NJ and Vayiheor FL have each caused these Articles of Merger to be signed by their respective authorized officers on the date set forth below, each of whom represents that he is authorized to execute this document on behalf of the respective limited liability companies.

VAYIHEOR, LLC, a New Jersey limited liability company

By: _____
Harvey Mackler, Manager

VAYIHEOR, LLC, a Florida limited liability company

By: _____
Harvey Mackler, Manager

Dated: _____, 2008

AGREEMENT AND PLAN OF MERGER

OF

VAYIHEOR, LLC, a New Jersey limited liability company

INTO

VAYIHEOR, LLC, a Florida limited liability company

This Agreement and Plan of Merger (this "Agreement") of **VAYIHEOR, LLC**, a New Jersey limited liability company (the "Company") with and into **VAYIHEOR, LLC**, a Florida limited liability company (the "Surviving Company"), is made as of this 31 day of December, 2008.

W I T N E S S E T H

WHEREAS, both the Company and the Surviving Company desire to merge their operations into a single entity to effectuate a transfer of business operations from New Jersey to Florida; and

WHEREAS, the respective members of the Company and the member of the Surviving Company have determined that it is in the best interest of the Company and the Surviving Company that the Company merge with and into the Surviving Company in accordance with the New Jersey Limited Liability Company Act N.J.S.A. 42:2B-1 et seq. and the Florida Limited Liability Company Act Fla. Stat. §§ 608.401 et seq.

NOW, THEREFORE, the parties set forth the following Agreement and Plan of Merger:

1. Merger/Surviving Company. Subject to the consent of all the Partners of the Company and all the Members of the Surviving Company within thirty (30) days of the date hereof (provided, however, that the Partners of the Company and Members of the Surviving Company may extend such period in their reasonable discretion), the Company shall merge with and into the Surviving Company. The percentage of members of the Company and percentage of members of the Surviving Company required to consent to the proposed merger shall be determined by the governing documents of each respective entity; provided, however, that in the absence of such governing documents, such requirements shall be governed by applicable state law. Following receipt of the consents referred in this Section, the parties shall file Articles of Merger, as required by applicable law.

2. Terms and Conditions of Merger. On the effective date of the merger, the following shall apply:

2.1. The separate existence of the Company shall cease and the Surviving Company shall continue in existence as the surviving entity in the merger.

2.2. The Surviving Company shall thereupon and thereafter possess all the rights, privileges, powers, immunities, purposes and franchises, both public and private, of the Company and the Surviving Company.

2.3. All real and personal property, tangible and intangible, of every kind and description belonging to each of the Company and the Surviving Company shall be vested in the Surviving Company without further action or deed, and the title to any real estate, or any interest therein, vested in any of the Company or the Surviving Company shall not revert or be in any way impaired by reason of the merger.

2.4. The Surviving Company shall be liable for all of the obligations and liabilities of the Company and any claim existing or action or proceeding pending by or against the Company may be prosecuted to judgment by or against the Surviving Company as if the merger had not taken place or the Surviving Company may be substituted in place of the Company. Neither the rights of the creditors nor any liens on the property of the Company shall be impaired by the merger. Each partner of the Company shall have and own a share of the membership interest in the Surviving Company as set forth in the attached Schedule A to this Agreement, which shall be incorporated into an Operating Agreement of the Surviving Company.

2.5. The assets and liabilities of the Company as of the effective date of the merger shall be taken onto the books of the Surviving Company at the amounts at which they are carried on the books of the Company.

2.6. The Certificate of Formation of the Surviving Company as in effect on the effective date of the merger shall be and shall continue to be the Certificate of Formation of the Surviving Company until altered, amended, changed or repealed as provided by law. The parties acknowledge that, as of the date of this Agreement, the Surviving Company has no Operating Agreement in place, and the members of the Surviving Company shall promptly, as of the effective of the merger, adopt an Operating Agreement of the Surviving Company, substantially in the form attached to this Agreement as Schedule B.

2.7. The partners of the Company shall become members of the Surviving Company and shall receive a membership interest in the Surviving Company in a percentage as set forth on the attached Schedule A, which shall be reflected substantially in the Operating Agreement of the Surviving Company a copy of which is attached to this Agreement as Schedule B.

3. Availability of Agreement. A copy of this Agreement will be furnished by the Surviving Company, on request and without cost, to any partner of the Company or to any member of the Surviving Company. An executed copy of this Agreement will be on file at the principal offices of the Surviving Company.

4. Managers: The names and addresses of the Managers of the Surviving Company are as follows:

Harvey Mackler

_____

_____

Helen Mackler

_____

_____

5. Abandonment Provision. This Agreement may be abandoned at any time prior to the filing of the Certificate of Merger with the Florida Department of State by mutual consent of the parties. In the event of abandonment of this Agreement, this Agreement shall become null and void and there shall be no liability or obligation on the part of any party.

6. Further Assurances. If at any time the Surviving Company and/or the Company determine that additional conveyances, documents or other actions are necessary to carry out the provisions of this Agreement, it is understood and agreed by the parties that the Surviving Company shall have the authority to execute such conveyances or documents and take such actions on behalf of any of the Company as may be required to carry out the purposes and provisions of this Agreement.

7. Effective Date. The merger shall be effective as of the latter of effective date of the filing of the Certificate of Merger or _____, 2008.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the day and year first written above.

VAYIHEOR, LLC
a New Jersey limited liability company

By: _____
Name: Harvey Mackler
Title: Manager

VAYIHEOR, LLC
a Florida limited liability company

By: _____
Name: Harvey Mackler
Title: Manager

Dated: As of _____, 2008

Schedule A

SCHEDULE OF MEMBERS OF SURVIVING COMPANY AFTER THE MERGER

Member (Name and Address)	Capital Contributions (Cash, or Gross Asset Value of Property Contribution)	Percentage Ownership
CLASS A		
Trust U/W/O Alfred Mackler [Address]	1% of Membership Interest (50% of Class A interest) in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	1%
Helen Mackler [Address]	1% of Membership Interest (50% of Class A interest) in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	1%
CLASS B		
Trust U/W/O Alfred Mackler [Address]	36.5% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	36.5%
Helen Mackler [Address]	36.5% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	36.5
Harvey Mackler [Address]	$25% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	25%

Schedule B

PROPOSED FORM OF OPERATING AGREEMENT

OPERATING AGREEMENT

OF

VAYIHEOR, LLC

A FLORIDA LIMITED LIABILITY COMPANY

Prepared by:
Norris, McLaughlin & Marcus
721 Route 202-206
P.O. Box 1018
Somerville, NJ 08876-1018

TABLE OF CONTENTS

OPERATING AGREEMENT

OF

VAYIHEOR, LLC

A FLORIDA LIMITED LIABILITY COMPANY

This OPERATING AGREEMENT OF VAYIHEOR, LLC into and shall be effective as of _____, 2008, by and among the parties whose names are set forth on Schedule A attached to this Agreement and incorporated by reference in this Agreement.

RECITAL

The persons listed on attached Schedule A (the "Members") desire to establish a limited liability company (the "Company"). The Members desire to set forth in this Agreement the terms of their understandings and agreement. In consideration of the mutual promises in this Agreement, the parties, intending legally to be bound, agree as follows:

ARTICLE 1
FORMATION, PURPOSE AND DEFINITIONS

1.1 Establishment of Limited Liability Company. The Members hereby agree to establish a limited liability company pursuant to the provisions of the Florida Limited Liability Company Act (the *"Act"*) and upon the terms set forth in this Agreement. The Company shall have two classes of Members, and the persons listed on Schedule A shall be Class A or Class B Members, as indicated on such Schedule.

1.2 Name. Pursuant to the terms of this Agreement, the Members intend to carry on a business for profit as co-owners under the name "*VAYIHEOR, LLC*" The Company may conduct its activities under any other permissible name designated by the Managers. The Managers shall be responsible for complying with any registration requirements in the event an alternate name is used.

1.3 Principal Office of the Company. The principal office of the Company shall be located at _____, Florida, or at such other location as the Managers, as a matter of discretion, may determine. The registered agent for the service of process and registered office of the Company shall be the person and location set forth in the Articles of Organization filed with the Florida Department of State, and the Managers may, from time to time, change such agent and office by appropriate filings as required by law.

1.4 Purpose. The Company may engage in any lawful business permitted under the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or advisable in order to accomplish such purposes.

1.5 Term. The term of this Company shall begin on the date of filing of Articles of Organization with the Florida Department of State. The duration of the Company shall be perpetual, and there shall be no time specified for dissolution of the Company, which shall

continue until it is dissolved in accordance with the provisions of Article 8 of this Agreement or the Act.

1.6 Other Activities of Members. Any Member may engage in or possess an interest in other business ventures of any nature, whether or not similar to or competitive with the activities of the Company.

1.7 Defined Terms. Capitalized words and phrases used in this Agreement shall have the meanings ascribed to such terms in the Glossary contained in Section 10.2 of this Agreement.

ARTICLE 2
CONTRIBUTIONS AND CAPITAL ACCOUNTS

2.1 Capital Contributions. Upon formation of the Company, the Members shall make the Capital Contributions set forth on Schedule A.

2.2 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member.

2.3 Withdrawal of Capital. A Member shall not be entitled to withdraw any part of such Member's Capital Account or to receive any distribution from the Company, except as provided in this Agreement.

2.4 Additional Capital Contributions. (a) No Member shall be required to make any additional capital contribution to the Company or to restore any deficit in such Member's Capital Account, except as provided in this Agreement, and such deficit, if any, shall not be considered a debt owed to the Company or to any other person for any purpose.

(b) If the Company is obligated, pursuant to federal, state or local law, to remit payment to a governmental entity in respect of a tax or other fee imposed directly on a Member, or a tax or fee imposed on the Company which is to be credited for tax purposes, by law or regulation, to the taxpayer account of a Member, then such payments shall be deemed, for purposes of this Agreement, to be a distribution to such Member. The Member shall be obligated to make an additional Capital Contribution to the Company in an amount equal to the payments by the Company on such Member's behalf, except to the extent the Company decides to treat such payments as a distribution of Net Cash from Operations or Net Cash from Agreement. The Capital Contribution to be made, if any, shall be made promptly after payment of such amounts by the Company, provided, however, that the Company reserves the right to require such Capital Contribution to be made in advance of the due date for the payment by the Company, in time sufficient to allow the Company to use such Capital Contribution to satisfy the Company's payment obligation.

2.5 Interest on Capital Contributions. No interest shall be due from the Company on any Capital Contribution of any Member.

2.6 Priority and Return of Capital. Except as may be expressly provided in this Agreement, no Member or Economic Interest Owner shall have priority over any other Member

or Economic Interest Owner, either for the return of Capital Contributions or for Net Cash from Operations or from Sales or Refinancings, provided that this section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

2.7 Limitation on Liability of Member.

(a) Except as otherwise expressly required by applicable law, or as otherwise provided under this Agreement, no member (or holder of economic rights in the Company), manager, employee or agent of the Company shall be obligated personally for any debt, obligation, or liability of the Company, or for any debt, obligation or liability of another member, manager, employee or agent of the Company, by reason of being a member (or holder of economic rights), or by reason of acting in the capacity of a manager, employee or agent of the Company.

(b) A Member shall be personally obligated for any debt or liability that the Member expressly assumes in writing, including, without limitation, the obligation to make a specified Capital Contribution as provided in this Agreement.

2.8 Loans. If any Member makes any loan or loans to the Company, or advances money on its behalf, the amount of any such loan or advance shall not be deemed an increase in, or contribution to, the capital account of the lending Member or entitle the lending Member to any increase in such Member's share of the distributions of the Company. Interest shall accrue on any such loan at an annual rate agreed to by the Company and the lending Member (but not in excess of the maximum rate allowable under applicable usury laws).

2.9 Default in Capital Contribution. If any Member fails to make any Capital Contribution when due, such Member shall be in default, and the Company may exercise all legal rights including, without limitation, the commencement of an action to collect from such defaulting Member by legal process the entire amount of the unpaid Capital Contribution (including those not currently in default), together with all court costs and reasonable attorney fees.

ARTICLE 3
ALLOCATION OF PROFITS AND LOSSES

3.1 Profits. After giving effect to the special allocations set forth in Section 3.3, Profits for any fiscal year shall be allocated in the following order and priority:

(a) First, to the extent that Losses have been allocated pursuant to Section 3.2(c) for any prior year, Profits shall be allocated to the Members until the cumulative Profits allocated pursuant to this Section for the current and all previous years are equal to the cumulative Losses allocated pursuant to Section 3.2(c) of this Agreement for all prior periods (pro rata among the Members in proportion to their share of the Losses being offset); and to the extent any allocations of Losses are offset pursuant to this Section 3.1(a), such allocations shall be disregarded for purposes of computing subsequent allocations pursuant to this Section 3.1(a);

(b) Second, to the Class A Members, until the aggregate amounts allocated to such Members under this Section 3.1(b) for the current and all previous years of the Company

are equal to the cumulative amounts of Priority Return received by such Members pursuant to Section 4.1(b), 4.2(c) or 8.3(d) from the commencement of the Company to a date that is 30 days after the current year of the Company; and

(c) Third, the balance, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different allocation of Profits permitted by law and applicable regulation.

3.2 Losses. After giving effect to the special allocations set forth in Section 3.3, Losses for any fiscal year shall be allocated in the following order and priority:

(a) First, to the extent that Profits have been allocated pursuant to Section 3.1(c) for any prior year, Losses shall be allocated first to offset any Profits allocated pursuant to Section 3.1(c) (pro rata among the Members in proportion to their share of the Profits being offset). To the extent any allocations of Profits are offset pursuant to this Section 3.2(a) such allocations shall be disregarded for purposes of computing subsequent allocations pursuant to this Section 3.2(a).

(b) Second, to the extent that Profits have been allocated pursuant to Section 3.1(b) for any prior year, Losses shall be allocated first to offset any Profits allocated pursuant to Section 3.1(b) (pro rata among the Members in proportion to their share of the Profits being offset). To the extent any allocations of Profits are offset pursuant to this Section 3.2(b), such allocations shall be disregarded for purposes of computing subsequent allocations pursuant to this Section 3.2(b).

(c) Additional Losses, if any, shall then be allocated, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different allocation of Losses permitted by law and applicable regulation.

3.3 Special Allocations. The following special allocations shall be made in the following order and priority:

(a) Tax Allocations: Code Section 704(c).

(i) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 10.2(m) of this Agreement).

(ii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 10.2(m)**Error! Reference source not found.** of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes

and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

(iii) Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 3.3(a) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreemen

(b) Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain (determined in accordance with Regulation Section 1.704-2). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2. This Section 3.3(b) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2 and shall be interpreted consistent with such Section.

(c) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3 except the foregoing provisions of this Section 3.3, if there is a net decrease in Member Minimum Gain during any Company fiscal year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt (determined in accordance with Regulation Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain (determined in accordance with Regulation Section 1.704-2(i)(4)). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(j)(ii). This Section 3.3(c) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistent with such Section.

(d) Qualified Income Offset Allocation. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which causes or increases a Member's Capital Account Deficit as of the end of the taxable year to which such allocation, distribution or adjustment relates, then items of Company income and gain shall be specially allocated (prior to any other allocation required by Section 3.1, but after the allocations required by the foregoing provisions of this Section 3.3) to such Member in an amount and manner sufficient to eliminate (to the extent required by the Regulations) the Capital Account Deficit balances, if any, created by such adjustments, allocations, or distributions as quickly as possible; provided that an allocation pursuant to this Section 3.3(b) shall be made only if and to the extent that such Member would have a Capital Account Deficit after all other allocations (other than Section 3.3(e) and Section 3.3(f)) provided for in this Article 3 have been tentatively made as if this Section 3.3(b) was not in the Agreement.

(e) Gross Income Allocation. In the event that any Member has a Capital Account Deficit at the end of any Company fiscal year, each such Member shall be specially allocated items of Company income and gain in the amount of such Deficit as quickly as possible, provided that an allocation pursuant to this Section 3.3(e) shall be made only if and to the extent that such Member would have a Capital Account Deficit in excess of such sum after all other allocations (other than Section 3.3(f)) provided for in this Article 3 have been tentatively made as if this Section 3.3(e) and Section 3.3(f) were not in this Agreement.

(f) Capital Account Limit on Loss Allocation. In the event that any allocation of Loss would cause or increase a Member's Capital Account Deficit as of the end of the taxable year to which such allocation relates, and one or more other Members have a positive balance in their Capital Accounts as of the end of such year, then, to the extent of such Capital Account Deficit (or the extent of such positive balance in the other Members' Capital Accounts, if less), no Losses shall be allocated to such Member which would otherwise have a Capital Account Deficit. Such Losses shall instead to be charged to the Capital Accounts of Members which would not have a Capital Account Deficit as a result of the allocation, in proportion to their respective Capital Accounts. An allocation pursuant to this Section 3.3(f) shall be made only if and to the extent that such Member would have a Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.3(f) were not in this Agreement.

(g) Company Nonrecourse Deductions. Company Nonrecourse Deductions for any fiscal year or other period shall be specially allocated among the Members in accordance with their respective Membership Interests.

(h) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member bearing the economic risk of loss for the debt to which such Deductions are attributable, as provided in Regulation Section 1.704 2(i).

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

(j) Curative Allocations. To the extent permitted by the Code and the Regulations, any special allocations of items of income, gain or loss pursuant to all of the preceding subsection of this Section 3.3 (other than Section 3.3(a)), or any reallocations of such items pursuant to the Regulations under Sections 704(b) of the Code prevailing over the allocations otherwise provided for in this Agreement, shall be taken into account in determining subsequent allocations of income, gain, and loss pursuant to this Article 3, so that the net amounts so allocated shall, to the extent possible, be equal to the net amounts that would have

been allocated to each Member pursuant to the provisions of this Agreement if such special allocations or reallocations had not occurred.

3.4 Allocation Rules.

(a) Determination Generally. The Profits, Losses and credits of the Company shall be determined for each fiscal year in accordance with the accounting method adopted by the Company for federal income tax purposes. Where the accounting method adopted by the Company for federal income tax purposes provides no rule regarding a specific transaction, the transaction shall be accounted for in accordance with sound accounting procedures applied in a consistent manner. Allocations to the Class A Members or Class B Members, as a class, unless otherwise expressly indicated, shall be made among them in proportion to their respective Membership Interests.

(b) Income Characterization. For purposes of determining the character (as ordinary income or capital gain) of any Profit allocated to a Member, the portion of such Profit that is treated as ordinary income attributable to the recapture of depreciation, if any, shall be allocated among the Members in the proportion that the amount of depreciation, if any, previously allocated to each Member relating to Company assets or property bears to the total of such depreciation allocated to all Members.

(c) Allocation of Other Items. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

(d) Binding Effects. The Members are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by the provisions of this Article in reporting their shares of Company Profits and Losses for income tax purposes.

ARTICLE 4
DISTRIBUTIONS OF CASH FLOW

4.1 Net Cash from Operations. Net Cash from Operations shall be distributed in the following priority, subject to Section 4.3 and Article 8:

(a) Net Cash from Operations shall first be distributed to any Member who has advanced funds to the Company as a Lender, to the extent of and in proportion to such advances still owed, including accrued and unpaid interest thereon, if any, and including, without limitation, amounts not then due and owing;

(b) Net Cash from Operations shall then be distributed to the Class A Members until each such Class A Member receives an amount equal to the excess of (i) the cumulative Priority Return from the inception of the Company to the end of the calendar quarter preceding the quarter during which such distribution is made, over (ii) the sum of all prior distributions to such Member of Priority Return pursuant to this Section 4.1(b) or Section 4.2(c) or Section 8.3(d); and

(c) Distributions, if any, of additional Net Cash from Operations will be made, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all of the Members, to a different division permitted by law and applicable regulation.

4.2 Net Cash from Sales or Refinancings. Net Cash from Sales or Refinancings shall be distributed in the following priority, subject to Section 4.3 and Article 8:

(a) First, to any Member who has advanced funds to the Company as a Lender, to the extent of and in proportion to such advances, including interest thereon, if any;

(b) Net Cash from Sales or Refinancings shall then be distributed to the Class A Members, without priority, until such Members' Unrecovered Capital Contributions are reduced to zero;

(c) Net Cash from Sales or Refinancings shall then be distributed to the Class A Members until each such Class A Member receives an amount equal to the excess of (i) the cumulative Priority Return from the inception of the Company to the end of the calendar quarter preceding the quarter during which such distribution is made, over (ii) the sum of all prior distributions to such Member of Priority Return pursuant to Section 4.1(b) or this Section 4.2(c) or Section 8.3(d); and

(d) Distributions, if any, of additional Net Cash from Sales or Refinancings will be made, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all of the Members, to a different division permitted by law and applicable regulation.

4.3 Restrictions on Distributions of Cash Flow.

(a) The Company may be restricted from making distributions under the terms of notes, mortgages, or other types of debt obligations which it may issue or assume in connection with borrowed funds, if any. In addition, distributions are subject to the payment of Company expenses and to the maintenance of sufficient reasonable reserves for such expenses and for alterations, repairs, improvements, maintenance and replacement of Company assets. Distributions may also be restricted or suspended in circumstances when the Managers determine, in their absolute discretion, that such action is in the best interest of the Company.

(b) Distributions of Net Cash from Operations or Net Cash from Sales or Refinancings shall be made in such amounts and at such times as determined in the absolute discretion of the Managers, subject to the Managers' fiduciary responsibilities to the Members. The Company may distribute at least annually to the Members so much of its Net Cash as is not, in the opinion of the Managers, necessary or advisable for the conduct of the Company's business, after setting aside such amounts as the Managers deem necessary to create adequate reserves for future capital or operating needs of the Company. The Managers may elect, notwithstanding anything to the contrary in this Agreement, to withhold any distributions of Net Cash or return of capital to the Members in order to accomplish the business purposes of the Company as may be established from time to time.

(c) The Company shall have the right to offset against a distribution to a Member any loan or other indebtedness of such Member in favor of the Company and, to the extent so credited against the obligation, such loan or other indebtedness shall be deemed to be and shall be canceled and discharged. Such right of offset shall be immediately available to the Company regardless of the due date of any such loan or other indebtedness, but shall be applied against the amounts due in inverse order of maturity.

(d) If any assets of the Company are distributed in kind, such assets shall be distributed to the Members entitled thereto as tenants in common in the same proportions as such Members would have been entitled to cash distributions.

(e) No Member shall be entitled to demand and receive property other than cash in return for Capital Contributions to the Company.

(f) The Members irrevocably waive, during the term of the Company and during the period of any liquidation following the dissolution of the Company, any right to maintain any action or claim for partition with respect to any assets of the Company.

ARTICLE 5
RIGHTS AND DUTIES OF MANAGERS AND MEMBERS

5.1 Management.

(a) The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company to the best of the Managers' ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by nonwaivable provisions of applicable law, the Managers shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

(b) At any time when there is more than one Manager, any action permitted to be taken by the Managers may be taken upon approval of the majority (in number) of the Managers. A Manager may delegate any or all of the Manager's responsibilities to another Manager of Officer (as defined below). All Managers, however, remain responsible for decisions made by such delegees. A Manager's delegation may be written or oral and may be revoked at any time.

(c) Any Manager may bind the Company with respect to third parties. Nothing contained in this Agreement shall require any person to inquire into the authority of the Managers to execute and deliver any document on behalf of the Company or to bind the Company pursuant to such document. However, a Manager whose action or failure to act is in contravention of this Agreement or applicable law, shall be liable to the Company and its Members for any such action or omission.

5.2 Voting Powers of Other Members.

(a) General Rules. Except as otherwise expressly provided for in this Agreement, the Members who are not Managers shall not have any rights to vote on or to take any part in the day to day management or conduct of the business of the Company, nor shall such Members have any right or authority to act for or bind the Company. Actions and decisions that do require the approval of the Members pursuant to any provision of this Agreement may be authorized or made by affirmative vote of Members holding at least a majority of the Membership Interest in the Company (unless a higher or lower vote is expressly required in this Agreement or applicable law for a particular action or decision of the Members). Such vote may be taken at a meeting of the Members or by unanimous written consent without a meeting. In addition, emergency actions may be taken in accordance with the provisions of Section 5.2(e) of this Agreement. Economic Interest Owners shall not be entitled to receive notices, vote, call meetings, or act as proxies, and their consent shall not be required for any purpose under this Agreement. The Interests in the Company held by Economic Interest Owners shall be excluded for purposes of determining the number of affirmative votes required for decisions or actions to be taken under this Agreement, except where expressly indicated otherwise.

(b) Meetings. Any Member may call a meeting to consider approval of an action or decision under any provision of this Agreement by delivering to each other Member notice of the time and purpose of such meeting at least ten (10) days before the day of such meeting. A Member may waive the requirement of notice of a meeting either by attending such meeting or executing a written waiver before or after such meeting. Any such meeting shall be held during the regular business hours at the Company's principal place of business unless all of the other Members consent in writing or by their attendance at such meeting to its being held at another location or time.

(c) Unanimous Consent. Any Member may propose that the Company authorize an action or decision pursuant to any provision of this Agreement by unanimous written consent of all Members in lieu of a meeting. A Member's written consent may be evidenced by such person's signature on a counterpart of the proposal or by a separate writing (including a facsimile) that identifies the proposal with reasonable specificity and states that the Member consents to such proposal.

(d) Vote by Proxy. A Member may vote (or execute a written consent) by proxy given to any other Member. Any such proxy must be in writing and must identify the specific meeting or matter to which the proxy applies or state that it applies to all matters (subject to specified reservations, if any) coming before the Members for approval under any provision of this Agreement prior to a specified date (which shall not be later than the first anniversary date on which such proxy is given). Any such proxy shall be revocable at any time and shall not be effective at any meeting at which the Member giving such proxy is in attendance.

(e) Emergency Procedures. Notwithstanding any provisions of this Section 5.2, in the event that Members who could authorize a Company action or decision at a duly called meeting reasonably determine, in writing, that the Company is facing a significant emergency that requires immediate action, such Members may, without complying with generally applicable procedures or meetings or actions by unanimous consent, authorize any action or decision that they deem reasonably necessary to allow the Company to benefit from a

significant opportunity or to protect the Company from significant loss or damage, provided that they make reasonable efforts under the circumstances to contact and consult all Members concerning such action or decision and the reasons why such action or decision must be made without observing generally applicable procedures.

(f) Records. The Company shall maintain permanent records of all actions taken by the Members pursuant to any provision of this Agreement, including minutes of all Company meetings, copies of all actions taken by consent of the Members, and copies of all proxies pursuant to which one Member votes or executes a consent on behalf of another.

5.3 Number, Tenure, and Qualifications. The Company shall initially have three Managers, who shall be Alfred Mackler, Helen Mackler and Harvey Mackler. The number of Managers of the Company shall be fixed from time to time by the unanimous affirmative vote of all of the Members, but in no instance shall there be less than one Manager. Each Manager shall hold office until he or she dies, resigns or is removed as Manager in accordance with this Agreement. Managers shall be elected by the Members. Managers need not be residents of the State of Florida or Members of the Company.

5.4 Certain Powers of Managers. Without limiting the generality of Section 5.1 above, the Managers shall have power and authority, on behalf of the Company:

(a) To acquire property from any person as the Managers may determine, and to develop, renovate, improve, lease, subdivide, sell, assign, convey or otherwise transfer title to any portion of, or interest in, the Company's Property. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such person shall not prohibit the Managers from dealing with that person;

(b) To purchase, lease or otherwise acquire or obtain the use of machinery, equipment, tools, staff and personnel, and material, and other types of real and personal property that may be deemed necessary or desirable in connection with carrying on the business of the Company;

(c) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection with such borrowing, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

(d) Prepay in whole or in part, refinance, recast, increase, modify, consolidate, correlate, or extend, on such terms as the Managers may deem proper, any debts of the company;

(e) To purchase liability and other insurance to protect the Company's property and business;

(f) To hold and own any Company real and/or personal properties in the name of the Company;

(g) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term government obligations, commercial paper, or other investments;

(h) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as that disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(i) To execute on behalf of the Company all instruments and documents, including, without limitation: checks, drafts; notes and other negotiable instruments; mortgages, or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;

(j) To employ accountants, legal counsel, managing agents, or other experts or employees or agents to perform services for the Company and to compensate them from Company funds;

(k) To enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such forms as the Managers may approve;

(l) To adjust, compromise, settle or refer to arbitration any claims in favor of or against the Company or any nominee of the Company or any property held or owned by the Company or its nominee, and to institute, prosecute and defend any legal proceedings as the Managers shall deem advisable; and

(m) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(n) Unless authorized to do so by this Operating Agreement or by the Managers of the Company, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

5.5 Company Basis Elections. In the event of the distribution of property by the Company within the meaning of Section 734 of the Code, or the transfer of an interest in the Company within the meaning of Section 743 of the Code, the Managers, in the Managers' sole and absolute discretion, may elect to adjust the basis of the Company property pursuant to Sections 734, 743 and 754 of the Code. Members affected by this election, if made, shall supply to the Company the information that may be required to make the election.

5.6 Liability for Certain Acts. Each Manager shall perform management duties in good faith, in a manner reasonably believed to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Manager of the company. A Manager does not, in any way,

guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. To the extent permitted by Florida law, no Member or Manager shall be personally liable to the Company or its Members for failure to perform in accordance with, or to comply with the terms and conditions of, the Operating Agreement or for any other reason, except that a Member or Manager shall not be relieved from liability for any breach of duty based on an act or omission (a) in breach of such person's duty of loyalty to the Company or its Members, (b) not in good faith or involving a knowing violation of law or this Agreement, or (c) resulting in receipt by such person of an improper personal benefit. Notwithstanding anything to the contrary in this Agreement, and to the extent permitted by law, no Member or Manager shall have any fiduciary duty or obligation to any Economic Interest Owner or other transferee of an interest in the Company (other than a person admitted as a Member) or to any other creditor of the Company.

5.7 Managers Have No Exclusive Duty to Company. The Managers shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managers or to the income or proceeds derived from such investments or activities. The Managers shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

5.8 Indemnification.

(a) Each Manager shall indemnify and hold harmless the Company from any loss, damage, claim or liability (including reasonable attorney fees) incurred by reason of the such Manager's gross negligence or willful misconduct.

(b) The Managers shall be indemnified by the Company against any losses, judgments, liabilities and expenses (including reasonable attorney fees) incurred by the Managers by reason of any act or omission performed or omitted by the Managers in good faith on behalf of the Company in a manner reasonably believed by the Managers to be within the scope of the authority granted to the Managers by this Agreement, except to the extent that such act or omission constituted gross negligence or willful misconduct. The Company may also indemnify its employees and other agents who are not Managers to the fullest extent permitted by law, provided that the indemnification in any given situation is approved by the Members.

5.9 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.10 Removal. At a meeting called expressly for that purpose, any or all of the Managers (other than the initial Manager appointed under Section 5.3) may be removed at any time, with or without cause, by the Members. The removal of a Manager who is also a Member

shall not affect the Manager's rights as a Member and shall not constitute a withdrawal or dissociation of a Member. Robert W. Singer and Mary Lee Singer, the initial Managers, appointed under Section 5.3, may be removed only by the unanimous affirmative vote of all of the Members.

5.11 Vacancies. Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of a majority of the remaining Managers then in office, provided that if there are no remaining Managers, the vacancy(ies) shall be filled by the Members. A Manager elected to fill a vacancy shall hold office until the next annual meeting of Members and until a successor shall be elected and shall qualify, or until the Manager's earlier death, resignation or removal.

5.12 Compensation of Managers. The Managers shall be entitled to receive reasonable compensation for services in management of the Company's business. The salaries and other compensation of the Managers shall be fixed from time to time by an affirmative vote of the Members, and no Manager shall be prevented from receiving that salary because the Manager is also a Member of the Company. The Members acknowledge that they have been advised by the Managers that the Managers and their affiliates may act in various capacities with respect to the Company. In exchange for services rendered in connection with Company, and the Property, the Managers' affiliates may receive fees and compensation. The Managers expressly reserve the right to contract for management, consulting or other services with an affiliated or unaffiliated company.

ARTICLE 6
TRANSFER OF MEMBERSHIP INTERESTS

6.1 General Restriction. Neither a Member nor an Economic Interest Owner may transfer, whether voluntarily or involuntarily, any portion of such person's Membership Interest or Economic Interest, except as otherwise expressly provided for in this Agreement. For purposes of this Agreement, a *"transfer"* includes, but is not limited to, any sale, assignment, gift, exchange, hypothecation, collateral assignment or subjection to any security interest.

6.2 Right of First Refusal. In addition to the other limitations and restrictions set forth in this Agreement, if a Member or Economic Interest Owner wishes to Transfer all or any portion of such person's Membership Interest or Economic Interest (the *"Offered Interests"*) either as a gift, or sale or other disposition, such Interest holder (the *"Transferring Interest Owner"*) must first comply with the provisions of this Article 6 and offer to sell the Offered Interest pursuant to the terms of this Article.

(a) A Transferring Interest Owner proposing to Transfer any or all of the Offerred Interests, for consideration or otherwise, must first deliver to the Company and to each of the other Members written Notice of Intent to Transfer the Offered interest, stating the name and the address of the proposed transferee and the terms and conditions of the proposed transfer. Delivery of this notice shall be deemed an offer by the Transferring Interest Owner to sell to the other Members, in the order provided in this Section, the Offered Interest proposed to be transferred. If the proposed Transfer is a sale by the Transferring Interest Owner, the terms in the Notice shall include the price to be paid for the interest by the proposed transferee, and a

copy of the offer to purchase the Offered Interests on these terms, dated and signed by the proposed transferee, shall be attached to the notice.

(b) The non-transferring Members (the *"Remaining Members"*) holding Class A Membership Interests shall then have an option, but not an obligation (except as otherwise stated in this agreement), to purchase the Offered Interests, within the time and according to the procedure in this Section. If Remaining Members holding Class B Membership Interests do not elect to purchase all of the Offered Interest stated in the Notice, the Remaining Members holding Class B Membership Interests shall then have an option, but not an obligation (except as otherwise stated in this agreement), to purchase the Offered Interests not purchased by Members holding Class A Membership Interests. If none of the Remaining Members elect to purchase the Offered Interests, the Transferring Interest Owner may then transfer such Offerred Interest to the proposed transferee stated in the Notice within 60 days after the expiration of the Remaining Members' purchase option.

(c) Remaining Members holding Class A Membership Interests may exercise their option, if at all, by delivering a written acceptance to the Transferring Interest Owner and to the other Members within ten days of receipt of the Notice of Intent to Transfer. Each Remaining Member of Class A shall each be entitled to purchase a proportion of the Offered Interest, based on the number of Units held by each Remaining Member as a fraction of the total number of Units held by the Remaining Members (exclusive of the offered Shares).

(d) In the event that one or more Remaining Members do not want to purchase any portion of the Offered Interest they may be entitled to purchase under subsection (c), and if one or more other Remaining Members do wish to purchase such Units, then such Remaining Members may agree among themselves to alter the number of Units they purchase under this Section, provided, that all of the Offered Interest available for purchase under this Section is, in the aggregate, agreed to be purchased by the Remaining Members within the ten-day option period. Any Member that purchases Units pursuant to this Article shall be referred to as a *"Purchasing Member"*.

(d) If the proposed transfer is a sale of all or part of the Offered Interest, the Remaining Members shall have the right to purchase such Units at the lesser of: (1) the purchase price and payment terms stated in the Notice of Intent to Transfer submitted to them by the Transferring Interest Owner (without regard to the requirement of any earnest money or similar deposit required of the purchaser prior to closing, and without regard to any security (other than the Offered Interests) to be provided by the purchaser for any deferred portion of the purchase price), or (2) the Purchase Price and payment terms described in Section 7.2 of this Agreement. If the proposed transfer is a gift of all or part of the Transferring Interest Owner's Units, the Remaining Members shall have the right to purchase such Units at the Purchase Price and upon the payment terms described in Section 7.2 of this Agreement.

(e) Any Units acquired under this Section 7.1 shall remain subject to the terms and conditions of this Agreement. Any Transfer that is not in compliance with the terms of this Agreement shall be null and void and shall not be recognized by the Members of the Company.

i. Offer Period. The Firm Offer shall be irrevocable for a period (the *"Offer Period"*) ending at 11:59 P.M., local time at the Company's principal place of business, on the ninetieth (90th) day following the day of the Offer Notice.

ii. Acceptance of Firm Offer. At any time during the first sixty (60) days of the Offer Period, any Offeree who is a Member may accept the Firm Offer as to all or any portion of the Offered Interest, by giving written notice of such acceptance to the Seller and the Managers which notice shall indicate the maximum Interests that such Offeree is willing to purchase. In the event that within the first sixty (60) days of the Offer Period, Offerees who are Members (*"Accepting Offerees"*), in the aggregate, accept the Firm Offer with respect to all of the Offered Interests, the Firm Offer shall be deemed to be accepted and each such Accepting Offeree shall be deemed to have accepted that portion of the Offered Interests that corresponds to the ratio of the Membership Interests that such Accepting Offeree indicated a willingness to purchase. At any time after the sixtieth (60th)) day of the Offer Period, the Managers may accept the Firm Offer as to any portion of the Offered Interest that has not been previously accepted by giving written notice of such acceptance to the Seller. In the event that Offerees including the Mangers (*"Accepting Offerees"*), in the aggregate, accept the Firm Offer with respect to all of the Offered Interest, the Firm Offer shall be deemed to be accepted. If Offerees do not accept the Firm Offer as to all of the Offered Interest during the Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

iii. Closing of Purchase Pursuant to Firm Offer. In the event that the Firm Offer is accepted, the closing of the sale Offered Interest shall take place within thirty (30) days after the Firm Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute such documents and instruments as may be necessary or appropriate to effect the sale of the Offered Interest pursuant to the terms of the Firm Offer and this Section ?.

iv. Sale Pursuant to Purchase Offer If Firm Offer Rejected. If the Firm Offer is not accepted in the manner provided above, the Seller may sell the Offered Interest to the Purchaser at any time within sixty (60) days after the last day of the Offer Period, provided that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer and provided further that such sale complies with other terms, conditions, and restrictions of this Agreement that are applicable to sales of Interests and are not expressly made inapplicable to sales occurring under this Section ?. In the event that the Offered Interest is not sold in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Section ?.

(b) **Net Equity of Member's Interest.** The *"Net Equity"* of a Member's Interest, as of any day, shall be the amount that would be distributed to such Member in liquidation of the Company pursuant to Section 8.3(d) if (1) the Gross Asset Values of Company assets were adjusted as set forth in Section 8.4, (2) all of the Company's assets were sold for their Gross Asset Values, as so adjusted, (3) the Company paid its accrued, but unpaid, liabilities and established reserves pursuant to Section 8.3(b) for the payment of reasonably anticipated contingent or unknown liabilities, and (4) the Company distributed the remaining proceeds to the Members in liquidation, all as of such day; provided that in determining such Net Equity, no reserve for contingent or unknown liabilities shall be taken into account if such Member (or such

Member's successor in interest) agrees to indemnify the Company and all other Members for that portion of any reserve as would be treated as having been withheld pursuant to Section 8.3(b) from the distribution such Member would have received pursuant to Section 8.3(d) if no such reserve were established. The Net Equity of a Member's Interest shall be determined, without audit or certification, from the books and records of the Company by the accounting firm regularly employed by the Company, and the amount of such Net Equity shall be disclosed to the Company and each of the Members by written notice. The Net Equity determination of such accountants shall be final and binding in the absence of a showing of gross negligence or willful misconduct.

(c) **Gross Appraised Value.** *"Gross Appraised Value,"* as of any day, shall be equal to the fair market value of the Property as of such day.

i. As used in this Agreement, as of any day, the *"fair market value"* of the Property means (i) the maximum amount that a single buyer would reasonably be expected to pay for the entire Property on such day, free and clear of all liens and encumbrances, in a single cash purchase, taking into account the current condition, use, and zoning of the Property, increased by (ii) the additional amount, if any, that such buyer would pay for an existing favorable financing or leases on the Property, and decreased by (iii) the amount, if any, that such buyer would subtract from the unencumbered fair market value of the Property by reason of any existing unfavorable financing or leases.

ii. In situations under this Agreement in which it is necessary to determine Gross Appraised Value, the provision requiring such determination should provide the manner and time for the appointment of two appraisers (the *"First Appraiser"* and the *"Second Appraiser"*). If the Second Appraiser is timely designated, the First and Second Appraisers shall meet within ten (10) days of such appointment and shall endeavor, within twenty (20) days of such appointment, to agree upon, and given written notice to the Company, the Members and the firm of independent certified public accountants regularly employed by the Company, of the Gross Appraised Value of the Property (the *"Appraisers' Notice"*). If an Appraisers' Notice is not given during such period, then at any time after such period, either the persons who appointed the First Appraiser or the persons who appointed the Second Appraiser, by written notice to the First Appraiser and Second Appraiser, may demand that they appoint a Third Appraiser (the *"Third Appraiser"*). If the First Appraiser, and Second Appraiser have not either given an Appraisers' Notice or appointed the Third Appraiser (who shall have agreed to serve) by the twentieth day after such demand, either the persons who appointed the First Appraiser or the persons who appointed the Second Appraiser may request any judge of the Superior Court of the State of New Jersey, to appoint the Third Appraiser. After the appointment of the Third Appraiser, the Gross Appraised Value shall be the amount included in an Appraiser's Notice subscribed to by at least two (2) of the three (3) appraisers; provided that before subscribing to a Gross Appraised Value, the Third Appraiser shall meet at least once with the First Appraiser and the Second Appraiser to discuss in good faith the appraisal of the Property. If two (2) the appraisers have not given an Appraisers' Notice within twenty (20) days of the appointment of the Third Appraiser, the Gross Appraised Value of the Property shall be determined solely by the Third Appraiser, who shall given an Appraisers' Notice within thirty (30) days of his appointment.

iii. If a Second Appraiser is not timely appointed in the manner provided by this Agreement, the Gross Appraised Value shall be determined solely by the First Appraiser who shall give an Appraisers' Notice of such Gross Appraised Value within ten (10) days of the last day on which the Second Appraiser could have been timely designated.

iv. Each appraiser shall be disinterested and shall be a member of the Appraisal Institute or other appropriate body and qualified to appraise property similar to the Property and located in the vicinity of the Property.

6.3 Transfer of Membership Interest Without Substitution. Subject to compliance with the conditions of Section 6.7, a Member shall have the right to transfer all or part of such Member's Membership Interest by a written instrument of transfer the terms of which are not in contravention of any of the provisions of this Agreement. Unless and until admitted as a substitute or additional Member in accordance with this Agreement, a transferee shall only be an Economic Interest Owner, who shall be entitled to receive distributions from the Company, and be allocated Profits and Losses of the Company, attributable to the Membership Interest acquired by reason of such transfer from and after the effective date of the transfer of such Interest, as specified in Section 6.7. All other Company rights attributable to such transferred Interest, including, without limitation, the right to inspect Company books and to vote on Company matters, shall terminate until and unless such transferee becomes a substituted or additional Member; provided, however, that the Managers and the Company shall be entitled to treat the assignor of such Membership Interest as the owner thereof in all respects, and shall incur no liability for distributions made in good faith to such transferor until such time as both the beneficiary of such transfer has been recognized by the Company as a transferee in accordance with Section 6.7 and the effective date of the transfer has passed.

6.4 Admission of Transferees as New Members.

(a) An Economic Interest Owner may become a substituted or additional Member in the Company if, in addition to the requirements of Section 6.6, (i) the Economic Interest Owner obtains the written consent of the Managers and of the Members, which consent may be withheld for any reason or without reason as a matter of absolute discretion; and (ii) the transferor and transferee named in such transfer have executed and acknowledged such other instruments as the Managers may deem necessary or desirable to effect such admission.

(b) A transferee accepted as a substitute or additional Member shall have all of the rights and obligations of its predecessor in interest in the Company, to the extent that they relate to the transferred interest. Admission of a substituted or additional Member shall be recognized by the Company as provided in Section 6.7.

(c) If there are no remaining Members in the Company, an Economic Interest Owner may become a substituted Member in the Company if, in addition to the requirements of Section 6.6, a new Member is appointed as provided in Section 8.1(d).

6.5 Issuance of New Membership Interests. Any person acceptable to the Managers and the Members may become an additional Member in the Company by the issuance of additional Membership Interests in exchange for such consideration as such Members and the

Managers may determine as a matter of absolute discretion. Such person may become an additional Member in the Company only if, in addition to the requirements of Section 6.6, the person executes such instruments as the Managers may deem necessary or desirable to effect such admission. Admission of an additional Member shall be recognized by the Company as provided in Section 6.7.

6.6 Conditions on Transfers of Membership or Economic Interest. A transfer of a Membership Interest or Economic Interest otherwise permitted by this Article 6 shall be subject to the following additional limitations:

(a) No Membership or Economic Interest may be transferred or issued if such proposed action, in the opinion of counsel for the Company, (i) would result in the termination of the Company under Section 708 of the Code, or (ii) would result in the cancellation of the Articles of Organization or an obligation to file a Certificate of Cancellation, or (iii) would impair the ability of the Company to be taxed as a partnership for Federal income tax purposes.

(b) No Membership (or Economic Interest) may be issued by the Company or transferred by a Member unless the transferee (whether such person is to be admitted as a Member or will merely be an Economic Interest Owner) confirms in a writing acceptable to the Managers and at the Managers election, necessary or appropriate in the opinion of counsel to the Company, that such transferee has accepted, assumed, and agreed to be bound subject to and bound by all of the terms and conditions of this Agreement. No Membership (or Economic) Interest may be transferred unless the assigning Member or Economic Interest Owner delivers to the Managers a written instrument of assignment in form and substance satisfactory to the Managers, duly executed by the transferor or such transferor's personal representative or authorized agent. The assignment shall be accompanied by such assurances of genuineness and effectiveness and by such consents or authorizations of governmental or other authorities as may be reasonably required by the Managers.

(c) No transfer of a Membership or Economic Interest may be made unless the transferee shall have paid or, at the election of the Managers, becomes obligated to pay all reasonable expenses connected with such transfer, substitution and admission, including but not limited to reasonable attorneys' and accountants' fees and the cost of preparing and filing an amendment required, if any, to effect the transferee's admission as a substituted Member pursuant to Section 6.7.

(d) No Membership Interest or Economic Interest may be transferred unless, if requested, the Managers receive an opinion of counsel, satisfactory in form and substance to the Company's counsel, to the effect that such transfer will not violate the Federal Securities laws, or any state securities or syndication laws. Such opinion shall, in the case of a transfer by a Member or Economic Interest Owner, be furnished at the expense of such Member or Owner.

(e) No Membership Interest or Economic Interest may be held by a tax exempt entity or a foreign person (as defined in Section 1445 of the Code).

6.7 Recognition of Transferees and Substituted Members. Amendments to the books and records of the Company and, as may be required by law, amendments to the Articles

of Organization, shall be made monthly (or less frequently to the extent that such transfers or substitutions occur less frequently) to recognize the transfer of a Membership Interest and, as applicable, admission of substituted or additional Members. Transfers of Membership Interests and admissions of new Members shall be recognized and effective on and as of the first day of the first month following the date of the satisfaction of the conditions to the transfer and substitution set forth in this Article, as applicable.

6.8 Obligations of Transferring Member. Except as otherwise agreed to by the Managers, no transfer by a Member of all or any portion of an interest in the Company shall, to any extent, relieve the transferring Member of any of such Member's obligations to the Company or liability, if any, as a Member (whether or not such person remains as a Member).

6.9 Allocations Upon Transfer of Membership or Economic Interest.

(a) As between a Member and such Member's transferee, profits, losses and credits for any semi monthly period shall be apportioned to the person who is the holder of the Membership Interest transferred on the last day of such semi monthly period, without regard to the results of the Company's operations during the period before or after such transfer. However, in the event that it is determined by the Managers that the convention adopted by the Company to allocate income, gain, loss, deduction or credit of the Company is not in compliance with Section 706(d) of the Code, as modified by Regulations promulgated thereunder, then the Managers shall revise the method of allocation to comply with such Regulations.

(b) No new Members or Economic Interest Owners shall be entitled to any retroactive allocation of Profits or Losses incurred by the Company. The Managers may, at their option, at the time a Member is admitted, or an Interest transferred, close the Company's books or make an allocation of tax items using any reasonable method permitted under Section 706(d) of the Code and applicable Treasury Regulations.

(c) Any distributions of cash or other property shall be made to the holder of record of any portion of a Membership Interest or Economic Interest on the date of distribution.

ARTICLE 7
DISSOCIATION OF A MEMBER

7.1 Dissociation. A person shall cease to be a Member (referred to as "dissociation") upon the happening of any of the following events:

(a) the bankruptcy of a Member;

(b) the assignment or transfer by a Member of such person's entire Membership Interest in accordance with the terms of this Agreement;

(c) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

(d) in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) in the case of a Member that is a separate organization other than a corporation, the dissolution and commencement of winding up of the separate organization; or

(f) in the case of a Member that is a corporation, the filing of articles of dissolution, or its equivalent, for the corporation or the revocation of its charter.

7.2 **Rights of Dissociating Member.** In the event any Member dissociates prior to the expiration of the term of the Company, then the Member who dissociates, or such Member's successor in interest shall, regardless of whether the dissociation was the result of a voluntary act by such Member, only be entitled to receive distributions to which the Member would otherwise have been entitled had the Member remained a Member, and the dissociating Member shall thereafter be an Economic Interest Owner. Further, if the dissociation occurs by virtue of an assignment of such person's entire Membership Interest in accordance with this Agreement, then the rights and obligations of the dissociating Member (and such Member's successor) shall be subject to the provisions of Article 6.

7.3 **Withdrawal of Member.** Except as otherwise provided in Article 6, no Member shall be entitled to withdraw or resign from the Company.

7.4 **Effect of Dissociation of a Member.** Notwithstanding anything to the contrary in this Agreement, the Act or otherwise applicable state law, the dissociation of a Member shall not cause the dissolution, termination or liquidation of the Company.

ARTICLE 8
DISSOLUTION AND LIQUIDATION

8.1 **Events Triggering Dissolution.** The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("Liquidating Events"):

(a) the determination by the Managers, or by unanimous agreement of all of the Members, that the Company should be dissolved;

(b) the insolvency or bankruptcy of the Company;

(c) the sale of all or substantially all of the Company's assets; or

(d) ninety (90) days after the date of any act that causes the Company to have less than the minimum number of members required under the Act, provided that any such event shall not be a Liquidating Event if one or more new members (sufficient to satisfy the requirement of the Act regarding the minimum number of members) are appointed, in writing, by the successor in interest to the last remaining Member of the Company within ninety (90) days of such Member's dissociation, and if there is more than one successor in interest to the last remaining Member or if two or more Members dissociate at the same time, then appointment of

a new member shall be made by the affirmative decision of persons holding a majority of such successor interests in the Company; or

(e) any event that makes it impossible, unlawful or impractical to carry on the business of the Company.

(f) The Members agree that the Company shall not be dissolved or liquidated prior to the occurrence of a Liquidating Event, as set forth in this Article 8. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, then within a 90-day period after such determination (the "Reconstitution Period"), the Members may elect to reconstitute the Company and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited liability company on identical terms. Upon such election within the Reconstitution Period all Members and Economic Interest Owners (and their successors in interest) shall be bound thereby and shall be deemed to have consented to such election.

8.2 Effect of Dissolution. No dissolution of the Company shall release any of the parties to this Agreement from their contractual obligations under this Agreement.

8.3 Liquidation. Upon dissolution of the Company in accordance with Section 8.1, the Company shall be liquidated. The Managers (or if there are no Managers, then the Members shall select a Liquidating Manager (who may be any Member or Manager) who shall serve only for purposes of winding up the Company. The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(a) to the payment of the debts and liabilities of the Company (other than debts or liabilities owing to a Member or Economic Interest Owner) and the expenses of liquidation (including, if applicable, the reasonable fees of the Liquidating Manager);

(b) the setting up of any reserves which the Liquidating Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves shall be paid over to an attorney at law of the State in which the Company is formed and organized, as escrow-holder, to be held for the purpose of disbursing (under the direction of the Liquidating Manager) such reserves in payment of any of the aforementioned liabilities and, at the expiration of such period (not to exceed two (2) years) as the Liquidating Manager may deem advisable, for distribution in the manner hereinafter provided;

(c) to the repayment of any outstanding advances or loans that may have been made by any of the Members or Economic Interest Owners to the Company, other than capital contributions, pro rata among them on the basis of such advances and loans to the Company;

(d) to the Class A Members until such Members receive an amount equal to the excess of (i) the cumulative Priority Return from the inception of the Company to the end of the calendar quarter preceding the quarter during which such distribution is made, over (ii) the sum of all prior distributions to such Members of Priority Return pursuant to Section 4.1(b) or Section 4.2(c) or this Section 8.3(d); and

(e) the balance, if any, to the Members or Economic Interest Owners (or to their permitted transferees of their Interest in the Company, in whole or in part) in accordance with their respective Capital Accounts, after adjustment for all income, loss, and gain of the Company and after adjustment for all previous contributions and distributions of the Company.

8.4 Revaluation. If the Company's assets are not sold, but instead are distributed in kind, such assets, for purposes of determining the amount to be distributed to the parties, shall be revalued on the Company books to reflect their then current fair market value as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation shall be allocated among the Members (in accordance with the provisions of Article 3 as if such assets were sold at such fair market value) and taken into account in determining the Capital Accounts of the Members as of the date of liquidation.

8.5 Distributions in Kind. The Liquidating Manager may make distributions to the Members in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, and to allocate any property towards the satisfaction of any payment or distribution due to the Members in such manner as the Liquidating Manager may determine, whether or not such distributive shares may as a result be composed of differently. Distribution of any asset in kind to a Member shall be considered as a distribution of an amount equal to the asset's fair market value for purposes of this Article 8.

8.6 Timing of Liquidation. Distributions and liquidation of the Company shall be made in compliance with Treasury Regulation Section 1.704 1(b)(2)(ii)(b). Distributions may be made to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members and Economic Interest Owners from time to time in the reasonable discretion of the Liquidating Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to such persons pursuant to this Agreement.

8.7 Articles of Dissolution. Upon the dissolution of the Company and the completion of the liquidation and winding up of the Company's affairs and business, the Liquidating Manager shall (or if the Liquidating Manager fails to act, then any Member may) prepare and file articles of dissolution with the Florida Department of State, as required by the Act. When such articles are filed, the Company's existence shall cease.

ARTICLE 9
ACCOUNTING AND FISCAL MATTERS

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

9.2 Method of Accounting. The Managers shall select a method of accounting for the Company as deemed necessary or advisable and shall keep, or cause to be kept, full and accurate records of all transactions of the Company in accordance with sound accounting principles consistently applied.

9.3 Books and Records. All books of account shall, at all times, be maintained in the principal office of the Company. Upon reasonable request, each Member or Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy all accounts, books, and other relevant Company documents at the requesting Member's and Economic Interest Owner's expense. Upon written request of any Member, the Managers shall provide a list showing the names, addresses, and Membership Interests and Economic Interests of all Members, and a copy of the operating agreement and Articles of Organization.

9.4 Federal Income Tax Returns. The Managers shall prepare, or cause to be prepared, Federal income tax returns for the Company, and, in connection therewith and in the discretion of the Managers, make any available or necessary elections, including elections with respect to the useful lives and rates of depreciation of the properties of the Company.

9.5 Reports and Statements. By the first of April of each calendar year of the Company, the Managers shall cause to be delivered to the Members such information as shall be necessary for the preparation by the Members of their Federal, state and local income and other tax returns. The Managers shall also furnish such other information to the Members as, in the judgment of the Managers, shall be reasonably necessary for the Members to be advised of the financial status and results of operations of the Company.

9.6 Bank Accounts. The Managers shall open and maintain (in the name of the Company) such bank accounts in which shall be deposited all funds of the Company. Withdrawals from such account or accounts shall be made upon the signature or signatures of such person or persons as the Managers shall designate.

9.7 Tax Matters Partner. The Managers may designate one of their number, or if there are no Managers eligible to act as Tax Matters Partner any Member, to act as the "Tax Matters Partner" under Section 6231(a)(7) of the Internal Revenue Code of 1986, as amended, to manage administrative tax proceedings with the Internal Revenue Service. Any Member designated as Tax Matters Partner may not take any action pursuant to Sections 6222 through 6232 without the consent of the Managers.

ARTICLE 10
MISCELLANEOUS

10.1 Amendment. Except as otherwise provided in this Section 10.1 or elsewhere in this Agreement, this Agreement may be amended only with the consent of the Managers and by Members holding at least 75% of the aggregate Membership Interests.

(a) **Amendments Without Consent of Members.** In addition to any amendments otherwise authorized in this Agreement, amendments may be made to this Agreement from time to time by the Managers, without the consent of any Member, which (i) do not adversely affect the rights of the Members or their assignees in any material respect; (ii) correct any error or resolve any ambiguity in or inconsistency among any of the provisions of this Agreement; (iii) delete or add any provision of this Agreement that is required to be so deleted or added by any federal or state securities commission or other governmental authority; (iv) amend this Agreement and any Articles of Organization to admit new Members in

accordance with this Agreement; (v) amend Article 3 in accordance with the provisions of Section 3.3(j); or (vi) is in response to a change in the Act that permits or requires an amendment so long as no Member is adversely affected in any material respect.

(b) **Amendments Requiring Consent of Affected Members.** Notwithstanding anything to the contrary in this Section 10.1, this Agreement may not be amended, without the consent of the Member or Members affected by any amendment to this Agreement, to (i) modify the limited liability of a Member; (ii) alter the status of the Company as a partnership for federal income tax purposes; or (iii) otherwise modify the compensation, distributions, or rights of reimbursement to which such Member(s) are entitled, or affect the duties of such Members serving as Managers or the indemnification to which such Members serving as Managers, and their affiliates, employees or agents, are entitled.

10.2 Glossary. As used in this Agreement, capitalized words and phrases shall have the following meanings:

(a) **Bankruptcy.** *"Bankruptcy"* of any individual, corporation or partnership shall be deemed to occur when (1) such individual, corporation or partnership files a petition in bankruptcy, or voluntarily takes advantage of any bankruptcy or insolvency law or (2) is the subject of a petition or answer proposing the adjudication of such person as a bankrupt, and such individual, corporation or partnership either consents to the filing thereof, or fails to cause such petition or answer to be discharged or denied prior to the expiration of sixty (60) days from the date of such filing, or (3) such person's or entity's assets are insufficient to pay its liabilities, or it has so admitted in writing.

(b) **Capital Account.** *"Capital Account"* means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Section 3.3 (other than Section 3.3(a)) or 3.4 of this Agreement, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(ii) To each Member's Capital Account there shall be debited the amount of cash (exclusive of amounts, if any, paid as compensation in exchange for management services of the Managers pursuant to Section 5.12) and the Gross Asset Value of any Company property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 3.3 (other than Section 3.3(a)) or 3.4 of this Agreement, such Member's distributive share of noncapital, nondeductible expenditures of the Company under Code Section 705(a)(2)(B) (including items treated as such expenditures pursuant to Treasury Regulation 1.704 1(b)(2)(iv)(i)), and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(iii) In the event any Member transfers all or any portion of its Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(iv) In the event the Gross Asset Values of Company property are adjusted pursuant to Section 10.2(m) of this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

(v) In determining the amount of any liability for purposes of this Section 10.2(b), there shall be taken into account Code Section 752(c) and other applicable Code Sections and Treasury Regulations.

(vi) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with the Treasury Regulations. In the event the Managers determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Managers may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 8 of this Agreement upon the dissolution of the Company. The Managers also shall (1) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (2) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704(b).

(c) **Capital Account Deficit.** *"Capital Account Deficit"* means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year of the Company, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore (pursuant to the terms of any promissory note of such Member or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(l)(5); and

(ii) Debit to such Member's Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations.

The foregoing definition of Capital Account Deficit is intended to comply with Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) **Capital Contribution.** *"Capital Contribution"* means, with respect to any Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to a Membership Interest held by such Member. The principal amount of a promissory note which is not readily tradable on an

established securities market and which is contributed to the Company by the maker of the note (or a person related to the maker of the note within the meaning of Treasury Regulation 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent that) principal payments are made on the note, all in accordance with Treasury Regulation 1.704-1(b)(2)(iv)(d)(2).

(e) **Code.** *"Code"* means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(f) **Company.** *"Company"* means the limited liability company governed by this Agreement.

(g) **Company Minimum Gain.** "*Company Minimum Gain*," which generally refers to the excess of the outstanding Company Nonrecourse Liability mortgage balance over the adjusted basis of any Company property securing such liability, shall have the meaning ascribed to such term under Regulation Section 1.704-2(d).

(h) **Company Nonrecourse Deductions.** "*Company Nonrecourse Deductions*" shall have the meaning set forth in Regulation Section 1.704-2(c), which provides generally that the amount of Company Nonrecourse Deductions (as identified in Regulation Section 1.704-2(j)(1)(ii)) for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the amount of any distributions during that fiscal year of proceeds of a Company Nonrecourse Liability that are allocable to an increase in Company Minimum Gain.

(i) **Company Nonrecourse Liability.** "*Company Nonrecourse Liability*" shall have the meaning set forth in Regulation Sections 1.704-2(b)(3) and 1.752-1(a)(2), which generally refer to liabilities of the Company for which no Member (or person related to a Member) bears the economic risk of loss.

(j) **Depreciation.** *"Depreciation"* means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable, if any, with respect to a Company asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

(k) **Economic Interest.** *"Economic Interest"* means a Member's or Economic Interest Owner's share of the Company's Profits, Losses, Net Cash Flow, and other distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision of the Members, all as provided in Section 6.3.

(l) **Economic Interest Owner.** *"Economic Interest Owner"* shall mean the owner of an Economic Interest who is not a Member, including without limitation, a person who has acquired an Economic Interest (i) as an assignee pursuant to Section 6.3, or (ii) as the

personal representative, guardian or other successor in interest upon the death (in the case of a Member who is an individual), dissolution (in the case of a Member who is not an individual), bankruptcy or physical or mental incapacity of a Member pursuant to Article 7.

(m) **Gross Asset Value.** *"Gross Asset Value"* means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property or money in exchange for an interest in the Company, unless all Members receive simultaneous distributions of undivided interests in the distributed property in proportion to their interests in the Company; (c) the grant of an interest in the partnership (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by a new or existing Member acting in a Member or Manager capacity, or by a new Member acting in anticipation of being a Member; (d) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g); and (e) the termination of the Company for federal income tax purposes pursuant to Code Section 708(b)(1)(B);

(iii) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 10.2(x)(v) and 3.3(g); and

(iv) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this subsection, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(n) **Lender.** *"Lender"* means any Member who advances (other than as a Capital Contribution) any money or property to the Company.

(o) **Manager.** *"Manager"* shall mean one or more persons elected to manage the affairs of the Company pursuant to Article 5 of this Agreement.

(p) **Members.** *"Members"* means the persons, identified by class, listed on attached Schedule A, and any person admitted to the Company as a Member in accordance with Article 6. The Members shall have the powers, rights and privileges provided to them in this Agreement. References in this Agreement to *"Member"*, without indication of a particular class, shall be deemed to include both Class A and Class B Members.

(q) **Membership Interest.** *"Membership Interest"* means a Member's Economic Interest in the Company and such Member's right to participate in the management of the business and affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision or action of the Members pursuant to this Agreement or the Act. Unless otherwise agreed to in a writing signed by all of the Members and attached to this Agreement, the Members' respective percentage Membership Interests shall be as set forth on Schedule A attached to and incorporated by reference into this Agreement.

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

(s) **Member Nonrecourse Debt.** "*Member Nonrecourse Debt*" shall have the meaning set forth in Regulation Section 1.704-2(b)(4), which refers generally to a loan made or guaranteed by a Member (or a person related to a Member within the meaning of such Regulations).

(t) **Member Nonrecourse Deductions.** "*Member Nonrecourse Deductions*" shall have the meaning set forth in Regulation Section 1.704-2(i)(2), which provides generally that the amount of Member Nonrecourse Deductions (as identified in Regulation Section 1.704-2(j)(1)(i)) with respect to a Member Nonrecourse Debt equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during the fiscal year of the Company over the aggregate amount of any distributions during that fiscal year to the Member bearing the economic risk of loss for such Member Nonrecourse Debt (to the extent that such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt).

(u) **Net Cash from Operations.** *"Net Cash from Operations"* means the gross cash proceeds from Company operations (including sales and dispositions in the ordinary course of business) less the portion of such proceeds used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Managers. "Net Cash from Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to Section 4.3. Payments of principal and interest on any debts or other obligations of the Company, whether or not secured by mortgages or liens on Company property, shall be considered as a deduction from Net Cash from Operations. Actual or deemed distributions to Members shall not be taken into account for purposes of calculating Net Cash from Operations.

(v) **Net Cash from Sales or Refinancings.** *"Net Cash from Sales or Refinancings"* means the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings or placement of new mortgages on the Property, less any portion of such proceeds used to establish reserves or applied to capital improvements, all as determined by the Managers. "Net Cash from Sales or Refinancings" shall include all principal and interest payments received by the Company with respect to any note or other

obligations received by the Company in connection with sales and other dispositions (other than in the ordinary course of business) of Property. Payments of principal and interest on any debts or other obligations of the Company, whether or not secured by mortgages or liens on Company property, shall be considered as a deduction from Net Cash from Sales or Refinancings. For purposes of this Agreement, Net Cash from Sales or Refinancings shall also include any Capital Contributions of the Members, as well as any incremental adjustment to the value of the Company's property in connection with a Revaluation under Section 8.4. Actual or deemed distributions to Members shall not be taken into account for purposes of calculating Net Cash from Sales or Refinancings.

(w) **Priority Return.** *"Priority Return"* means a sum equivalent to 10% per annum on a cumulative basis, and compounded annually (and prorated for any partial year) of the aggregate Unrecovered Capital Contributions of a Class A Member, from time to time during the period to which the Priority Return relates, commencing on the date of this Agreement.

(x) **Profit and Losses.** *"Profits"* and *"Losses"* means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, which shall be calculated after offset of all deductions of the Company including, but not limited to, compensation or guaranteed payments made to the Members in respect of personal services provided by them to or for the benefit of the Company as agreed upon by the Managers, and determined in accordance with Code Section 703(a) (and for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss and including deductions attributable to nonrecourse debt), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Subsection shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise required to be taken into account in computing Profits or Losses pursuant to this Subsection, shall be subtracted from such taxable income or loss;

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 10.2(g) of this Agreement;

(v) In the event that the Gross Asset Value of any Company asset is adjusted pursuant to Section 3.3, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(vi) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required under Treasury Regulation 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Any items that are specially allocated pursuant to Section 3.3(a) shall not be taken into account in computing Profits or Losses.

(y) **Property.** *"Property"* means the Company's interest in any tangible or intangible property, real or personal, but excluding services and promises to perform services in the future.

(z) **Treasury Regulations.** *"Treasury Regulations"* means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(aa) **Unrecovered Capital Contributions.** *"Unrecovered Capital Contributions"* means, as of any day, a Class A Member's Capital Contributions, as defined in Section **Error! Reference source not found.** above, and as adjusted as follows: (i) reduced, but not below zero, by the amount of cash or the Gross Asset Value of any other property distributed to such Member pursuant to Section 4.2(b) or 8.3(e) of this Agreement, and reduced by the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company, and (ii) increased by the amount of any Company liabilities which, in connection with distributions referred to subsection (i) above, are assumed by such Member or are secured by any Company property distributed to such Member. In the event any person transfers all or any portion of its Membership Interest or Economic Interest as a Class A Member in accordance with the terms of this Agreement, the transferee shall succeed to the Unrecovered Capital Contribution of the transferor to the extent it relates to the transferred Class A Membership Interest.

10.3 Notices. Unless otherwise provided in this Agreement or by written agreement of the Members, all notices or other communications required or permitted to be given under this Agreement shall be deemed given when delivered personally or mailed by registered or certified mail, return receipt required, postage prepaid, or delivered by overnight courier service, to the Members at their addresses on the records of the Company, or at such other addresses as a Member may designate to the Company in writing.

10.4 Binding Effect. Except as otherwise provided in this Agreement to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns.

10.5 Counterparts. This Agreement may be executed in several counter parts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

10.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida.

10.7 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

10.8 Gender. As used in this Agreement, the masculine gender shall include the feminine and the neuter, and vice versa.

CERTIFICATE

The undersigned agree, acknowledge and certify that the foregoing document constitutes the Operating Agreement adopted by the Members of the Company as of the date of this Agreement.

_____
Alfred Mackler, Member

_____
Helen Mackler, Member

_____
Harvey Mackler, Member

Schedule A

Member (Name and Address)	Capital Contributions (Cash, or Gross Asset Value of Property Contribution)	% of Priority Return	Membership Interest (Subject to Priority Return on and of Cap. Contrib.)
CLASS A			
Alfred Mackler [Address]	1% of Membership Interest (50% of Class A interest) in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	50%	1%
Helen Mackler [Address]	1% of Membership Interest (50% of Class A interest) in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	50%	1%
CLASS B			
Alfred Mackler [Address]	36.5% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	0%	36.5%
Helen Mackler [Address]	36.5% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	0%	36.5
Harvey Mackler [Address]	$25% of Membership Interest in Vayiheor, LLC, a New Jersey limited liability company, pursuant to that certain Agreement and Plan of Merger dated _____, 2008	0%	25%

CONSENT OF MEMBERS
OF
VAYIHEOR, LLC, a Florida limited liability company

The undersigned, being all of the members of **VAYIHEOR, LLC**, a limited liability company organized under the laws of the State of Florida (the "Company"), at a meeting duly called, hereby adopt the following resolutions:

WHEREAS, the Managers of the Company recommend that the Company merge with **VAYIHEOR, LLC**, a limited liability company organized under the laws of the State of New Jersey (the "Merged Company") to facilitate the move of the Merged Company's operations from New Jersey to Florida; and

WHEREAS, the members of the Company believe that it is in the best interest of the Company to merge with the Merged Company.

NOW THEREFORE, BE IT,

RESOLVED, that the members of the Company desire that the Company merge with the Merged Company in accordance with the terms and conditions of the Agreement and Plan of Merger attached to this resolution as Schedule A; and be it

FURTHER RESOLVED, that the Managers of the Company are authorized, directed and empowered to take any and all action necessary to merge with the Merged Company in accordance with the terms and conditions of the Agreement of and Plan of Merger attached to this resolution as Schedule A, including, but not limited to, the filing with the New Jersey Department of the Treasury, New Jersey Division of Revenue and the Florida Department of State of an appropriate certificate of merger; and be it

FURTHER RESOLVED, that this action may be executed in counterparts, including by facsimile, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

VAYIHEOR, LLC, a Florida limited liability company
Consent of Members Signature Page

The undersigned, being all of the members of VAYIHEOR, LLC, a Florida limited liability company, by affixing his or her signature hereto as of the 31st day of December, 2008, hereby consent to, authorize and approve of the resolution dated as of the 31st day of December, 2008, approving the merger of VAYIHEOR, LLC, a New Jersey limited liability company with VAYIHEOR, LLC, a Florida limited liability company.

Trust U/W/O Alfred Mackler, Member

Helen Mackler, Member

Harvey Mackler, Member

Schedule A

Attached hereto is (i) the Articles of Merger; and (ii) Agreement of Plan of Merger.