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SHEPPARD, BRETT, STEWART & HERSCH, P.A.

ATTORNEYS AT LAW

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JOHN F. STEWART  
CRAIG R. HERSCH\*  
D. HUGH KINSEY, JR.

(FORMERLY SHEPPARD & WOOLSLAIR)  
FIRM ESTABLISHED 1924

2121 WEST FIRST STREET  
P. O. DRAWER 400  
FORT MYERS, FLORIDA 33902

W. A. SHEPPARD (1898-1971)  
JOHN K. WOOLSLAIR (1908-1968)

JOHN WOOLSLAIR SHEPPARD\*  
OF COUNSEL

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\*BOARD CERTIFIED: WILLS, TRUSTS & ESTATES

May 7, 1998

Corporate Records Bureau  
Division of Corporations  
Department of State  
409 E. Gaines Street  
P. O. Box 6327  
Tallahassee, Florida 32301

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-05/11/98--01112--002  
\*\*\*\$285.00 \*\*\*\$285.00

Re: HEALTHPARK FLORIDA FITNESS CENTER, L.C.

Dear Sirs:

Enclosed herewith are proposed Articles of Organization and copy of Operating Regulations for the above reference Limited Liability Company. Also enclosed is our check in the amount of \$285.00 to cover the following:

Filing Fee	\$ 250.00
Resident Agent Fee	<u>\$ 35.00</u>
	\$ 285.00

llh

CM

If the Articles meet with your approval, we will appreciate your executing and sending to the undersigned a Certificate.

Very truly yours,

SHEPPARD, BRETT, STEWART & HERSCH, P.A.

  
Jay A. Brett

JAB:dlb

Enclosures

cc: Mr. Jeffrey M. Bensky  
Mr. Douglas A. Dodson

CM  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF ORGANIZATION  
OF  
HEALTHPARK FLORIDA FITNESS CENTER, L.C.**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned parties (the "Members"), for the purpose of forming a Limited Liability Company under the Florida Limited Liability Company Act, F.S. Chapter 608, hereby make, acknowledge, and file the following Articles of Organization.

**ARTICLE I - NAME**

The name of this Limited Liability Company shall be "HEALTHPARK FLORIDA FITNESS CENTER, L.C." ("the Company"). The principal place of business of the Company in Florida shall be: 9800 HealthPark Circle, Suite 208, Fort Myers, Florida 33908 , (Mailing address is the same.)

**ARTICLE II - DURATION**

The Company shall commence its existence on the date these Articles of Organization are filed with the Florida Department of State. The Company's existence shall be perpetual from the date of filing of these Articles with the Florida Department of State, unless the Company is earlier dissolved, as provided in these Article of Organization, or the operating Regulations of the Company.

**ARTICLE III - PURPOSE AND POWERS**

The general purpose for which the Company is organized is to own, operate and develop a health, wellness and fitness facility to be located in Lee County, Florida. The Company may also conduct any lawful business for which a Limited Liability Company may be organized under the laws of the state of Florida. The Company shall have all the powers granted to a Limited Liability Company under Chapter 608 of the Florida Statutes, as said chapter may be amended.

**ARTICLE IV - REGISTERED OFFICE AND AGENT**

The name and street address of the Registered Agent of the Company in the State of Florida is: DOUGLAS A. DODSON, 9800 HealthPark Circle, Suite 208, Fort Myers, Florida 33908.

**ARTICLE V - CAPITAL CONTRIBUTIONS**

The members of the Company shall contribute to the capital of the Company the cash or property set forth in Exhibit "A" attached hereto and made a part hereof by reference.

## ARTICLE VI - ADDITIONAL CAPITAL CONTRIBUTIONS

Each member shall make additional capital contributions to the Company only upon the unanimous consent of all the members.

## ARTICLE VII - ADMISSION OF NEW MEMBERS

No additional members shall be admitted to the Company except upon the unanimous written consent of all the members of the Company and upon such terms and conditions as shall be determined by all the members. A member may transfer his or her interest in the Company as set forth in the Operating Regulations of the Company, but the transferee shall have no right to participate in the management of the business and affairs of the Company or become a member unless all the other members of the Company (other than the member proposing to dispose of its interest) shall approve of the proposed transfer by unanimous written consent.

## ARTICLE VIII - TERMINATION OF EXISTENCE

The Company shall be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or upon the occurrence of any other event that terminates the continued membership of a member in the Company, unless the business of the Company is continued by the consent of all the remaining members, provided there are at least two (2) remaining members.

## ARTICLE IX - MANAGEMENT

The Company shall be managed by the members in accordance with Operating Regulations adopted by the members for the management of the business and affairs of the Company. These Operating Regulations may contain any provisions for the regulation and management of the affairs of the Company not inconsistent with law or these Articles of Organization. The names and addresses of the members of the Company are:

### NAME

### ADDRESS

1197-396  
TBG DEVELOPMENT, L.L.C., a  
Missouri Limited Liability Company

226 S. Meramec, Suite 200  
St. Louis, Missouri 63105

116254  
WELLNESS VENTURES, INC., a  
Florida Corporation

9800 South HealthPark Drive  
Suite 208  
Fort Myers, FL 33908

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TALLAHASSEE FLORIDA

IN WITNESS WHEREOF, the undersigned organizers have made and subscribed these Articles of Organization for the foregoing uses and purposes this 6<sup>th</sup> day of April, 1998.

TBG DEVELOPMENT, L.L.C.

BY: Jeffrey M. Bensky  
Its Member-Manager

WELLNESS VENTURES, INC.

BY: Douglas A. Gordin  
Its President

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

STATE OF Florida

COUNTY OF Lee

Execution of the foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April, 1998, by Jeffrey M. Bensky as member-Manager of TBG DEVELOPMENT, L.L.C., who is (☒) personally known to me or who has ( ) produced \_\_\_\_\_ as identification.



Helma Reynolds  
Signature of Notary Public  
Helma Reynolds  
Printed Name of Notary Public

Commission Number:  
Commission Exp. Date:

STATE OF FLORIDA

COUNTY OF LEE

Execution of the foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April, 1998, by Douglas A. Dodson, as President of WELLNESS VENTURES, INC., who is (☒) personally known to me or who has ( ) produced \_\_\_\_\_ as identification.



Helma Reynolds  
Signature of Notary Public  
HELMA REYNOLDS  
Printed Name of Notary Public

Commission Number:  
Commission Exp. Date:

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TALLAHASSEE, FLORIDA

**EXHIBIT "A"**  
**CAPITAL CONTRIBUTIONS**

<u>NAME</u>	<u>CASH</u>	<u>LAND</u>	<u>TOTAL</u>
Wellness Ventures, Inc.	\$ <u>0.00</u>	\$ <u>1,757,646</u>	\$ <u>1,757,646</u>
TBG Development	\$ <u>150,000</u>	\$ <u>0.00</u>	\$ <u>150,000</u>

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TALLAHASSEE, FLORIDA

**AFFIDAVIT OF MEMBERSHIP AND CONTRIBUTIONS**

THE UNDERSIGNED member of HEALTHPARK FLORIDA FITNESS CENTER, L.C., deposes and says:

1. The above named limited liability company has at least two (2) members.
2. The total amount of cash contributed by the members is \$ 150,000.00.
3. A member is contributing real property the initial capitalization of the organization, in addition to cash.
4. The total amount of cash and real property contributed in its initial capitalization is \$ 1,907,646.00 and the members anticipate contributing an additional \$ 0.00 to the organization in the near future.
5. The signature of the undersigned member is in accordance with Section 608.408(3), Florida Statutes.
6. The execution of this Affidavit constitutes an affirmation under the penalties of perjury, and that the facts stated herein are true.

EXECUTED this 6th day of April, 1998

WELLNESS VENTURES, INC.

BY: Douglas A. Dodson

Its President

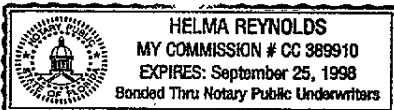
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TALLAHASSEE, FLORIDA

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STATE OF FLORIDA  
COUNTY OF LEE

Execution of the foregoing instrument was acknowledged before me this 6th day of April, 1998, by Douglas A. Dodson, as President of WELLNESS VENTURES, INC., who is ☒ personally known to me or who has ( ) produced \_\_\_\_\_ as identification.



Helma Reynolds  
Signature of Notary Public  
HELMA REYNOLDS  
Printed Name of Notary Public

Commission Number:  
Commission Exp. Date:

**OPERATING REGULATIONS**  
**OF**

**HEALTHPARK FITNESS CENTER, L.C.,**  
**a Florida Limited Liability Company**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to Article VII of the Articles of Organization of HEALTHPARK FLORIDA FITNESS CENTER, L.C., and Chapter 608 of the Florida Statutes, the undersigned, WELLNESS VENTURES, INC. ("WELLNESS VENTURES") and TBG DEVELOPMENT, L.L.C. ("TBG") (both TBG and WELLNESS VENTURES are collectively referred to herein as the "Members"), hereby adopt these Operating Regulations (the "Regulations") for this Limited Liability Company (the "Company") as follows:

**ARTICLE I**  
**NAME AND OFFICE**

**SECTION 1.** The name of this Limited Liability Company is HEALTHPARK FLORIDA FITNESS CENTER, L.C.

**SECTION 2.** The principal office of the Company shall be located at 9800 HealthPark Circle, Suite 208, Fort Myers, Florida 33908. Other offices for the transaction of business shall be located at such places as the Members may from time to time determine.

**ARTICLE II**  
**RECORDS**

**SECTION 1.** The Company shall keep at its registered office the following records:

A. A current list of the full names and last known business addresses of all Members.

B. A copy of the Article of Organization and all Certificates of Amendments thereto, together with executed copies of any Powers of Attorney pursuant to which any Certificate was executed.

C. Copies of all of the Company's federal, state and local income tax returns and reports.

D. Copies of any then-effective Regulations.

E. Any financial statements of the Company for the three (3) most recent years.

F. Minutes of all Membership meetings.

G. All financial books and records of the Company.

SECTION 2. All Company records are subject to inspection and copying by any Member or their designated representative during ordinary business hours at the reasonable request, and at the expense, of any Member.

### **ARTICLE III** **MEETINGS/QUORUM**

SECTION 1. An annual meeting of the Members shall be held within seventy-five (75) days after the close of the Company's fiscal year at the principal office of the Company or at such other place within or outside the State of Florida as the Members may unanimously agree upon.

SECTION 2. Special meetings of the Members may be called at any time and place by a majority in interest of the Members.

SECTION 3. Notice of the time and place of all annual and special meetings shall be mailed by any Member to the other Members at least ten (10) days before the date thereof. Any Member may dispense with the notice requirement by signing a written waiver or by signing the minutes of any annual or special meeting.

SECTION 4. The Members hereby consent that any meeting may be held by electronic conference in lieu of personal appearance.

SECTION 5. Members holding a majority in interest in the Company entitled to vote, represented in person or in proxy, will constitute a quorum at any meeting.

### **ARTICLE IV** **AMENDMENT OF ARTICLES OF ORGANIZATION AND REGULATIONS**

SECTION 1. The Articles of Organization and these Regulations, except with respect to any vested rights of the Members, may be amended from time to time by a majority in interest of the Members.

SECTION 2. In order to be effective, all amendments to these Regulations shall be signed by all Members of the Company, and all amendments to the Articles of Organization shall be filed with the Florida Department of State. All Members shall abide by the majority decision and shall be required to sign such amendment(s) upon request.

**ARTICLE V**  
**MANAGEMENT**

**SECTION 1.** The business and affairs of the Company shall be managed by a Management Committee.

**SECTION 2.** The number of the Management Committee of the Company will never be less than three (3) or more than five (5) persons. Each Committee Member will hold office until his successor has been elected and qualified. Management Committee Members are elected by a majority of votes cast by the Members entitled to vote in the election at a meeting at which a quorum is present. Members of the Management Committee need not be residents of the State of Florida or Members of the Company. After notice, the Members may remove one or more Management Committee Members at anytime with or without cause.

**SECTION 3.** A majority of the number of Management Committee Members fixed by Section 2 of this Regulation will constitute a quorum for the transaction of business at any meeting of the Members.

**SECTION 4.** Each Member hereby appoints the following representative to act for it on the Management Committee, with full and complete authority to act on its behalf in relation to any matter in connection with or arising out of the business or operations of the Company: (i) WELLNESS VENTURES hereby appoints Douglas A. Dodson and Terrence M. Hiduke as its representatives; and (ii) TBG hereby appoints Jeffrey M. Bensky as its representative.

**SECTION 5.** Any Member may at any time and from time to time change its respective representative(s) by filing with the other Member(s) a written notice appointing a new representative to the Management Committee, but until such new representative shall be appointed in writing, the actions of the current representative shall be conclusively binding upon the Company.

**SECTION 6.** The Management Committee shall meet from time to time to act upon all necessary business matters pertaining to the Company. The Management Committee shall act by majority vote except for those matters which are set forth elsewhere in these Regulations or in the Articles of Organization which require unanimous vote. So long as WELLNESS VENTURES shall retain a majority ownership interest in the Company, WELLNESS VENTURES shall be entitled to appoint a majority of the Management Committee.

SECTION 7. No representative of the Management Committee shall be liable to the Company or to the any Member by reason of his acts as a representative, except in the case of fraudulent or reckless conduct.

SECTION 8. All checks written on the Company bank account(s) shall require the signatures of two (2) persons currently serving on the Management Committee.

SECTION 9. All contracts, deeds, promissory notes, mortgages or other documents obligating the Company shall be signed by all Members. A Members' signature may be signed by another Member as Attorney-in-Fact if made pursuant to a validly executed Power of Attorney.

## **ARTICLE VI** **OFFICERS**

SECTION 1. The officers of the Company will be a President, a Secretary and a Treasurer, each of whom will be elected or appointed by the Management Committee. Any two or more offices may be held by the same person, except the offices of the President and Secretary. All officers shall be persons currently serving on the Management Committee.

SECTION 2. The officers of the Company shall be elected by the Management Committee annually at its first meeting, and such officers shall serve at the pleasure of the Management Committee.

SECTION 3. Any officer or agent elected or appointed by the Management Committee may be removed by the Management Committee whenever, in its sole judgment, the best interest of the Company would be served by such removal, but any such removal will be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. The President will be the principal executive officer of the Company and, subject to the control of the Management Committee, will supervise and control all of the day-to-day business affairs of the Company. When present, he will preside at all meetings of the Members and of the Management Committee. He may sign, with the Secretary or any other proper officer of the Company authorized by the Management Committee, certificates of Membership of the Company, and deeds, mortgages, bonds, contracts or other instruments except those required by law, by these Regulations or by the Management Committee to be otherwise signed or executed; and in general shall perform all duties as may be prescribed by the Management Committee from time to time.

SECTION 5. The Secretary will: (a) prepare and keep the minutes of the Members and of the Management Committee meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of the Regulations or as required by law; (c) be custodian of the Company records and of the seal of the Company; (d) keep a register of the mailing address of each Member; (e) sign with the President certificates for the Membership of the Company, the issuance of which shall have been authorized by resolution of the Management Committee; (f) have general charge of the Membership transfer books of the Company; (g) authenticate records of the Company; and (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Management Committee.

SECTION 6. If required by the Management Committee, the Treasurer will give a bond for the faithful discharge of his duties in the sum and with the surety or sureties as the Management Committee shall determine. He will: (a) have charge and custody of and be responsible for all funds and securities of the Company; receive and give receipts for monies due and payable to the Company from any source whatsoever, and deposit all the monies in the name of the Company in the banks, or other depositories selected in accordance with the provisions of these Regulations; and (b) in general perform all of the duties incident to the office of Treasurer and other duties as from time to time will be assigned to him by the Management Committee.

## ARTICLE VII MEMBERS

SECTION 1. The Members of this Company shall be the persons or entities whose names are set forth and designated as Members in the Articles of Organization and such other persons or entities as may be admitted to Membership pursuant to these Regulations.

SECTION 2. No person or entity may be admitted as a Member unless each existing Member consents in writing to the admission of the additional Member.

SECTION 3. A Member's interest in this Company may be transferred only with the unanimous written consent of all the remaining Members. Without such consent, the transferee shall not be entitled to become a Member or to participate in the management of the Company, but shall be entitled only to the share of profits, losses or other compensation, or return of contributions to which the transferor would otherwise be entitled.

**ARTICLE VIII**  
**CAPITAL CONTRIBUTIONS**

The Members agree to share in all post formation capital contributions, profits, and surplus of the Company according to the percentage of their ownership. Each Member owns an undivided interest in the business and Company as follows:

WELLNESS VENTURES	92.13%
TBG	7.87%

**ARTICLE IX**  
**DIVISION OF PROFITS AND LOSSES**

Each of the Members will own an interest in the Company as set forth in Article VIII, entitled "Capital Contributions". All profits of the Company will be shared by each of the Members according to the percentage of interest each Member owns. A separate capital account will be maintained for each Member. No Member may make any withdrawals from its capital account without prior approval of the Management Committee. If the capital account of the Member becomes impaired, his share of subsequent Company profits will be first credited to his capital account until that account has been restored.

**ARTICLE X**  
**RIGHT OF FIRST REFUSAL**

SECTION 1. If a Member desires to sell or transfer all or any portion of its ownership interest (the "Interest") in the Company to a third-party purchaser (who is not an Affiliate), the selling Member shall obtain from such third-party purchaser a bona fide written offer to purchase the Interest, stating the terms and conditions in which the purchase or transfer is to be made and the consideration offered therefor. The selling Member shall give written notification to the remaining Members, by certified mail or personal delivery, of its intentions to so transfer the Interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase the Interest.

SECTION 2. The remaining Members, and each of them, shall, on a basis pro rata to the capital contribution of those remaining Members exercising their right of first refusal, have the right to exercise a right of refusal to purchase all (but not less than all) of the Interest upon the same terms and conditions as stated in the aforesaid written offer to purchase, by giving written notice to the selling Member within thirty (30) days from the

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TALLAHASSEE, FLORIDA

receipt of the selling Member's notice. If any Member declines to purchase its prorata portion of the Interest, the remaining Member(s) who have responded in the affirmative to the Selling Member's initial notice, shall be provided a period of ten (10) days following receipt of written notice from the Selling Member in which to exercise their right to buy such prorata share of the Interest.

SECTION 3. The failure of all remaining Members (or any one or more of them) to so notify the selling Member of their desire to exercise this right of first refusal within the time frame set for the above shall result in the termination of the right of first refusal and the selling Member shall be entitled to consummate the sale of the Interest. However, unless all of the remaining Members consent (in their absolute discretion) in writing to such sale or transfer, the third party shall succeed only to the economic interest of the selling Member, and shall not become a voting Member of the Company.

SECTION 4. If the remaining Members (or any one or more of the remaining Members) give written notice to the selling Member within the required time frame of their desire to exercise their right of first refusal and to purchase all of the Interest upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within ninety (90) days after receipt of the selling Member's written notification.

SECTION 5. In the event of the purchase of the Interest by a third-party purchaser (including an economic interest), and as a condition to recognizing the effectiveness and binding nature of any such sale and substitution of a new Member in the Company, or otherwise, the remaining Members may require the selling Member and the proposed purchaser, or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members may deem necessary or desirable to:

(i) constitute such purchaser, as a Member, donee or successor-in-interest as such;

(ii) confirm that the person desiring to acquire an interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject to and bound by all of the terms, obligations and conditions of these Regulations as the same may have been further amended (whether such person is to be admitted as a new Member or will merely own an economic interest);

(iii) maintain the status of the Company as a partnership for federal tax purposes; and,

(iv) assure compliance with any applicable state and federal laws, including securities laws and regulations.

SECTION 6. Any material change in the third-party's offer will require the selling Member to again offer the other Member the right of first refusal pursuant to the procedures set forth above.

#### ARTICLE XI DISSOLUTION

SECTION 1. This Company shall be dissolved upon the occurrence of any of the following events:

- A. When any specific period fixed for the duration of this Company shall expire.
- B. By the unanimous written agreement of all Members.
- C. When the Company has fewer than two (2) Members.

SECTION 2. Upon the occurrence of any of the above events of dissolution, the Company shall deliver Articles of Dissolution to the Florida Department of State for filing and shall conclude its business, pay claims and distribute assets in accordance with the applicable provisions of Chapter 608, Florida Statutes, as may be amended from time to time.

SECTION 3. Following dissolution of the Company, and for a period of one (1) year immediately following said dissolution, TBG will not, directly or indirectly, for itself or on behalf of some other person or firm engage in or acquire any financial or beneficial interest, or enter into the ownership or operation as an owner or landlord of a health, wellness, or fitness facility in Lee County, Florida, excluding, however, the three (3) existing facilities located on the Cleveland Avenue campus of Lee Memorial Hospital, Cay West, Cape Coral, Florida, or on the campus of Cape Coral Hospital. Further, this restriction shall not apply to ownership of less than two (2%) percent of a company whose shares are traded on a national or regional securities exchange. Any violation of this covenant may be addressed by appropriate damages as permitted by law and/or preliminary and permanent injunctive relief to restrain the violation, which rights and remedies shall be cumulative and in addition to any other legal and equitable remedies to which the remaining Member(s) may be entitled.

**ARTICLE XII**  
**INDEMNIFICATION**

Each Member hereby agrees to indemnify the other Members against any loss or liability exceeding the stated proportions of ownership in the Company by reason of any liability incurred or loss sustained in and about the business of the Company, or by reason of any obligations, contracts, or operating losses incurred by the Company.

**ARTICLE XIII**  
**WORKING CAPITAL**

In the event any Member contributes money to the Company for working capital, the Members agree that such contribution shall be deemed to be a loan to the Company, which shall bear interest at the "prime rate" established by the Wall Street Journal (or any successor publication), and that all such loans shall be repaid to the Member making same prior to the distribution of any profits. The need for working capital shall be determined by the Management Committee from time to time. A sufficient balance shall be maintained at all times by the Company to pay for all bills currently incurred in accordance with good accounting and business practices.

**ARTICLE XIV**  
**BANK ACCOUNTS**

A general bank account shall be opened in a bank mutually acceptable to the Members. All funds advanced to the Members hereto and monies received by the Company in the course of its business operations shall be deposited in the Company's bank account. Sums may be withdrawn from the Company's bank account by check or draft in the form with signatories as the Management Committee shall from time to time determine.

**ARTICLE XV**  
**CONTRACTS**

The Company is hereby authorized to enter into such Contracts as the Company shall deem appropriate as determined by the Management Committee, to operate the business of the Company, which shall include, but not be limited to: (a) a Management and Marketing Agreement with TBG, and (b) a Development and Financial Consulting Agreement with TBG.

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TALLAHASSEE, FLORIDA

**ARTICLE XVI**  
**PROHIBITED TRANSACTIONS**

**SECTION 1.** Notwithstanding any other provision of these Regulations, none of the following acts shall be done without the unanimous consent of each Member of the Company:

- A. The borrowing of any money in the Company name.
- B. The utilization of collateral owned by the Company as security for any loan.
- C. The assignment, transfer, pledge, compromise or release of any claim or debt due the Company, except upon payment in full.
- D. The arbitration or consent to the arbitration of any dispute or controversy of the Company.
- E. The making, execution or delivery of any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, deed, guaranty, indemnity bond, surety bond, security agreement, or contract to sell with regard to any property owned by the Company.
- F. The leasing, mortgaging, assigning, or otherwise encumbering or pledging of any Company property or any interest therein, or the entering into of any Contract for such purpose.
- G. The becoming of a surety, guarantor or accommodation party to any obligation affecting Company property.
- H. The refinancing of any Company obligation.

**SECTION 2.** Should any funds be borrowed from any lender or any other Member (excluding any long-term debt of the Company secured by any mortgage), then repayment of such borrowed funds shall be made prior to the return of any working capital to any Member as well as prior to the distribution of any profits (unless the Members shall hereto unanimously agree).

**ARTICLE XVII**  
**DISTRIBUTION**

**SECTION 1.** After payment of or providing for payment of all known costs or expenses incurred in connection with the Company's business,

and after setting aside reasonable reserves for unsettled claims and contingencies as the Management Committee may deem appropriate, then the profits of the Company shall be distributed from time to time as determined by the Management Committee in proportion to the Members' ownership interest in the Company.

SECTION 2. When funds set aside as reserve for contingencies and unsettled claims are no longer required, then such funds shall be distributed in the same manner as set forth above.

SECTION 3. Distributions to Members shall be subject to all adjustments which may occur by reason of a default of any Member in the performance of its duties and obligations hereunder.

SECTION 4. In the event that the operation of the Company results in a loss, each Member shall be responsible for its portion of the loss incurred in the same percentages as profits are allocated to it, and such proportional liability shall continue, irrespective of the default of any Member.

**ARTICLE XVIII**  
**ACKNOWLEDGMENT OF TBG'S RIGHTS**

SECTION 1. WELLNESS VENTURES acknowledges TBG's exclusive ownership of and the rights to the service mark and trade name "TBG Development" during the existence of the Company, and thereafter. WELLNESS VENTURES agrees as follows:

A. Nothing herein shall give WELLNESS VENTURES any right, title or interest in TBG Development or any other mark of TBG, except the right to use the same in conformity with the provisions of these Regulations, and that any and all uses thereof shall inure to the benefit of TBG.

B. Upon any termination or expiration of the Company, no monetary amount shall be assigned as attributable to any good will associated with any activities pursuant to this Agreement or with any use of TBG's marks.

C. Service mark infringement and/or unfair competition, causes of action arising from or in connection with the use by others of names, symbols, and/or devices consisting of or confusingly similar to the term TBG Development may solely at the option of TBG, be prosecuted. However, this shall not be construed as obligating the Company to bring and to prosecute any such cause of action. In the event of any such cause of action, WELLNESS VENTURES agrees to participate as requested by TBG and

to render its fullest cooperation and assistance to TBG, provided that the cost of such assistance and cooperation is to be borne solely by TBG.

D. To notify TBG of any writing of any claim made against it adverse to or conflicting with TBG's exclusive ownership of the mark TBG Development.

E. To notify TBG promptly in writing of any suspected infringement of the mark TBG Development of which it becomes aware.

F. Upon any termination or expiration of these Regulations, WELLNESS VENTURES will: (i) immediately discontinue the use of the name TBG Development and its service mark; (ii) dispose by delivery to TBG or by destruction, at TBG's option, all signs, labels, packaging material, advertising, pertinent promotional material and all other written materials bearing the mark TBG Development which are then in its possession or subject to its control; and (iii) refrain from adopting any trademark, service mark or trade name which may be confusingly similar to TBG Development.

SECTION 2. Notwithstanding the foregoing, all trade secrets used or developed by the Company, including customer lists, and sources of supplies, shall remain the property of the Company, and all copyrighted materials in the Company name shall remain the property of the Company.

**ARTICLE XIX**  
**NOTICES**

Any notices required under these Regulations shall be sufficient if sent by certified mail, return receipt requested, addressed as follows:

If to TBG:

TBG Development, L.L.C.  
Attn: Jeffrey M. Bensky  
226 South Meramec Avenue, Suite 200  
St. Louis, Missouri 63105

If to WELLNESS VENTURES:

WELLNESS VENTURES, INC.  
Attn: Douglas A. Dodson, President  
9800 HealthPark Circle, Suite 208  
Fort Myers, Florida 33908

THE ABOVE AND FOREGOING REGULATIONS are hereby agreed upon  
and adopted this 6<sup>th</sup> day of April, 1997.

TBG DEVELOPMENT, L.L.C.

BY: Jeffrey M. Bandy

WELLNESS VENTURES, INC.

BY: Douglas P. Reder

FILED  
98 MAY 11 PM 1:11  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA