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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**NICHOLAS J. BARONE, individually
and derivatively on behalf of 899
FULTON LLC,**

Plaintiff(s),

-against-

**CHRISTOPHER K. SOWERS, 899
FULTON LLC, as its interest may
appear, JOHN AND JANE DOES I-V,
ENTITIES I-V,**

Defendant(s).

INDEX NUMBER: TBA

**VERIFIED COMPLAINT AND
JURY DEMAND**

**VENUE BASED UPON RESIDENCE
OF PLAINTIFF**

Plaintiff, Nicholas J. Barone, currently residing at 435 West 23rd Street, City of New York, County of New York, State of New York, by and through his attorneys James A. Kridel, Jr. & Associates (James A. Kridel, Jr., Esq., appearing) by way of Verified Complaint against Defendants, Christopher K. Sowers, 899 Fulton, LLC, as its interest may appear, et. als., hereby respectfully states and alleges as follows:

PARTIES

1. Plaintiff, Nicholas J. Barone (hereinafter referred to as "BARONE") is a natural person residing at 435 West 23rd Street, New York, New York, with a brokerage business situate at 435 West 23rd Street, County of New York, State of New York.

2. Defendant Christopher K. Sowers (hereinafter referred to as "SOWERS") is a natural person residing at 538 Clinton Avenue, City of Brooklyn, County of Kings, State of New York, and has a business known as Christopher K. Sowers, P.C. (hereinafter referred to as "PC") situate at 899-907 Fulton Street, City of Brooklyn, County of Kings, State of New York.

3. Upon information and belief, Defendant 899 Fulton LLC (hereinafter referred to as "FULTON") was and still is a Limited Liability Company formed on or about July 1, 2002, authorized to do business in the State of New York with Sowers being an Eighty Percent (80%) Member and Barone being a Twenty Percent (20%) Member. This Defendant is being named a Defendant only to the extent that it is the title owner to the real estate which is the subject matter of this Complaint and the fact that only the LLC can legally sell, transfer, deal with or otherwise control the disposition and/or conservation of the real estate.

4. John and Jane Does I-V are fictitious names describing an affiliated person, persons and/or individual representatives and/or agents of the Defendants who may have contributed to the wrongful conduct alleged herein or future parties who may be discovered throughout the course of discovery

5. Entities I-V (hereinafter referred to as "Entities") are fictitious names describing affiliated entities authorized to do business in the State of New York which are alter egos and/or agents of the other defendants.

INTRODUCTION

6. On or about August 31, 2002, Sowers caused to be transferred certain real estate known as 899-907 Fulton Street, City of Brooklyn, County of Kings, New York 11238 (hereinafter referred to as "PREMISES") the sum of Three Hundred Twenty Thousand (\$320,000.00) Dollars such that the membership interest were Sowers at Eighty Percent (80%) and Barone at Twenty Percent (20%), Sowers contributing Two Hundred Sixty Thousand (\$260,000.00) Dollars and Barone contributing Sixty Thousand (\$60,000.00) Dollars. In effect, Fulton was funded by Sowers and Barone and purchased the aforesaid Premises from a third party by the contribution of Three Hundred Twenty Thousand (\$320,000.00) Dollars.

7. The asset is a mixed-use building of six thousand four hundred seventy (6,470) square feet with approximately three thousand two hundred (3,200) square feet of office space on the second floor and three thousand two hundred (3,200) square feet of retail space on the ground floor. The building has an additional one thousand three hundred seventy (1,370) square feet of basement space. The building has air rights of six thousand eight hundred forty nine (6,849) buildable square feet. Upon information and belief, the building is currently worth in excess of Three Million (\$3,000,000.00) Dollars and subject

to a Mortgage of approximately One Million Six Hundred Thousand (\$1,600,000.00) Dollars.

8. Upon information and belief, Sowers has, from inception of the acquisition of the Premises to date, maintained his place of business which is a Law Firm and which is a tenant of the office space of approximately one thousand six hundred (1,600) square feet, which said space is lavishly decorated and built and which Sowers in effect controlled and occupied the entire remaining square footage on the second floor.

9. On or about September 11, 2002 Sowers and Barone executed a certain Operating Agreement (hereinafter referred to as "AGREEMENT" for Fulton, a copy of which is attached hereto and made a part hereof as **Exhibit A**.

10. On or about September 4, 2002, Sowers forwarded to Barone certain correspondence, attached hereto and made a part hereof as **Exhibit B**, which set forth certain details regarding monies and obligations of Fulton, which are to date unknown to Barone. It is interesting to note that the aforesaid correspondence appears to be the giving of legal advice and is done so on the legal stationary of Sowers. Sowers did not advise Barone to obtain independent legal counsel with respect to the pending acquisition of Fulton.

11. Upon information and belief, Sowers was designated in the Agreement as the managing member and was a managing agent due Six Percent (6%) of the gross income as a management fee.

12. Upon information and belief, on or about May 9, 2003 Sowers, with the help of Barone, caused the real estate which is titled in the name of Fulton to

be refinanced with Carver Bank (hereinafter referred to as "CARVER") for Six Hundred Seventy One Thousand Four Hundred Thirty Seven (\$671,437.00) Dollars.

13. Upon information and belief, Sowers has continually, from inception to date, failed to disclose and/or deliberately concealed material facts so as to preclude Barone from learning of the use of the funds after the refinance.

14. Upon information and belief, Sowers has continually, from inception to date failed to produce even after multiple demands by Barone an accounting with respect to the disbursements of the funds produced from the Carver refinance and Sowers has continued to promise same but has never done so.

15. Upon information and belief, sometime in or around the end of December 2004 to the beginning of February 2005 Carver commenced a foreclosure action against the Premises as the loan was then in arrears which was then unknown to Barone by virtue of Sowers not disclosing same such that Barone later discovered same by receiving correspondence directly from Carver.

16. On or about September 22, 2005, Sowers and Barone signed a Settlement Agreement with Carver in the amount of Six Hundred Fifty Seven Thousand Six Hundred Sixty Three (\$657,663.69) Dollars and Sixty-Nine Cents.

17. On or about September 27, 2005, Sowers and Barone refinanced with BPD Bank (hereinafter referred to as "BPD") the Premises paying off Carver encumbering the Premises with a new mortgage in the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars.

18. Upon information and belief, Sowers has continually, from inception to date, failed to disclose and/or deliberately concealed material facts from Barone so as to preclude Barone from determining the use of the funds after the BPD refinance.
19. Upon information and belief, Sowers has continually, from inception to date failed to produce even after multiple demands by Barone an accounting with respect to the disbursements of the funds produced from the BPD refinance.
20. Upon information and belief, on or about May 16, 2007, the Premises were refinanced, this time through Washington Mutual Bank (hereinafter referred to as "WAMU") in the sum of One Million Six Hundred Thousand (\$1,600,000.00) Dollars, which extinguished the BPD loan in the sum of Seven Hundred Fifty Thousand (\$750,000.00) Dollars.
21. Barone received the sum of Seventy Five Thousand (\$75,000.00) Dollars as a distribution from the proceeds.
22. Upon information and belief, a stipulated contingency of the WAMU refinance was the obligation of the members of Fulton to personally guarantee the loan; however, an additional condition was that if Barone's interest fell below Twenty Percent (20%), same would constitute a default.
23. Upon information and belief, WAMU required Barone to remain as a Twenty Percent (20%) Member and Guarantor, as a consequence of the bad credit of Sowers.
24. Upon information and belief, Sowers has continually, from inception to

date, failed to disclose and/or deliberately concealed material facts so as to preclude Barone from determining the use of the funds after the WAMU refinance.

25. Upon information and belief, Sowers has continually, from inception to date failed to produce even after demands by Barone an accounting with respect to the disbursements of the funds produced from the WAMU refinance.

26. Barone caused correspondence to be sent from his then-legal counsel (Blank Rome) to Sowers, a copy of which is attached hereto and made a part hereof as **Exhibit C**. Said correspondence in effect constituted an informal request for a partial accounting which may have revealed certain of the deceptions, omissions, and concealments which Barone has continually attempted to discover. Barone received approximately three (3) of the twenty-four (24) requested items.

27. In or about January 2013, Sowers requested of Barone to participate in a new refinance with the successor to WAMU, Chase Bank (hereinafter referred to as "CHASE"), at a lower interest rate.

28. Barone continued to inquire as to the disbursements of monies within Fulton and Sowers continued to fail and refuse to provide meaningful answers as to same.

29. Upon information and belief, in response to Barone's continued requests, Sowers has only provided superficial documents to date.

30. The aforesaid Agreement provides in Article III "Business of Company" and specifically section 3.1 "Nature of Business," "The Company's purpose and

business is to acquire, improve, own, manage, sell (emphasis added), dispose (emphasis added) of, and otherwise realize on the value of the Property and to engage in all transactions reasonably necessary or incidental to the foregoing.”

31. Upon information and belief, Sowers has acted contrary to the expressed business of Fulton by failing to realize on the value of the Premises by selling or disposing of the Premises and has caused the Premises to remain as a rental so as to benefit Sowers personally as he wishes to maintain his status as tenant therein to the detriment of Barone and Fulton and for the sole benefit of Sowers. The result of this failure is the establishment of the LLC (Fulton) and contrary to the Operating Agreement of Fulton and Sowers’s aforementioned conduct constitutes oppression of Barone and is therefore inconsistent with the continued operations of Fulton.

32. The Agreement provides in Article IV entitled “Member Rights and Duties” and specifically in 5.5 entitled “Books and Records,” which references Article 9.9 entitled “Records, Audits and Reports” “... The Manager will retain records and accounts of all operations and expenditures of the Company...” states that “...a reasonable request, each member and each economic interest owner has the right, during ordinary business hours and at the company’s principle place of business to inspect and copy company documents at the requesting member’s or economic interest owner’s expense.” Sowers has continuously refused access to Barone.

33. Upon information and belief, certain funds were diverted to 194 Hale LLC, a limited liability company owned and/or controlled by Sowers

(hereinafter referred to as "HALE") without explanation and without benefit to Fulton.

34. Upon information and belief, further monies were diverted to 632 Throop LLC a limited liability company owned and/or controlled by Sowers (hereinafter referred to as "THROOP") without explanation and without benefit to Fulton.

35. Upon information and belief, further monies were diverted to properties in New Jersey which are believed to be owned or controlled by Sowers, without explanation and without benefit to Fulton.

36. Upon information and belief such other and sundry material funds were diverted for the personal use of Sowers, without benefit to Fulton, which said sums were concealed from Barone in a scheme to defraud, conceal and deceive Barone.

37. In fact, upon information and belief, more than Two Hundred Thousand (\$200,000.00) Dollars from Fulton was written to persons believed to be friends and business associates of Sowers and further believed to be unrelated to the business of Fulton and without benefitting Fulton.

38. Since on or about September 11, 2002, Sowers has exercised complete control of the books, records, documents and operation of Fulton.

40. Since on or about September 11, 2002, Sowers has been unilaterally making all decisions for Fulton.

41. Since on or about September 11, 2002, Sowers has failed to provide Barone with access to Fulton's books, records and/or documents.

42. Since on or about September 11, 2002, Sowers has failed to provide Barone with access to Fulton's books, records and/or documents.

43. Since Sowers's refusal to fully respond to the correspondence attached hereto as Exhibit C Barone has grown increasingly concerned that Sowers is operating Fulton's business that is detrimental to Barone.

44. Sowers continues to refuse to allow Barone to exercise his rights to the copying of Fulton's books, records and/or documents.

Barone's Standing to Bring This Derivative Action

45. At all times relevant to this action, Barone is and has continuously been a Twenty Percent (20%) owner and member of Fulton, which interest represents a minority ownership in Fulton.

46. The denial to Barone of access to Fulton's books and records by Sowers has caused and continues to cause injury to Barone.

47. Since Sowers owns Eighty Percent (80%) of Fulton, and this lawsuit is filed against the monetary and other interests of Sowers and the Premises, it would be futile for Barone to make a demand upon Sowers to consent to the filing of a lawsuit on behalf of Fulton.

The Need for Injunctive Relief

48. The Parties to the Operating Agreement bargained for the right to access and copy the books and documents of Fulton and to do so without any restriction other than those set forth in Section 5.5 of the Agreement.

49. The right to access and copy the books, records and/or documents of Fulton on an ongoing and continuous basis is a valuable right of all of the members of Fulton, the value of which cannot be quantified or compensated by an award of damages alone.

50. Even in the absence of any reason for concern of how Fulton is being run, the Parties have a right to ongoing and continuous access to the books and documents of Fulton.

51. Here however, there is reason for concern. Sowers is conflicted in his operation of Fulton. Sowers has secretly diverted funds to entities and/or persons related to him which said conduct constitutes the fraud of non-disclosure, deception and concealment by a fiduciary who has an obligation to disclose such suspicious transactions.

52. Whatever Sowers' objectives at the time he entered into his relationship with Fulton, Sowers's primary present motivation, upon information and belief, is to manage Fulton in a way that benefits only Sowers by not proceeding to market and sell same and without regard to whether profits will be generated to the detriment of Barone, the minority member whose interest continues to be diminished.

53. Upon information and belief, the value of the Premises is increasing yet same has not been realized as Sowers continues to self-deal by maintaining the premises so that he may remain as a tenant at a well below-market lease at the expense of Barone and Fulton.

54. Upon information and belief, Sowers has already caused the value of

Barone's equity of Fulton to decline as aforesaid, and allowing Sowers to continue to conceal its operations of Fulton from the scrutiny of Barone will likely result in further decline in the value of Fulton to the severe detriment of Barone.

55. Barone has no adequate remedy at law.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

56. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Fifty-Five (55) above as if same were set forth more fully at length herein.

57. Sowers breached and repudiated his obligations under the Agreement by denying Barone his right to inspect and copy Fulton's books, records and/or documents for purposes of reasons related to Barone's membership interest.

58. As a result of Sowers's breach and repudiation of the Agreement, Barone has sustained damages and will likely sustain further damages.

59. As a result of the foregoing, Barone is entitled to both injunctive relief and a money Judgment against Sowers for compensatory damages for an amount to be determined at trial.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY TO BARONE

60. Barone repeats and re-pleads the allegations set forth in paragraphs One

(1) through Fifty-Nine (59) above as if same were set forth more fully at length herein.

61. Sowers owed and continues to owe fiduciary duties to Barone as co-venturers in Fulton.

62. Sowers breached his fiduciary duties to Barone by diverting funds from Fulton, by failing to execute the stated purpose of the company so as to only benefit himself and by denying Barone his right to inspect and copy Fulton's books, records and/or documents.

63. As a direct and proximate result of Sowers's breaches of his fiduciary duties, Barone has sustained damages and will likely sustain further damages.

64. Sowers's breaches of his fiduciary duties to Barone was and are malicious, wanton and willful and were willfully concealed from Barone when Sowers well knew of his obligation to disclose same.

65. As a direct and proximate result of the foregoing, Barone is entitled to injunctive relief as well as a money Judgment against Sowers for compensatory and punitive damages for an amount to be determined at trial.

THIRD CAUSE OF ACTION

EQUITABLE DECREE OF ACCOUNTING

66. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Sixty-Five (65) above as if same were set forth more fully at length herein.

67. Sowers owed and continues to owe, fiduciary duties to Barone.

68. Sowers has a legal duty to account to Barone for the operations of Fulton.

69. Since Sowers usurped control over the operations of Fulton on or about September 11, 2002, Sowers has not accounted to Barone for the operations of Fulton.

70. As a result of the foregoing actions by Sowers, Barone is entitled to an equitable decree directing Sowers to provide Barone with a complete accounting for the operations of Fulton since on or about September 11, 2002.

FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

71. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Seventy (70) above as if same were set forth more fully at length herein.

72. A fiduciary relationship existed and exists by and between Sowers and Barone and to Fulton.

73. Sowers owes a duty to disclose facts, which one is required to disclose, regarding the operations of Fulton as set forth in the Agreement, and failure to do so presents the requisite intent to deceive

74. Sowers intentionally and deliberately concealed his intent to not dispose of or sell the Premises but rather keep same as rental premises so as to retain his personal law firm there and to divert funds from Fulton for his own

benefit.

75. Barone relied upon the aforesaid omission and concealment to his detriment by lulling Barone into inaction when he would have acted to stop Sowers's breaches had Barone been properly informed of facts to which he was entitled.

76. Sowers prevented Barone from obtaining discovery on the precise issues of Sowers's knowledge and intent with respect to his concealments, including his failure to have Fulton carry out the stated purposes of Fulton in its Operating Agreement to maximize the profitable sale of the Premises.

77. In light of the foregoing, Barone should be entitled to the benefit of the Doctrine of Equitable Estoppel or the Fraud Discovery Accrual Rule.

78. Sowers at all times relevant hereto intended to deceive Barone and did so deceive Barone.

79. As a direct and proximate result of the fraudulent concealment, both Barone and Fulton were damaged and both are entitled to injunctive relief and a money Judgment against Sowers for compensatory and punitive damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY TO FULTON

80. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Seventy-Nine (79) above as if same were set forth more fully at length herein.

81. Sowers owed and continues to owe fiduciary duties to Fulton.

82. Sowers breached his fiduciary duties to Fulton by the aforementioned conduct including by denying Barone his right to inspect and copy Fulton's books, records and/or documents and the failure of the stated purpose to sell the Premises.

83. As a direct and proximate result of Sowers's breach of his fiduciary duties to Fulton, Fulton and Barone have sustained damages and will likely sustain further damages.

84. Sowers's breach of his fiduciary duties to Fulton and Barone were and are malicious, wanton and willful.

85. As a direct and proximate result of the foregoing, Fulton and Barone are entitled to injunctive relief as well as a money Judgment against Sowers and Fulton, jointly and severally, for compensatory and punitive damages for an amount to be determined at trial.

SIXTH CAUSE OF ACTION

DECLARATORY JUDGMENT AGAINST FULTON AND SOWERS

86. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Eighty-Five (85) above as if same were set forth more fully at length herein.

87. There is an actual, justiciable controversy between Barone and Sowers and between Barone and Fulton as to Barone's rights to inspect and copy Fulton's books, records and/or documents.

88. Barone has the right to inspect and copy Fulton's books, records and/or documents without having to abide by conditions unilaterally imposed by Sowers.

89. As a direct and proximate result of the foregoing, Barone is entitled to a declaratory Judgment pursuant to CPLR 3001 decreeing that Barone has a right to inspect and copy Fulton's books, records and/or documents without having to abide by conditions unilaterally imposed by Sowers.

SEVENTH CAUSE OF ACTION

DECLARATORY JUDGMENT AGAINST SOWERS

~~90.~~ Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Eighty-Nine (89) above as if same were set forth more fully at length herein.

91. There is an actual, justiciable controversy between Barone and Sowers as to whether Sower's refusal to allow Barone to inspect and copy Fulton's books, records and/or documents, without having to abide by conditions unilaterally imposed by Sowers constitutes a material breach and repudiation by Sowers of the Agreement.

92. Sowers's refusal to allow Barone to inspect and copy Fulton's books, records and/or documents without having to abide by conditions unilaterally imposed by Sowers constitutes a material breach and repudiation by Sowers of the Agreement, which entitles Barone, at his option, to elect to terminate

the Operating Agreement and dissolve Fulton.

93. As a direct and proximate result of the foregoing, Barone is entitled to a declaratory Judgment pursuant to CPLR 3001 decreeing that Sowers refusal to allow Barone to inspect and copy Fulton's books, records and/or documents without having to abide by conditions unilaterally imposed by Sowers constitutes a material breach and repudiation by Sowers of the Agreement and that Barone may, at his option, elect to terminate the Agreement and dissolve Fulton.

EIGHTH CAUSE OF ACTION

PRELIMINARY AND PERMANENT INJUNCTION AGAINST SOWERS AND FULTON BEING NAMED AS A DEFENDANT BY REASON OF ITS CONTROL BY SOWERS

94. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through Ninety-Three (93) above as if same were set forth more fully at length herein.

95. Under the Agreement, Barone has an expressed, contractual right to inspect and copy Fulton's books, records and/or documents for purposes reasonably related to Barone's membership interest.

96. By refusing to allow Barone to inspect and copy Fulton's books, records and/or documents, Sowers and Fulton have breached and repudiated the Agreement, causing irreparable harm to Barone.

97. Money damages are inadequate to compensate Barone.

98. Sowers and Fulton's wrongful conduct is ongoing, likely to recur and unless enjoined, will continue causing further irreparable harm to Barone.

99. Barone has a substantial likelihood of success on the merits of this action.

100. As a direct and proximate result of the foregoing, both Barone is entitled to a preliminary and permanent injunction enjoining Sowers and Fulton from breaching and repudiating the Agreement and from refusing Barone access to the books, records and/or documents of Fulton and in not proceeding to sell the Premises as set forth in the purpose of the Agreement.

NINTH CAUSE OF ACTION

DISSOLUTION OF FULTON PURSUANT TO L.L.C.L. §702 **"OPPRESSION"**

101. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through One Hundred (100) above as if same were set forth more fully at length herein.

102. Sowers owns a majority interest of Eighty Percent (80%) in the LLC known as Fulton and is in control of the company in all respects.

103. Barone is a minority member of Fulton.

104. As previously set forth, Sowers has engaged in illegal, fraudulent and oppressive conduct with respect to Barone's minority ownership interest in Fulton, and particularly, the failure to sell the Premises and/or provide access to Barone of Fulton's books, records and/or documents.

105. Barone has made numerous written and oral attempts to encourage Sowers to cease his oppressive conduct, including the retention of a previous attorney to draft correspondence on his behalf (Exhibit C); however, such attempts have been met with non-action and/or silence.

106. Based upon the conduct of Sowers as set forth above, it is not reasonably practical to carry on the business of Fulton in conformity with the Agreement.

107. Barone, as a member with a minority interest, is, and continues to be, damaged as a result of Sowers's oppressive conduct with respect to his control of Fulton and Barone and Fulton will be best served by judicial dissolution.

108. Upon dissolution, a constructive trust may be imposed by the Court with regard to the ownership of the Premises held by Fulton and as an equitable remedy, the real ~~property sh~~ould be sold and the net proceeds be distributed amongst the member of the LLC, less any damages awarded herein.

109. Barone has no adequate remedy at law.

110. The Doctrine of Oppression seeking dissolution and/or damages is appropriate herein as Barone has made a showing of a failed purpose on that the purposes of the Agreement as stated in section 5.5 thereof has been thwarted by Sowers willfully, wantonly and maliciously so as to solely benefit Sowers and his law firm as a tenant on the Premises to the detriment of Barone and contrary to the Agreement which is the very lynchpin of the focus hereof creating the Oppression to Barone.

111. In addition to the foregoing and as a direct and proximate result, Barone has been damaged and is entitled to compensatory and punitive damages,

dissolution and/or a constructive trust so as to sell the Premises.

TENTH CAUSE OF ACTION

CONVERSION WITH RESPECT TO SOWERS AND FULTON

112. Barone repeats and re-pleads the allegations set forth in paragraphs One (1) through One Hundred and Eleven (111) above as if same were set forth more fully at length herein.

113. Barone made substantial payments and contribution to Fulton based upon Sowers's promises and contractual obligation to maintain Barone's ownership interest in Fulton and the Premises and to share with Barone Twenty Percent (20%) of all profits, proceeds and income generated by Fulton.

114. Sower and Fulton accepted Barone's payments and contributions but have failed and/or refused to maintain Barone's ownership interest in Fulton or to share with him Twenty Percent (20%) of all profits, proceeds and income generated by Fulton.

115. Sowers accepted Barone's payments and contributions and for all intents and purposes have locked him out of the Premises owned by Fulton and excluded him from all benefits to which he owns a Twenty Percent (20%) interest by failing to sell or dispose of the Premises and/or provide an accounting so as to continue for his own sole benefit the operation of his law firm on the Premises to the detriment of Barone.

116. Sowers has effectively stolen Barone's funds and ownership interest in

Fulton and the Premises.

117. In unlawfully accepting Barone's contributions and payments, but failing to include Barone as a Twenty Percent (20%) member of Fulton, Sowers has, without permission and authority, assumed and exercised the rights of ownership over the monies, real property, assets, company entities, and opportunities in business rightfully belonging to Barone and converted same to his own sole use and purpose to the exclusion of Barone's ownership rights.

118. Sowers's improper exercise of the rights of ownership over Barone's monies, real property, assets, company entities, opportunities, and business is inconsistent with Barone's ownership rights to same and constitutes unlawful conversion of Barone's property.

119. As a direct and proximate result, Barone has been damaged by the wrongful acts of Sowers and is entitled to compensatory and punitive damages.

WHEREFORE, Plaintiff demands Judgment against Defendants as follows:

1. On the First Cause of Action, injunctive relief and a money Judgment against Sowers for compensatory damages in an amount to be determined at trial;
2. On the Second Cause of Action, injunctive relief and a money Judgment against Sowers for compensatory and punitive damages in an amount to be determined at trial;
3. On the Third Cause of Action, an equitable decree directing Sowers

- and Fulton to provide Barone with an accounting for the operations of Fulton since on or about September 11, 2002;
4. On the Fourth Cause of Action, injunctive relief, and a money Judgment against Sowers for compensatory and punitive damages in an amount to be determined at trial;
 5. On the Fifth Cause of Action, injunctive relief, and a money Judgment against Sowers and Fulton, jointly and severally, for compensatory and punitive damages for an amount to be determined at trial;
 6. On the Sixth Cause of Action against Sowers and Fulton, a declaratory Judgment pursuant to CPLR 3001 decreeing that Sowers's refusal to allow Barone to inspect and copy Fulton's books, records and/or documents without having to abide by conditions unilaterally imposed by Sowers constitutes a material breach by Sowers of the Operating Agreement and that Barone may, at his option, elect to terminate the Operating Agreement and dissolve Fulton;
 7. On the Seventh Cause of Action against Sowers, a declaratory Judgment pursuant to CPLR 3001 decreeing that Barone has the right to inspect and copy Fulton's books, records and/or documents, without having to abide by conditions unilaterally imposed by Sowers;
 8. On the Eighth Cause of Action against Sowers and Fulton, a preliminary and permanent injunction, enjoining Sowers and Fulton from breaching and repudiating the Operating Agreement and from refusing Barone access to the books, records and documents of

Fulton.

9. On the Ninth Cause of Action:

- a. Dissolving Fulton and enjoining Sowers from disposing of the LLC's assets or effects or receiving monies until resolution of this action;
- b. Directing Sowers and Fulton to pay to Barone whatever sums of money appear on the account to be due to Barone for his share of the profits together with interest;
- c. Awarding Barone the costs and disbursements of this action including reasonable attorney's fees, expert fees, costs and expenses;
- d. Imposing a constructive trust to hold the Premises subject to sale and the net proceeds to be distributed amongst the members of the LLC according to the Operating Agreement with any offsets herein granted; and
- e. For such other and further relief this Court deems equitable, just and proper.

10. On the Tenth Cause of Action, jointly and severally, as follows:

- a. Compensatory and consequential and punitive damages in an amount to be determined at trial plus accrued interest;
- b. Awarding Barone the costs and disbursements of this action including reasonable attorney's fees, expert fees, costs and expenses;

c. For such other and further relief this Court deems equitable,
just and proper.

Respectfully submitted,
Kridel Law Group
Attorneys for Plaintiff

Dated: May 14, 2013

By: /s/ James A. Kridel, Jr., Esq.
James A. Kridel, Jr., Esq.
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Clifton, New Jersey 07013
973-470-0800
New York State Bar No: 199403

EXHIBIT A

OPERATING AGREEMENT

OF

899 FULTON LLC

A NEW YORK LIMITED LIABILITY COMPANY

This Operating Agreement of 899 FULTON LLC, a limited liability company organized pursuant to the New York State Limited Liability Company Law, is entered into and is effective as of the effective date, by and among the Company and the persons executing this Agreement as Members.

ARTICLE I

Definitions

The terms and conditions used in this Agreement have the meanings set forth in §102 of the Act, or as set forth below, unless otherwise expressly provided here

1.1 "Act" means the New York Limited Liability, and all amendments.

1.2 "Additional Member" means a member other than an initial member or a substitute member who has acquired a membership interest in the Company.

1.3 "Agreement" means this Operating Agreement, as originally executed and as it may be amended from time to time.

1.4 "Articles of Organization" means the Articles of Organization of the Company filed or to be filed with the New York Secretary of State for the purpose of forming the Company, pursuant to Section 203 of the Act, as amended.

1.5 "Assignee" means the transferee of a Membership Interest who has not been admitted as a substituted member.

1.6 "Bankrupt Member" means a Member who (a) has become the subject for an order for relief under the United States Bankruptcy Code, or (b) has initiated, either in an original proceeding or by way of answer in any state, insolvency receivership proceeding, an action for liquidation arrangements, composition, readjustment, dissolution or similar relief.

1.7 "Capital Account" as of any date means the capital contribution to the Company

by a Member, adjusted as of that date pursuant of this Agreement.

1.8 "Capital Contribution" means any Member's contribution to the capital of the Company in cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to render services. "Initial capital contribution" means the initial contribution to the capital of the Company pursuant to this Operating Agreement.

1.9 "Capital Interest" means the proportion that the Member's positive capital account bears to the aggregate positive capital accounts of all Members whose capital accounts have positive balances, as may be adjusted from time to time.

1.10 "Code" means the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any superseding federal revenue statute.

1.11 "Company" refers to 899 FULTON LLC, and any successor limited liability company.

1.12 "Company Property" means any Property owned by the Company.

1.13 "Default Interest Rate" means the higher of the legal rate or the then prime rate quoted in The Wall Street Journal plus five percent.

1.14 "Deficit Capital Account" means with respect to any Member, the deficit balance, if any, in that Member's Capital Account as of the end of the taxable year, after making the following adjustments:

(1) Credit to the Capital Account any amount that the Member is obligated to restore under Section 1.704-1(b)(2) (ii)(c) of the Treasury Regulations, as well as any addition to it pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (l)(5) of the Treasury Regulations, after taking into account any changes during the year in partnership minimum gain as determined in accordance with Treasury Regulations Section 1.704-2(d)) and in the minimum gain attributable to any partner's nonrecourse debt (as determined under Treasury Regulations Section 1.704-2(l)(3); and

(2) Debit to the Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Deficit Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

1.15 "Distributable Cash" means all cash, revenues and funds received by the

Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on the Company's indebtedness and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; and (iii) Reserves.

1.16 "Disposition" ("Dispose") means any sale, assignment, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance including dispositions by operation of law.

1.17 "Disassociation" means any action that causes a person to cease to be a Member as described in Article XIII hereof.

1.18 "Dissolution Event" means an event results in the dissolution of the Company under Article XIV unless the Members agree to the contrary.

1.19 "Distribution" means any cash and other property paid by the Company to a Member in his, her or its capacity as a Member.

1.20 "Economic Interest" means a Member's or Economic Interest Owner's share of one or more of the Company's net profits, net losses and distributions of the Company's assets pursuant to this Operating Agreement and the Act, but it does not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

1.21 "Economic Interest Owner" means the owner of an economic interest who is not a Member.

1.22 "Effective Date" means July 1, 2002.

1.23 "Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, or any foreign trust or foreign business organization.

1.24 "Fiscal Year" means the fiscal year of the Company, which will be the year ending December 31st.

1.25 "Gifting Member" means any Member or Economic Interest Owner who gifts, bequeaths or otherwise transfers for no consideration by operation of law or otherwise, except with respect to bankruptcy all or any part of its Membership Interest or Economic Interest.

1.26 "Majority Interest" means one or more interests of Members which, taken together, exceed 50 percent of the aggregate of all Capital Interests.

1.27 "Manager" means one or more managers. Specifically, "Manager" means those names listed on Exhibit B, or any other persons that succeed him or her in that capacity. References to the Manager in the singular or as him, her, it, itself, or other like references will also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

1.28 "Member" means each of the parties who executes a counterpart of this Operating Agreement as a Member, and each of the parties who may subsequently become Members in accordance with Article XII. To the extent a Manager has acquired a Membership Interest in the Company, he or she will have all the rights of a Member with respect to that Membership Interest, and the term "Member" as used here includes a Manager to the extent he or she has purchased the Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition of an Economic Interest, such person will have all the rights of a Member with respect to the purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be. The term includes initial members, substituted members and additional members.

1.29 "Membership Interest" means a Member's entire interest in the Company, including Member's Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the Act.

1.30 "Net Losses" means the losses and deductions of the Company, determined in accordance with accounting principals consistently applied from year to year employed under the generally accepted accounting principles, and as reported separately or in the aggregate, as appropriate, on the Company's tax return filed for federal income tax purposes.

1.31 "Net Profits" means the Company's income and gains, determined in accordance with accounting principals consistently applied from year to year employed under the generally accepted accounting principles, and as reported separately or in the aggregate, as appropriate, on the Company's tax return filed for federal income tax purposes.

1.32 "Person" means any association, corporation, stock company, estate, general partnership including any Registered Limited Liability Partnership or Foreign Limited Liability Partnership, limited association, limited liability company including a professional service limited liability company, foreign limited liability company, joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or other individual in its own or any representative capacity. In addition, the term means the heirs, executors, administrators, legal representatives, successors and assigns of that "Person" where the context so permits.

1.33 "Proceeding" means any judicial or administrative trial, hearing or other activity, civil, criminal or investigative, the result of which may be that a court, arbitrator or governmental agency may enter a judgment, order, decree or other determination that, if not appealed and reversed, would be binding on the Company, a Member or other Person subject to the jurisdiction of that court, arbitrator or governmental agency.

1.34 "Property" means any Property, real or personal, tangible or intangible, including money and any legal or equitable interest in Property, but excluding services and promises to perform future services.

1.35 "Reserves" means, with respect to any fiscal period, funds set aside or amounts allocated during that period to Reserves that must be maintained in an amount deemed reasonably sufficient by the Managers for working capital and to pay taxes, insurance, debt service, or other costs or expenses incident to the ownership or operation of the Company's business.

1.36 "Resignation" means the act by which a Manager ceases to be a Manager.

1.37 "Selling Member" means any Member or Economic Interest Owner who desires to or does sell, assign, pledge, hypothecate or otherwise transfers for a consideration all or any portion of the Member's Membership Interest or Economic Interest.

1.38 "Taxable Year" means the taxable year of the Company as determined pursuant to Section 706 of the Code.

1.39 "Taxing Jurisdiction" means any state, local or foreign government that collects tax, interest or penalties, however designated, and any Member's share of the income or gain attributable to the Company.

1.40 "Transferring Member" collectively means a Selling Member and a Gifting Member.

1.41 "Treasury Regulations" means all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

ARTICLE II Organization

2.1 Formation. On _____, 2001, Christopher K. Sowers organized a New York Limited Liability Company by executing and delivering Articles of Organization to the New York Secretary of State in accordance with and pursuant to the Act.

2.2 Agreement. In consideration of the mutual covenants contained here, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Members executing this Agreement agree to the terms and conditions of this Agreement as it may be from time to time amended according to its terms. The Members expressly intend that the Agreement be the sole source of agreement of the parties, and except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to the Code or Regulations, or is expressly prohibited or ineffective under the Act, even when inconsistent with or different from the provisions of the Act or any other law or rule. To the extent that any Agreement provision is prohibited or ineffective under the Act, the Agreement is considered amended to the smallest degree possible in order to make the Agreement effective under the Act. If Act is subsequently amended or interpreted in such a way to make any formerly invalid provision of the Agreement valid, the provision will be considered to be valid from the effective date of the interpretation or amendment.

2.3 Name. The name of the Company is 899 FULTON LLC, and all business of the Company will be conducted under that name or any other name, but in any case, only to the extent permitted by applicable law.

2.4 Effective Date. This Agreement is effective on July 1, 2002.

2.5 Principal Place of Business. The Company's principal place of business within the State of New York will be 538 Clinton Avenue, Brooklyn, N.Y. 11238. The Company may establish any other places of business as the Managers deem advisable.

2.6 Registered Office and Registered Agent. The Company's initial Registered Office is at the office of its Registered Agent at 538 Clinton Avenue, Brooklyn, N.Y. 11238, and the name of its initial Registered Agent at that address is Christopher K. Sowers. The Registered Office and Registered Agent may be changed from time to time by filing the address of the new Registered Office and/or the name of the new Registered Agent with the New York Secretary of State pursuant to the Act.

2.7 Term. The Company's term is perpetual from the date of filing of the Articles of Organization with the Secretary of State, unless the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

2.8 Partnership Treatment. It is the intention of the members that the Company and its status shall be treated as a partnership for federal tax purposes.

ARTICLE III Business of Company

3.1 Nature of Business. The Company's purpose and business is to acquire, improve, own, manage, sell, dispose of and otherwise realize on the value of the Property and to engage in all transactions reasonably necessary or incidental to the foregoing.

3.1.1 To accomplish any lawful business whatsoever, or that will at any time appear conducive to or expedient for the protection or benefit of the Company and its assets.

3.1.2 To exercise all other powers necessary to or reasonably connected with the Company's business that may be legally exercised by limited liability companies under the Act.

3.1.3 To engage in all activities necessary, customary, or convenient, or incident to any of the foregoing.

ARTICLE IV Members

4.1 Names and Addresses. The names and addresses of the Initial Members are CHRISTOPHER K. SOWERS, 538 Clinton Avenue, Brooklyn, New York and NICHOLAS J. BARONE, 85 West 23rd Street, New York, New York. Notwithstanding anything in this Agreement to the contrary, it is the Members unanimous agreement, for valuable consideration, that the Members' Interests in the Company will be Sowers 80% and Barone 20%.

4.2 Additional Members. In the event that a Person is subsequently admitted as an Additional Member in accordance with Section 12.2, or otherwise, that Person's name, address and Capital Contribution, if necessary, must be added to Exhibit A.

4.3 Membership Certificates.

4.3.1 Membership Interests in the Company will be represented by certificates. They will be numbered and entered in the books of the Company as they are issued. They will state the holder of the Membership Interest and the numerical percentage or other designation of the Member's Interest, and will be signed by the Manager.

4.3.2 The Manager may issue a new certificate or certificates in place of any certificate or certificates issued by the Company, alleged to have been lost or destroyed, on the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing the issue of a new certificate or certificates, the Manager

may, and as a condition precedent to the issuance, require the owner of the lost or destroyed certificate or certificates, or his or her legal representative, to advertise the loss or destruction in any manner that the Manager may require, and/or give the Company a bond in a sum and with a surety or sureties as it may direct as indemnity against any claim that may be made against the Company with respect to the certificate or certificates alleged to be lost or destroyed.

4.3.3 On proof of compliance with the provisions of Article XI relating to transfer of Membership Interests, and on surrender to the Company of a certificate for Membership Interests, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Company will issue a new certificate to the Person entitled to it and cancel the old certificate; a record of every transfer will be entered on the transfer book of the Company, which will be kept at its principal office. No transfer will be made within 10 days next preceding the annual meeting of Members.

4.3.4 The Company is entitled to treat the owner of record of any Membership Interest certificates as the holder of that certificate, and accordingly is not bound to recognize any equitable claim to or interest in the certificate on the part of any other Person, whether or not it has express or other notice of the claim or interest, except as expressly provided by the laws of New York.

4.3.5 Membership certificates will not be issued to holders who own Economic Interests only.

ARTICLE V Member Rights and Duties

5.1 Management Rights. All Members (other than Assignees) who have not dissociated are entitled to vote on any matter submitted to a vote of the Members. Notwithstanding the foregoing, the following actions require the vote or consent of a majority of the Members:

5.1.1 Any amendment to this Agreement.

5.1.2 The admission of an Assignee as a Member.

5.1.3 The Company's continuation after a Dissolution Event.

5.2 **Majority.** Whenever any matter is required or allowed to be approved by a Majority of the Members or a Majority of the Remaining Members under the Act or this Agreement, the matter will be considered approved or consented to on the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of

Members having Capital Accounts in excess of one-half of the Capital Accounts of all the Members entitled to vote on a particular matter. Assignees and, in the case of approvals to withdrawal where consent of the remaining Members is required, disassociating Members will not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has disposed of that Member's entire Membership Interest to an Assignee, but has not been removed as provided in Section 11.6.2, the Capital Account of that Assignee will be considered in determining a Majority and that Member's vote or consent will be determined by that Capital Account.

5.3 Limitation of Liability. Each Member remains personally liable for payment of his, her or its Capital Contribution as set forth in §502 of the Act or as otherwise provided in this Agreement.

5.4 Indemnification. The Company will indemnify the Members, Managers, and agents for all costs, losses, liabilities and damages paid or accrued by the Member, Manager or agent in connection with the Company's business, to the fullest extent provided or allowed by the laws of New York.

5.5 Books and Records. In accordance with §9.9, the Managers will maintain and preserve during the Company's term and for the following six years, all accounts, books, minutes of Member meetings, and all other relevant Company documents. On reasonable request, each Member and each Economic Interest Owner has the right, during ordinary business hours and at the Company's principal place of business, to inspect and copy Company documents at the requesting Member's or Economic Interest Owner's expense.

5.6 Sale of All Assets. The Members have the right, by the vote or written consent of Members holding at least a majority or all of all Capital Interests, to approve the sale, lease, exchange or other disposition of all or substantially all of the Company's assets which is to occur as part of a single transaction or plan.

5.7 Priority and Return of Capital. Except as expressly provided in Article VIII or IX, no Member has priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this Section does not apply to loans or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

5.8 Liability to the Company. A Member who rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or subsequently provided by the Act. A Member who receives a Distribution made by the Company in violation of this Agreement, or made when the Company's liabilities exceed its assets (after giving effect to the Distribution) is liable to the Company for the amount of the Distribution for a period of six years after the Distribution.

5.9 Financial Adjustments. No Members admitted after the date of this Agreement are entitled to any retroactive allocations of losses, income or expense deductions incurred by the Company. The Managers may, at the Managers' discretion, at the time a Member is admitted, close the Company's books and records (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to that Member for that portion of the Fiscal Year in which that Member was admitted in accordance with the Code.

5.10 Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Agreement on the organization's behalf, represents and warrants to the Company and each other Member and Manager that: (a) if that Member is an organization, it is duly organized, validly existing, and in good standing under the law of its state of organization, and has full organizational power to execute and agree to the Agreement to perform its obligations under the Agreement; (b) the Member is acquiring its interest in the Company for the Member's own account as an investment and without intent to distribute the interest; and (c) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from those requirements.

5.11 Conflicts of Interest.

5.11.1 A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a non-Member, subject to other applicable law. No transaction with the Company will be voidable solely because a Member has a direct or indirect interest in the transaction if either (i) the transaction is fair to the Company, or (ii) disinterested Members, knowing the material facts of the transaction and the Member's interest, authorize, approve or ratify the transaction.

ARTICLE VI Manager Rights and Duties

6.1 Management. The Company's business and affairs will be managed by its Manager. The Manager will direct, manage and control the Company's business to the best of his ability. Except for situations in which Member approval is expressly required by this Operating Agreement or by nonwaivable provisions of law, the Manager has full authority and discretion to manage and control the Company's business, affairs and properties, 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. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is

expressly required pursuant to this Operating Agreement or the Act.

6.2 Number, Tenure and Qualifications. The Company will initially have one Manager. The individual listed on Exhibit B to this Agreement will initially serve as the Manager. Each Manager holds office until the next annual meeting of Members, or until a successor has been elected and qualified. Managers are elected by the vote or written consent of Members holding at least a majority of all Membership Interests and need not be residents of the State of New York or Members of the Company.

6.3 Certain Powers. Except as set forth in this Agreement, the Manager has the power and authority, on the Company's behalf to:

6.3.1 Purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of, to any Person any property.

6.3.2 Open bank accounts and otherwise invest the Company's funds.

6.3.3 Borrow money for the Company from banks or other lending institutions and on terms as the Members deem appropriate, and in connection with this power, to hypothecate, encumber or grant security interests in the Company's assets to secure repayment of the borrowed sums. No debt may be contracted nor liability incurred by or on behalf of the Company except by the Manager or, to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur liability by the Manager.

6.3.4 Purchase insurance on the Company's business and assets.

6.3.5 Commence lawsuits and other proceedings.

6.3.6 Enter into any agreement, instrument or other writing.

6.3.7 Retain accountants, attorneys or other agents.

6.3.8 If approved by the Members holding a Majority of Membership Interests, the Managers and each of those members have the right to make a filing under the federal Bankruptcy Code.

6.3.9 Take any other lawful action that the Managers consider necessary, convenient or advisable in connection with any Company business.

6.4 Binding Authority. Unless authorized to do so by the Manager, no attorney-in-fact, employee or other agent of the Company has any power or authority to bind the Company in any way, to pledge its credit or to render it pecuniarily liable for any

purpose. No Member has any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

6.5 Liability for Certain Acts. The Manager must perform his duties as Manager in good faith, in a manner he reasonably believes to be in the best Company's interests, 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 as Manager does not have any liability by reason of being or having been a Manager of the Company. The Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the Company operations. The Manager is not liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage was the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Manager.

6.6 Manager's Duty to Company. The Manager shall not be required to manage this Company as his sole business interest but may, without liability to this Company or its members, be involved in management of other entities and activities which do not adversely affect his capacity to exercise his obligations to this Company; nor shall this Company or its members have any right to participate in such other business interests or in income or profits therefrom.

6.7 Indemnification. The Company must indemnify and hold harmless the Managers from and against all claims and demands to the maximum extent permitted under the Act.

6.8 Resignation. Any Manager may resign at any time by giving written notice to the Company, with a copy to each Member. The resignation of any Manager takes effect on receipt of notice by the Company or at any later time specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation is not necessary to make it effective. The resignation of the Manager who is also a Member does not affect the Manager's rights as a Member and does not constitute a withdrawal of the Member.

6.9 Removal. Any Manager may be removed or replaced with or without cause by the vote of Members who hold at least a majority of Membership Interests. The removal of a Manager who is also a Member will not affect the manager's rights as a Member and will not constitute a withdrawal of the Member.

6.10 Vacancies. Any vacancy occurring for any reason in the number of Managers may be filled by the vote or written consent of at least a majority of the Membership Interests. A Manager elected to fill a vacancy is elected for the unexpired term of the Manager's predecessor in office and holds office until the expiration of the term and until the Manager's successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers holds office until the next

annual meeting of Members and until a successor has been elected and qualified.

6.11 Salaries. The Manager will be reimbursed for all reasonable expenses incurred in managing the Company. The Manager shall be paid a management fee of six (6%) percent of the gross rent roll for his services as Manager. Said fees shall commence as of January 1, 2002. No Manager or Member is prevented from receiving such a salary or other compensation because the Manager is also a Member.

ARTICLE VII Member Meetings

7.1 Annual Meeting. The annual meeting of the Members will be held on each 15th day of January, or at such other time as determined by the Managers for the purpose of the transaction of any business that may come before the meeting.

7.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by any Manager or any Member or group of Members holding collectively not less than 20 percent of the Membership Interests.

7.3 Place. Meetings of the Members may be held at the Company's chief executive office, unless some other location is chosen by a majority of the Members. Said location shall be reasonably convenient to the Members.

7.4 Notice of Meetings. Written notice stating the place, day and hour of the meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called, must be delivered no fewer than 5 nor more than 30 days before the date of the meeting.

7.5 Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of the meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, is the record date for making a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this section, the determination applies to any adjournment of the meeting.

7.6 Quorum. Members holding not less than fifty (50%) percent of all Membership Interests, representing in person or by proxy, constitute a quorum at any meeting of Members. In the absence of a quorum at any Member meeting, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for

more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting must be given to each Member of record entitled to vote at the meeting. At an adjourned meeting at which a quorum must be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present.

7.7 Manner of Acting. If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority of Membership Interests is the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by this Agreement.

7.8 Proxies.

7.8.1 At all Member meetings, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. The proxy must be filed with the Managers before or at the time of the meeting. No proxy will be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

7.8.2 Every proxy must be signed by the Member or his or her attorney-in-fact.

7.8.3 No proxy will be valid after the expiration of 11 months from the date of the proxy unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the Member executing it, except as otherwise provided in this Section.

7.8.4 The authority of the holder of a proxy to act will not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of incompetence or death is received by any Manager.

7.8.5 Except when other provision is made by written agreement between the parties, the record holder of a Membership Interest that he, she or it holds as pledgee or otherwise as secured, or that belongs to another, must issue to the pledgor or to the owner of the Membership Interest, on demand for and payment of necessary expenses, a proxy to vote or take other action.

7.8.6 A proxy that is entitled "irrevocable proxy" and states that it is irrevocable, is irrevocable when it is held by: (i) a pledgee, (ii) a Person who has purchased or agreed to purchase the Membership Interest, (iii) a creditor or creditors of the Member who extend or continue credit to the Member in consideration of the proxy if the proxy states that it was given in consideration of the extension or continuation of credit, the amount, and the name of the person extending or continuing credit, (iv) a Person who has contracted to perform

services as an officer of the Member, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of the employment contract, the employee's name and the period of employment contracted for, or (v) a nominee of any of the Persons described in clauses (i)-(iv) of this sentence.

7.8.7 Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the Member is paid, or the period of employment provided for in the employment contract has terminated and, in a case provided for in Section 7.8.6 (iii) or (iv) of this Agreement, becomes revocable three years after the date of the proxy or at the end of the period, if any, specified in the proxy, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section.

7.8.8 A proxy may be revoked, notwithstanding a provision making it irrevocable, by an Assignee of a Membership Interest who receives the assignment without knowledge of the existence of the proxy.

7.9 Member Action Without Meeting.

7.9.1 Whenever the Members are required or permitted to take any action by vote or consent, action may be taken without a meeting, without prior notice and without a vote, if written consent or consents, setting forth the action taken are signed by the Members who hold the Membership Interests, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote at the meeting were present and voted, and are delivered to the office of the Company, its principal place of business, or a Manager, employee or agent of the Company. Action under this provision shall be on reasonable notice to all Members unless in the case of an emergency.

7.9.2 Every written consent must bear the date of signature of each Member who signs the consent, and no written consent is effective to take the action referred to in it unless, within 60 days of the earliest dated consent delivered in the manner required by this section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business, or a Manager, employee or agent of the Company having custody of the Company records.

7.9.3 Delivery of consents to such office or principal place of business of Manager, employee or agent must be by hand, including messenger or other courier, or by certified or registered mail, return receipt requested.

7.9.4 Prompt notice of the taking of the action without a meeting by less than unanimous written consent must be given to each Member who has not consented in writing but who would have been entitled to vote on the action had the action been taken

at a meeting.

7.10 Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the meeting's conclusion the lack of notice of that meeting, constitutes a waiver of notice by him or her.

7.11 Voting Agreements. An agreement between two or more Members, if in writing and signed by them, may provide that in exercising any voting rights, the Membership Interests held by them will be voted as provided in the agreement, or as they may agree, or as determined in accordance with a procedure agreed on by them.

ARTICLE VIII

Contributions and Capital Contributions

8.1 Capital Contributions. Each Member has previously contributed an amount or amounts, in money or money's worth, which collectively aggregate the portions of Membership Interests set forth in attached Exhibit A as his or her share of the Initial Capital Contribution.

8.2 Additional Contributions. Except as set forth in Section 8.1, no Member is required to make any Capital Contributions. To the extent approved by a majority of the Members, from time to time, the Company may require additional Capital Contributions. In such event, the Members may, but are not obligated, to participate in those additional Capital Contributions.

8.2.1 Any Member who makes a contribution to the Company in excess of his proportionate Membership Interest, shall have the contribution treated as a loan to the Company, which election shall be made, in writing, at the time the contribution is made.

8.2.2 The amount advanced by the Member or Members shall be a debt of the Company and shall bear interest at the rate determined by the Manager. Said contribution shall be paid back when the Company is financially able to re-pay, based upon generally accepted accounting principles.

8.3 Capital Accounts. A Capital Account will be established and maintained for each Member and each Assignee. Each Member's Capital Account will be increased by the value of each Capital Contribution made by the Member, allocations to the Member of the Net Profits and any other allocations to the Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to the Member of Net Losses, and other allocations

to the Member pursuant to the Code.

8.4. Transfers. On a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her or its Membership Interests will become the Capital Account of the Person to which or whom the Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

8.5 Modifications. The manner in which Capital Accounts are to be maintained pursuant to this section is intended to comply with the requirements of Section 704(b) of the Code. If, in the opinion of the Managers, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained will be so modified; provided, however, that any change in the manner of maintaining Capital Accounts will not materially alter the economic agreement between or among the Members.

8.6 Deficit Capital Account. Except as otherwise required in the Act or this Agreement, no Member has any liability to restore all or any portion of a deficit balance in a Capital Account.

8.7 Withdrawal or Reduction of Capital Contributions. No distributions will be made from the Capital Contributions of a Member without the consent of Members owning a majority of Membership Interests in the Company. A Member, irrespective of the nature of the Capital Contribution of that Member, has only the right to demand and receive cash in return for the Capital Contribution.

ARTICLE IX Allocations and Distributions

9.1 Allocations of Profits and Losses. The Net Profits and the Net Losses of the Company for each Fiscal Year will be allocated to each Member in accordance with the ratio of the value of his, her or its Capital Account bears to the value of all Capital Accounts in the aggregate,

9.2 Distributions. Except for a Distribution on Dissolution in accordance with Section 14.2.3, the Managers may, from time to time, in the Managers' discretion, make Distributions to the Members in accordance with the ratio of the value of his, her or its Capital Account bears to the value of all Capital Accounts in the aggregate;

9.3 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to the Member.

9.4 Limitation on Distributions. No Distribution will be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

9.5 Interest on and Return of Capital Contributions. No Member is entitled to interest on his or her Capital Contribution, or to a return of his, her, or its Capital Contribution, except as specifically set forth in this Agreement.

9.6 Accounting Principles. The profits and losses of the Company will be determined in accordance with accounting principles applied on a consistent basis using the cash method of accounting. It is intended that the company will elect those accounting methods which provide the greatest tax benefits.

9.7 Accounting Period. The accounting period of the Company will be the calendar year.

9.8 Loans to Company. Nothing in this Operating Agreement prevents any Member from making secured or unsecured loans to the Company by agreement with the Company.

9.9 Records, Audits and Reports. At the expense of the Company, the Manager will maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company will keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Member, Economic Interest Owner and Manager, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments to it, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the four most recent years;

(d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years.

(e) Minutes of every annual, special, and court-ordered meeting.

(f) Any written consents obtained from Members for actions taken by Members without a meeting.

ARTICLE X
Taxes

10.1 Tax Returns. The Manager must cause to be prepared and filed all necessary federal and state income tax returns for the Company. Copies of such returns or pertinent information from them, will be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. Each Member must furnish to the Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

10.2 Tax Elections. Company will make the following elections on the appropriate tax returns:

- (a) To adopt the calendar year as the Fiscal Year;
- (b) To adopt the cash method of accounting and keep the Company's books and records on the income tax method;
- (c) If a Distribution as described in Section 734 of the Code occurs, or if a transfer of a Membership Interest described in Section 743 of the Code occurs, on the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;
- (d) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under Section 185 of the Code ratably over a period of 60 months as permitted by Section 708(b) of the Code; and
- (e) Any other election that the Manager deems appropriate and in the best interests of the Members. Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement will be interpreted to authorize any such election.

10.3 Tax Matters Partners. The Manager must designate one Manager to be the "tax matters partner" of the Company pursuant to Section 6231 (a)(7) of the Code. Any Manager who is designated "tax matters partner" must take any action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code.

ARTICLE XI
Disposition of Interests

11.1 General. Except as otherwise specifically provided in this Agreement, neither a Member nor an Economic Interest Owner has the right to:

(a) Sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell")

(b) Gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its Membership Interest or Economic Interest.

11.2 Gift of Membership Interest. A Transferring Member may gift all or any portion of its Membership Interest or Economic Interest (without regard to Sections 11.3.1, 11.3.2 and 11.3.3), provided that a majority of the remaining Members approve such transfer the donee or other successor-in-interest (collectively, "donee") complies with Section 11.4, and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member's Membership Interest or Economic Interest to one or more donees who are under 21 years of age, one or more trusts must be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 21 years.

11.3 Sale of Membership Interest.

11.3.1 If a Selling Member desires to sell all or any portion of its Membership Interest or Economic Interest to another person, the Selling Member must obtain from such purchaser a bona fide written offer to purchase the interest, stating the terms and conditions on which the purchase is to be made. The Selling Member must give written Notice to the remaining Members of its intention to transfer the interest, with a copy of the bona fide written offer to purchase the interest.

11.3.2 Each of the remaining Members, on a basis pro rata to their Capital Interests or on a basis pro rata to the Capital Interests of those remaining Members exercising their right of first refusal, has the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member on the same terms and conditions as stated in the bona fide written offer to purchase by giving Notice to the Selling Member of their intention to do so within 30 days after receiving written notice from the Selling Member. The failure of the remaining Members to so notify the Selling Member of their desire to exercise this right of first refusal with respect to all of the interest desired

to be sold within 30 days results in the termination of the right of first refusal, and the Selling Member is entitled to consummate the sale of its interest in the Company, or the portion of its interest, if any, with respect to which the right of first refusal has not been exercised, to the third party purchaser.

11.3.3 In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell on the same terms and conditions as are stated in the bona fide written offer to purchase, the remaining Members have the right to designate the time, date and place of closing, provided that the date of closing will be the later of the date set forth for closing in the bona fide offer or within 90 days after receipt of written notification from the Selling Member of the third party offer to purchase.

11.4 Conditions of Transfer. In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or a gift of an interest in the Company (including an Economic Interest), and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 11.6 below) substitution of a new Member as against the Company or otherwise, the Managers may require the Selling Member or Gifting Member and/or the proposed purchaser, donee or successor-in-interest to execute, acknowledge and deliver to the remaining Members, the instruments of transfer, assignment and assumption and other certificates, representations and documents, and to perform all other acts which the Managers deem necessary or desirable to:

- (i) Constitute the purchaser, donee or successor-in-interest as a Member;
- (ii) Confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner)
- (iii) Preserve the Company after the completion of the sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;
- (iv) maintain the status of the Company as a partnership for federal tax purposes; and
- (v) Assure compliance with any applicable state and federal laws, including securities laws and regulations.

11.5 Effective Date. Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article XI is deemed effective as of the last day of the calendar month in which the remaining Members' consent to it was given or, if no such consent was required pursuant to Section 11.2, then on the date that the donee or successor interest complies with the provisions of Section 11.4. The Selling Member agrees, on request of the Managers, to execute certificates or other documents and perform other acts as reasonably requested by the Managers from time to time in connection with the sale, transfer, assignment or substitution. The Selling Member indemnifies the Company and the remaining Members against any and all loss, damage or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article XI.

11.6 Transferee Not Member in Absence of Unanimous Consent.

11.6.1 Notwithstanding anything contained in this operating agreement to the contrary (including, without limitation, Section 11.3), if all of the remaining Members do not approve by unanimous consent of the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee who is not a Member immediately prior to the sale or gift, then the proposed transferee or donee has no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee will be merely an Economic Interest Owner. No transfer of a Member's interest in the Company (including any transfer of the Economic Interest or any other transfer which has not been approved by unanimous written consent of the Members) will be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of transfer) has been provided to the Company and the nontransferring Member(s).

11.6.2 Contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by one Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company must purchase from the Transferring Member, and the Transferring Member shall sell to the Company, for a purchase price of \$100, all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Economic Interest.

ARTICLE XII

Admission of Assignees and Additional Members

12.1 Admission of New Members or Assignees. From the date of the formation of the Company, any Person or Entity acceptable to the Members by sixty(60%) percent vote

may become a Member in the Company, subject to the terms and conditions of this Operating Agreement, either by the Company's issuance of Membership Interests for such consideration that the Members determine by their unanimous votes, or as an Assignee of a Member's Membership Interest or a portion of it.

12.2 No Retroactive Allocations. No new Members are entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager or Managers may, at his, her or their option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated under it.

ARTICLE XIII Dissociation of Member

13.1 Dissociation. A Person ceases to be a Member on the happening of any of the following events (a "Withdrawal Event")

13.1.1 The withdrawal of a Member with the consent of a Majority of the remaining Members;

13.1.2 a Member becoming a Bankrupt Member;

13.1.3 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 person estate;

13.1.4 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);

13.1.5 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;

13.1.6 In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

13.1.7 In the case of a Member which is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

13.2 Rights of Dissociating Member. In the event any Member disassociates prior to the expiration of a stated term of existence as set forth in the Articles of Organization, or in Section 2.7 above:

13.2.1 If the dissociation causes a dissolution and winding up of the Company under Article XIV, the Member is entitled to participate in the winding up of the Company to the same extent as any other Member, except that any Distributions to which the member would have been entitled will be reduced by the damages sustained by the Company as a result of the Dissolution and winding up;

13.2.2 If the dissociation does not cause a dissolution and winding up of the Company under Article XIV, the Member is entitled to an amount equal to the value of the Member's Membership Interest in the Company, to be paid within six months of the date of dissociation. Notwithstanding the foregoing, if the dissociation is other than as a result of the death or incompetence of the Member, the Managers may pay the value of the Member's Membership Interest in the Company out over a period not to exceed five years, provided that the dissociating Member is entitled to participate as an Assignee in the Company until the value of such interest (plus interest at the Default Interest Rate) is paid in full. The value of the Member's Membership Interest includes the amount of any Distributions to which the Member is entitled under the Agreement and the fair value of the Member's Membership Interest as of the date of dissociation, based upon the Member's right to share in distributions from the Company, reduced by any damages sustained by the Company as a result of the Member's dissociation.

13.2.3 If the dissociation is a consensual withdrawal pursuant to Section 13.1.1, then the disposition of the Member's interest is to be provided in the terms of the consent to withdraw.

ARTICLE XIV Dissolution and Winding Up

14.1 Dissolution. The Company is dissolved and its affairs must be wound up upon the first to occur of the following Dissolution Events:

14.1.1 The latest date on which the Company is to dissolve as set forth in Section 2.7;

14.1.2 The vote or written consent of all Members;

14.1.3 The dissociation of any Member or any other event that terminates the continued membership of any Member, unless within 180 days after such event, the

Company is continued by the vote or written consent of a Majority Interest of all of the remaining Members, and there are at least two remaining Members. Each of the Members agrees that within 90 days after the occurrence of a Withdrawal Event and provided that there are then at least two remaining Members of the Company, they will promptly consent, in writing, to continue the business of the Company. The consents must be mailed or hand delivered to the principal place of business of the Company set forth in Section 2.3 of this Operating Agreement or to another address designated by the Managers no later than 90 days after each Withdrawal Event or transfer by a Member of its entire Economic Interest or Membership Interest. The sole remedy for breach of a Member's obligation under this section is money damages (and not specific performance)

14.2 Winding Up. On dissolution of the Company, the Managers may, in the name of and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities, and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. On winding up of the Company, the assets are to be distributed as follows:

14.2.1 To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or 508 of the Act;

14.2.2 To Members and former Members in satisfaction of liabilities for Distributions under Section 507 or 508 of the Act; and

14.2.3 To Members and owners of Economic Interests, first for the return of their Capital Contributions, to the extent not previously returned, and second, respecting their Membership Interests, in the proportions in which the Members share in Distributions in accordance with this Agreement.

14.3 Articles of Dissolution. Within 90 days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, the Manager must file articles of dissolution with the New York Secretary of State pursuant to the Act.

14.4 Deficit Capital Account. On a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member has no obligation to make any Capital Contribution, and the negative balance of any Capital Account will not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

14.5 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, on dissolution, each Member will receive a return of his, her or its Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, the Member will have no recourse against any other Member.

14.6 Termination. On completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company is deemed terminated.

ARTICLE XV General Provisions

15.1 Notices. Any notice, demand or other communication required or permitted to be given pursuant to this Agreement is sufficiently given for all purposes if it is in writing and (a) delivered personally to the party or to an executive officer of the party to whom the notice, demand or other communication is directed, or (b) sent by messenger, or by overnight courier, or by registered or certified mail, postage prepaid, addressed to the Member, Manager or the Company at his, her or its address set forth in this Agreement, or such address as the Member, Manager or Company gives notice of. Except as otherwise provided in this Agreement, any notice is deemed given, on delivery, except if sent by registered or certified mail, then five business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this section.

15.2 Entire Agreement and Amendments. This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect to them, whether or not relied or acted on. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted on, and no usage of trade, whether or not relied or acted on, amends this Agreement or impairs or otherwise affects any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. No amendment to this Agreement is effective unless made in a writing duly executed by all Members and specifically referring to each provision of this Agreement being amended.

15.3 No Partnership Intended for Non-tax Purposes. The Members have formed the Company under the Act, and expressly do not intend to form a partnership under either the New York Partnership Law or the New York Limited Partnership Law. The Members do not intend to be partners to one another, or partners as to any third party. To the extent

any Member, by work or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation is liable to any other Member who incurs personal liability by reason of such wrongful representation.

15.4 Rights of Creditors and Third Parties Under Agreement. The Agreement is entered into between the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party has any rights under the Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

15.5 Execution of Additional Instruments. Each Member agrees to execute other and further statements of interests and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

15.6 Telephone Conferences. The Members and/or Managers may participate in a meeting of Members or a meeting of Managers, as the case may be, by means of conference telephone or similar communications equipment in which all Persons participating in the meeting can hear each other, and participation in a meeting constitutes presence of the Person at the meeting.

15.7 Construction. Whenever the singular number is used in this Agreement, and when required by the context, the same includes the plural and vice versa, and the masculine gender includes the feminine and neuter genders and vice versa.

15.8 Headings. The headings in this Agreement are for convenience only and are not to be used to interpret or construe any provision of this Agreement.

15.9 Waiver. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement constitutes a waiver of such right or remedy. No waiver by a Member of any right or remedy under this Agreement is effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

15.10 Severability. Whenever possible, each provision of this Agreement is to be interpreted to be effective and valid under applicable law. However, if any provision of this Agreement is prohibited by or invalid under such law, it is deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it is prohibited or invalid only to the extent of such prohibition or invalidity without the remainder of the Agreement or any other provision being prohibited or invalid.

15.11 Binding. This Agreement is binding on and inures to the benefit of all Members, and each of the successors and assignees of the Members, except that rights or obligations of a Member under this Agreement may be assigned by the Member to another Person without first obtaining the written consent of all other Members.

15.12 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original and all of which constitutes one and the same instrument.

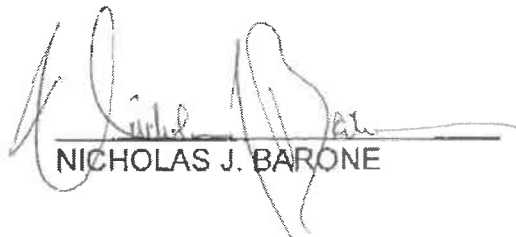
15.13 Governing Law. This Agreement is governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the individuals and entities signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.



CHRISTOPHER K. SOWERS

7/11/02



NICHOLAS J. BARONE

EXHIBIT A

Initial Members (as of July 1, 2002)

<u>Name, Address</u>	<u>Capital Contribution</u>	<u>Ownership %</u>
Christopher K. Sowers	\$ 260,000.00	80
Nicholas J. Barone	\$ 60,000.00	20

Additional Members

<u>Name</u>	<u>Capital Contribution</u>	<u>Ownership %</u>
_____	\$ _____	_____%
_____	\$ _____	_____%
_____	\$ _____	_____%
_____	\$ _____	_____%

EXHIBIT B

Manager

Name

Address

Christopher K. Sowers

538 Clinton Avenue
Brooklyn, NY 11238

EXHIBIT B

CHRISTOPHER K. SOWERS, P.C.

Attorneys at Law
538 Clinton Avenue
Brooklyn, New York 11238
Telephone (718) 636-6100
Facsimile (718) 636-3867

5/4/02 update
~~August 30, 2002~~

BY FAX (866) 864-4914

PERSONAL & CONFIDENTIAL

Mr. Nicholas J. Barone
c/o Aries Capital
90 John Street, Suite 405
New York, NY 10038

Re: 899-907 Fulton Street
Brooklyn, New York

Dear Nick:

Upon the conclusion of this transaction, you and I will be the sole shareholders of the Corporation. You will own 20 shares which is equal to 20% of the issued and outstanding stock of 899 Fulton Corp. and I will own the remaining 80 shares. I previously purchased the corporate shares owned by Frank Fox. No stock certificate was ever issued to Mr. Fox and there are no other stock certificates in existence as myself and Dara Lawson are the only shareholders in 899 Fulton Corp.

Upon your payment of \$75,000.00 to Dara Lawson and \$25,000.00 to CKS, you shall own 20% of 899 Fulton Corp. Thereafter title shall be transferred to 899 Fulton LLC, subject to all outstanding obligations of 899 Fulton Corp. 899 Fulton LLC shall assume all obligations of 899 Fulton Corp. These obligations include the following items.

1. An initial loan from Christopher K. Sowers (Frank Fox) in the amount of \$20,000.00 plus interest at 16%.
2. Management fees (from January 1, 2002 representing 6% of the income collected to date approximately \$2,000.00.
3. Tax arrears, Water/Sewer arrears, liens and violations (See title report)

Mr. Nicholas J. Barone
c/o Aries Capital
90 John Street, Suite 405
New York, NY 10038

-2-

August 30, 2002

- A legal fee payable to Christopher Panny regarding work which resulted in the vacancy of the 2nd floor in the amount of \$8,000.00.
5. A legal fee to Christopher K. Sowers in the amount of \$2,000.00 for L&T case.

6. Possible additional loans which should not exceed \$20,000.00 plus interest.

7. *Approx 10-15 K due to prior Capital Ventures*
The total capital account of 899 Fulton Corp. is \$320,000.00. Upon your payment, Dara Lawson's \$60,000.00 capital account shall be transferred to your credit on the books of the LLC. CKS capital account shall be \$260,000.00.

As previously discussed, I have budgeted \$200,000.00 for the construction and complete renovation of the property. This work is already underway. I anticipate that you will procure construction financing. Upon procurement of permanent financing any "cash out", distribution of profits shall be on a percentage basis (80% Sowers, 20% Barone). You shall be entitled to a resalable commission in connection with any financing arranged by you.

In the event you are displeased with this investment, you shall have the option prior to 8/31/03 to be bought out for 100% of your investment plus interest at 12% from the date of payment.

Very truly yours,

[Signature]
CHRISTOPHER K. SOWERS

CKS:je

The remainder of the investment deal - if for dollar - (Less the Barone fee and an amount for info 100% deal on 8/31/03)

P.S. All files should be in place week

EXHIBIT C

Phone: 212-885-5246
Fax: 917-332-3053
Email: AMingione@blankrome.com

April 26, 2012

By Federal Express

899 Fulton LLC
c/o Christopher K. Sowers, Esq.
907 Fulton Street
2nd Floor
Brooklyn, New York 11238

Re: 899 Fulton LLC

Dear Mr. Sowers:

We represent Nicholas Barone, a member in, and twenty percent (20%) owner of, 899 Fulton LLC (the "Company"). Pursuant to the Operating Agreement of 899 Fulton LLC A New York Limited Liability Company (the "Operating Agreement") and Section 1102 of New York's Limited Liability Company Law, please accept this correspondence as a formal request for the following:

1. A current list of the full names and last known mailing addresses of each of the Company's managers;
2. A current list of the full names and last known mailing addresses of each of the Company's members;
3. A current list of each member's respective contributions to the Company and shares of the Company's profits and losses;
4. A copy of the Company's Articles of Organization and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed;
5. A copy of any amendments to, or restatements of, the Operating Agreement;
6. A copy of all of the Company's federal, state and local income tax or information returns and reports, if any, since the Effective Date, as the term "Effective Date" is defined in Paragraph 1.22 Operating Agreement;

7. A copy of the all of the Company's financial statements since the Effective Date;
8. A current list of any Assignees, as that term is defined in Paragraph 1.5 of the Operating Agreement, and a statement of account for each Assignee;
9. A current list of any Economic Interest Owner, as that term is defined in Paragraph 1.21 of the Operating Agreement, and a statement of account for each Economic Interest Owner;
10. A current statement of account for each member's Capital Account, as that term is defined in Paragraph 1.7 of the Operating Agreement;
11. A current statement of account for each member's Capital Interest, as that term is defined in Paragraph 1.9 of the Operating Agreement;
12. A current statement of account for each member's Deficit Capital Account, as that term is defined in Paragraph 1.14 of the Operating Agreement;
13. A current statement of account for each member's Economic Interest, as that term is defined in Paragraph 1.20 of the Operating Agreement;
14. A current statement of account for the Company's Distributable Cash, as that term is defined in Paragraph 1.15 of the Operating Agreement;
15. All documents relating to Distributions made by the Company, as the term "Distribution" is defined in Paragraph 1.19 of the Operating Agreement;
16. All documents relating to the Company's Net Losses, as that term is defined in Paragraph 1.30 of the Operating Agreement;
17. All documents relating to the Company's Net Profits, as that term is defined in Paragraph 1.31 of the Operating Agreement;
18. A current statement of account for the Company's Reserves, as that term is defined in Paragraph 1.35 of the Operating Agreement;
19. A copy of any executed powers of attorney, as referenced in Paragraph 9.9(b) of the Operating Agreement;
20. Minutes of every annual, special or court-ordered meeting, as referenced in Paragraph 9(e) of the Operating Agreement;

Christopher K. Sowers, Esq.,

April 26, 2012

Page 3

21. Any written consents obtained from members for actions taken by members without a meeting, as referenced in Paragraph 9(f) of the Operating Agreement;
22. A copy of all Proxies, as that term is contemplated by Paragraph 7.8 of the Operating Agreement;
23. All documents related to any financial transactions between member(s) and the Company; and
24. All documents related to any construction, excavation or renovation of the property at 899-907 Fulton Street, Brooklyn, New York (the "Property"), including but not limited to agreements, receipts or agreements.

Kindly provide copies of these documents to me at the address provided, or advise as to the location where these records are stored so that we can inspect and copy them on Mr. Barone's behalf.

Additionally, Section 1102(b) of New York's Limited Liability Company Law permits Mr. Barone to inspect and copy all other information regarding the Company's affairs, and Paragraph 5.5 of the Operating Agreement permits Mr. Barone to inspect and copy all of the Company's Books and Records. To the extent that there are documents in those categories not covered by the specific requests above, please advise us of the location where such documents are stored so that we can make arrangements to inspect and copy them on Mr. Barone's behalf as well.

We look forward to hearing from you.

Very truly yours,

ANTHONY A. MINGIONE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

INDEX NO.:

**NICHOLAS J. BARONE, individually and derivatively on behalf of 899
FULTON LLC,**

Plaintiff(s),

-against-

**CHRISTOPHER K. SOWERS, 899 FULTON LLC, as its interest may appear,
JOHN AND JANE DOES I-V, ENTITIES I-V,**

Defendant(s).

KRIDEL LAW GROUP
1035 Route 46 East, Suite B-204
Clifton, NJ 07013
(973) 470-0800-Telephone
(973) 472-1909-Facsimile
law@kridel.com
Attorneys For Plaintiff

SUMMONS, VERIFIED COMPLAINT, VERIFICATION

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: May 14, 2013

Signature: 

Print Signer's Name: James A. Kridel, Jr., Esq.

Service of the foregoing is hereby admitted: _____

Dated: _____

LAW GROUP
1035 Route 46 East, Suite B-204
Clifton, NJ 07013
(973) 470-0800-Telephone
(973) 472-1909-Facsimile
Attorneys for Plaintiff

LAW OFFICES OF JAMES A. KRIDEL, JR. & ASSOCIATES
250 Park Avenue, 7th Floor
New York, New York 10177
(212) 924-1625- Telephone

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**NICHOLAS J. BARONE, individually
and derivatively on behalf of 899
FULTON LLC,**

Plaintiff(s),

-against-

**CHRISTOPHER K. SOWERS, 899
FULTON LLC, as its interest may
appear, JOHN AND JANE DOES I-V,
ENTITIES I-V,**

Defendant(s).

INDEX NUMBER: TBA

**VERIFICATION OF PLAINTIFF
OF PLAINTIFF**

STATE OF NEW YORK]

SS:

COUNTY OF NEW YORK]

Nicholas J. Barone, being duly sworn, deposes and says under penalties of perjury as follows:

I am one of the Plaintiffs in the within action. I have read the within Verified Complaint and know the contents thereof and verify that same is true to my

own personal knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Dated: May 14, 2013

By: 

Nicholas J. Barone
Plaintiff

Sworn to and
Subscribed before me this
14 day of May, 2013.


Notary Public

MICHELLE A. JACOBS
Notary Public - State of New York
NO: 01JAG230841
Qualified in Suffolk County
Commission Expires: November 8, 2014

LAW GROUP
1035 Route 46 East, Suite B-204
Clifton, NJ 07013
(973) 470-0800-Telephone
(973) 472-1909-Facsimile
Attorneys for Plaintiff

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**NICHOLAS J. BARONE, individually
and derivatively on behalf of 899
FULTON LLC,**

Plaintiff(s),

-against-

**CHRISTOPHER K. SOWERS, 899
FULTON LLC, as its interest may
appear, JOHN AND JANE DOES I-V,
ENTITIES I-V,**

Defendant(s).

**INDEX NUMBER: TBA
Purchased on:**

**Plaintiff designates NEW YORK
COUNTY as place of trial**

SUMMONS

**Basis of venue is Plaintiff's
principal place of residence
located at 435 West 23rd Street,
New York County, New York**

To the Above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Answer, or if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, Judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: May 14, 2013

Kridel Law Group

By:

/s/ James A. Kridel, Jr., Esq.
James A. Kridel, Jr., Esq.