LIMITED LIABILITY COMPANY AGREEMENT OF THIRD ST DEVELOPMENT LLC

LIMITED LIABILITY COMPANY AGREEMENT of **THIRD ST DEVELOPMENT LLC**, a Delaware limited liability company (the "Company"), dated as of February 25, 2022 (the "Effective Date"), by and among **GOWANUS GP VENTURES LLC**, a Delaware limited liability company (the "Developer Member"), the persons and entities signatory hereto and such persons as may become signatories hereto in the future (collectively, the "Investor Members").

RECITALS:

The Certificate of Formation of the Company (as amended and amended and restated from time to time, the "Certificate") was filed with the Delaware Secretary of State on February 11, 2022, in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act").

The principals of the Developer Member, Yossef Meir Ariel ("Ariel"), Ido Paul Amit ("Amit"), and Andrew Bradfield ("Bradfield"), have a long history and high competence in real estate development specializing in the New York City residential market. As such they are fully committed to causing the Developer Member to carry out its obligations under this Agreement and managing the Project to its completion.

NOW, THEREFORE, the Members do hereby agree as follows:

1. ORGANIZATION

1.1 **Formation**. The Company has been formed as a limited liability company pursuant to the Act.

1.2 **Name**. The name of the Company shall be "Third St Development LLC," or such other name as the Members shall from time to time determine.

1.3 **Office** .

(a) Principal Business Office. The principal office of the Company shall be 936 Fulton Street, Store #A, Brooklyn, New York 11238, or such other place as may be designated by the Managing Member. The Managing Member may provide additional offices for the Company within or outside of the State of New York if the same are deemed advisable for the conduct of the Company's business.

(b) Registered Agent and Registered Office. The name and address of the registered agent and the registered office for service of process of the Company in the State of Delaware is set forth in the Certificate. The Managing Member may change the Company's registered agent and registered office at any time.

1.4 **Filings**.

(a) The Certificate was filed with the Delaware Secretary of State on February 11, 2022

and the Managing Member shall execute such further documents (including amendments to the Certificate) and take such further action as may be necessary or appropriate to comply with the requirements of law for the formation and operation of a limited liability company pursuant to the Act.

(b) The Managing Member is authorized to execute, file and publish, or cause to be filed and published, with the proper authorities in each jurisdiction (or subdivision thereof) where the Company conducts business, such certificates or documents in connection with the conduct of business as may be required by applicable law.

(c) The Members, from time to time, shall execute, acknowledge, verify, file, record and publish, or cause to be executed, acknowledged, verified, filed, recorded and published, all such applications, certificates and other documents, and do or cause to be done all such other acts, as the Managing Member may deem necessary or appropriate to comply with the requirements of law for the formation, qualification and operation of the Company as a limited liability company in all jurisdictions in which the Company shall desire to conduct business.

1.5 **Purpose**. The purposes of the Company are:

(a) to acquire the Property (as defined in Section 2.1 below), and to finance, refinance (if a longer term hold strategy is implemented) own, and develop, the Project (as defined in Section 2.1 below) thereon and to sell, transfer, exchange, operate and manage the Project in accordance with the business plan attached hereto as Schedule C (the "Business Plan"). The Members may elect to offer the Project for sale upon completion or to lease out the apartments for a longer-term hold;

(b) to do all things necessary, suitable, desirable or proper for the accomplishment of, or in furtherance of, any of the purposes set forth herein and to do every other act or acts incidental to, or arising from, or connected with, any of such purposes; and

(c) to engage in any business that may be undertaken by a limited liability company under the Act.

1.6 **Term**. Pursuant to Section 18-201(d) of the Act, the term of the Company commenced upon the filing of the Certificate in the Delaware Secretary of State and shall continue until the Company is dissolved and terminated pursuant to and in accordance with this Agreement.

1.7 **Names and Addresses of Members; Subsequent Financing**.

(a) The name, address, telephone number, facsimile number and Percentage Interest, profit participation and initial Capital Contribution of each Member (as defined in Section 2.1 below) are set forth in Schedule A annexed hereto.

(b) If necessary, Schedule A shall be amended from time to time to reflect any changes to the information set forth thereon.

(c) The initial Capital Contributions of all Members as of the date of this Agreement total $8,500,000.00. The Developer Member proposes to solicit an additional $9,500,000.00 in Capital Contributions prior to commencement of the construction phase of the Project, and, upon conclusion

of such solicitation, Schedule A will be amended accordingly.

(d) The Developer Member shall use commercially reasonable efforts to procure on behalf of the Company the balance of the $9,500,000.00 in requisite capital as shown on the Business Plan attached as Exhibit C from a bank in the form of an additional construction loan. Should the Developer Member, after making such efforts, determine the procurement of such a loan on suitable terms to be not feasible, the Developer Member shall attempt to procure such additional capital through the issuance by the Company of additional equity to the then-current Members. If and to the extent the Company is unable within a reasonable time to procure such requisite capital through the issuance of additional equity, the Developer Member shall attempt to procure the balance of the requisite capital by Investor Member Loans and be repayable in accordance with the terms of this Agreement therefor. Such loans shall have a yield equal to the Investor Member Loan Return.

(e) All decisions regarding additional funding of the Company, including through the contribution of additional equity in excess of the amounts set forth in Section 1.7(c), Investor Loans or other third-party loans, other than as described in Section 1.7(d), shall require a Requisite Unaffiliated Investor Member Vote.

1.8 **Additional Members**.

(a) Additional Members may be admitted to the Company on such terms as may be approved by the Managing Member and, after the Initial Closing Date, by a Requisite Unaffiliated Investor Members Vote. In connection with any such admission, the Managing Member shall amend Schedule A to reflect the name, address and Capital Contribution (as hereinafter defined) of the additional Member(s) and any agreed upon changes in the Percentage Interests. Any offering by the Company of additional Percentage Interests shall be made first to the existing Investor Members pro rata to their then-Percentage Interests and on such further on such terms and pursuant to such procedures as are customary for rights of first refusal offerings and such additional terms and procedures as the Managing Member shall in its reasonable discretion deem fair and equitable to all Investor Members.

(b) The Capital Contribution of any Additional Members admitted after the Initial Closing Date shall be on economic terms that are no more favorable than the terms offered to the Investor Members that were admitted on or prior to the Initial Closing Date. Each admission of Additional Members after the Initial Closing Date shall be deemed as an subsequent closing date.

1.9 **Condition of Property.** In order to induce the Investor Members to become Members in the Company, the Developer Member represents and warrants that it has delivered to the Investor Members a true, correct and complete copy of each material document or instrument in the possession of the Developer Member (or any Affiliate of the Developer Member) that pertains to the condition, acquisition and/or development of the Property, including, without limitation, the Purchase and Sale Agreement, between Third Street Holdings, LLC, as seller, and Orange Management, Inc., as purchaser ("PSA") and all amendments thereto and notices given or received under the PSA, including, without limitation, all engineering reports and environmental reports. Except as disclosed in writing to the Investor Members (including in the foregoing material), to the actual knowledge of the Developer Member, (a) the PSA is in full force and effect, and there exists no breach or default by any party thereto, (b) the PSA has been duly assigned to the Company, (c) there are no facts or circumstances that would reasonably be expected to prevent the Company from obtaining a construction loan or acquiring, constructing, operating and selling the Property substantially in the

manner set forth in the Business Plan. The actual knowledge of the Developer Member shall mean such facts or matters that are to the actual knowledge of Ariel, Amit and Bradfield.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions**. In addition to terms otherwise defined herein, the following terms shall have the following meanings:

"Accountants" shall have the meaning set forth in Section 7.4(c) of this Agreement.

"Act" shall have the meaning set forth in the Recitals.

"Additional Contribution" shall have the meaning set forth in Section 3.1(c)(i) of this Agreement.

"Adjusted Capital Contributions" means, for each Investor Member at any time, the excess, if any, of such Member's Capital Contributions (including all Additional Contributions made under Section 3.1 of this Agreement) over all prior distributions under Section 4.3 and Section 8.2 of this Agreement.

"Affiliate" or "Affiliate" of a Person shall mean: (A) any officer, partner, director, manager, trustee, member, general partner, controlling shareholder, spouse, child (natural or legally adopted), sibling or other relative within the second degree of kindred (i.e., including uncles/aunts, nephews/nieces or cousins) of such Person; (B) any Person controlling, controlled by or under common control with such Person; and (C) any officer, director, trustee, member, manager, controlling shareholder or general partner of any Person described in (B) above. For purposes of this definition, the term "control" shall also mean the power to direct the management and policies of such Person, directly or indirectly, by or through stock ownership, agency or otherwise, or pursuant to or in connection with an agreement, arrangement or understanding (written or oral) with one or more other Persons by or through stock ownership, agency or otherwise; and the terms "affiliate," "controlling" and "controlled" shall have meanings correlative to the foregoing.

"Allocated Expenses" shall mean non-material expenses the Developer Member shall routinely incur from time to time in the ordinary course of its operations on behalf or for the benefit of the Company that shall comprise a portion of like expenses similarly incurred on behalf or for the benefit of various projects conducted or supervised by the Developer Member or its Affiliates which are fairly and equitably allocated to the Company by the Developer Member on a "pass-through basis."

"Approving Member" shall have the meaning set forth in Section 9.2(b) of this Agreement.

"Available Cash" shall mean all Gross Receipts actually received by the Company, less the sum of the following, to the extent paid from Gross Receipts received by or on behalf of the Company to third parties in arms-length transactions, or, if otherwise, then not in excess of what third parties would charge in arms-length transactions:

(1) All principal, interest and other payments due and owing with respect to loans, mortgages and other indebtedness of the Company;

(2) All cash expenditures then required to be made in connection with the operation of the business of the Company; provided, however, that any unpaid Development Fee and Management Fee owing upon a dissolution of the Company shall be paid, if at all, only in accordance with Section 8.2 below;

(3) The Income Tax Distribution; and

(4) Such cash reserves as the Managing Member reasonably determines to be necessary for contingent liabilities or obligations of the Company or appropriate for the operation of the business of the Company.

"Bankruptcy" of a Person or a "Bankruptcy Action" of a Person shall mean after the date hereof (A) the filing by that Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code or any other federal or state insolvency law, or a Person's filing an answer or otherwise consenting to or acquiescing in any such petition, (B) the making by a Person of any assignment for the benefit of its creditors with respect to substantially all of the assets of such Person or (C) the expiration of 90 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for substantially all of the assets of a Person, or any involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal or state insolvency law, provided that the same shall not have been dismissed, vacated, set aside, stayed or otherwise disposed of within such 90-day period. A "Bankrupt" Person shall mean a Person who has entered into Bankruptcy within the meaning of this Section.

"Bona Fide Property Purchaser" shall have the meaning set forth in Section 9.2(a) of this Agreement.

"Buyout Offer" shall have the meaning set forth in Section 9.2(a) of this Agreement.

"Buyout Offer Notice" shall have the meaning set forth in Section 9.2(a) of this Agreement.

"Buyout Offer Terms" shall have the meaning set forth in Section 9.2(a) of this Agreement.

"Capital Account" shall have the meaning set forth in Section 3.8(a) of this Agreement.

"Capital Contribution" shall mean, with respect to any Member, the amount of capital contributed by such Member to the Company. The initial Capital Contributions of each Member is set forth on Schedule A.

"Certificate" shall have the meaning set forth in the Recitals.

"Code" shall mean the Internal Revenue Code of 2017, as the same may be amended from time to time.

"Contributing Member" shall have the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"Contribution Notice" shall have the meaning set forth in Section 3.1(c)(i) of this Agreement.

"Cumulative Capital Contributions" means the aggregate of a Member's Capital Contributions without regard to distributions made pursuant to Section 4.3 and Section 8.2 of this Agreement.

"Declining Member" shall have the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"Development Fee" shall have the meaning set forth in Section 5.6(b) of this Agreement.

"Developer Member" shall mean a Member who has an Economic Interest in the Company and who shall have all other rights of a Member set forth herein, unless specifically limited to Investor Members.

"DM Buyout Notice" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"DM Buyout Offer Terms" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"DM Principal" shall have the meaning set forth in Section 5.2(e) of this Agreement.

"DM Principal Controlled Entity" shall have the meaning set forth in Section 5.4(b) of this Agreement.

"Economic Interest" shall mean a Member's share of the Net Profits and Net Losses of, and the right to receive distributions from, the Company.

"Economic Interest Holder" shall mean any Person who holds an Economic Interest, whether as a Member or an unadmitted assignee of a Member's interest as more specifically set forth in Section 6.3(c).

"Family Member" shall have the meaning set forth in the definition of Permitted Transferee.

"Gross Receipts" with respect to any period shall mean all gross cash receipts of the Company from any source whatsoever received by the Company during such period, including, without limitation, all payments of principal and interest made with respect to any loan made by the Company, interest income, any compromise or settlement payments (including good faith deposits or escrows when forfeited) received by the Company with respect to any mortgage loans, cash proceeds of the sale or other disposition of any mortgage loan or other asset held by the Company (including amounts paid by any Member in connection with the purchase by it of any asset of the Company), all payments received by the Company in reduction of the outstanding principal balance of any mortgage or other loans held by the Company (whether in the nature of standard amortization, prepayments or special payments of principal), all payments received by the Company for the release of collateral from the lien of a mortgage held by the Company, cash proceeds of the sale or other disposition of any real property, rental income of any and every nature, condemnation awards or hazard insurance proceeds received by Company and not applied by the Company toward the repayment and/or restoration of the properties which suffered the casualty or condemnation, (as reasonably determined by the Managing Member), but excluding (A) Capital Contributions, (B) Company borrowings (including the loan represented by the Loan Documents) and (C) any amounts

received by the Company which constitute segregated escrow or similar accounts (until the same are released or forfeited to the Company).

"Hard Costs" means any and all costs directly related to and incurred in connection with the construction of the Project, including, without limitation, the cost of all labor, materials and equipment incurred, but excluding the acquisition cost of the Property and any fees for architectural and engineering services, marketing fees, financing costs and other similar fees and costs.

"Income Tax Distribution" means a distribution to the Members in an amount equal to the estimated amount of income taxes due as a result of profits.

"Initial Closing Date" shall mean the date that is 60 days from the date hereof.

"Initial Investor Members" shall mean and include the Persons set forth on Schedule A annexed hereto as of the date of this Agreement.

"Initiating Member" shall have the meaning set forth in Section 9.2(a) of this Agreement.

"Interest" shall mean the ownership interest of a Member in the Company as reflected on Schedule A annexed hereto, as the same may be required to be amended from time to time (which shall be considered personal property for all purposes), consisting of (i) such Member's Economic Interest in profits, losses, allocations and distributions, (ii) such Member's right to vote or grant or withhold consents with respect to Company matters as provided herein or in the Act and (iii) such Member's other rights and privileges as herein provided.

"Investor Member Loan" shall mean any loan extended by Members pursuant to Section1.7(d) of this Agreement.

"Investor Member Loan Return" shall mean, as of any date, the amount not to exceed ten percent (10%) annual return (cumulative), calculated on the balance of the Investor Member Loans from time to time outstanding.

"Laws" shall mean all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders, judicial decisions, common law and other governmental or quasi-governmental acts.

"Loan Documents" means one (1) or more notes, mortgages, assignments, regulatory agreements and/or any other documents evidencing or securing any mortgage loan, and any replacements or modifications thereof affecting the Property.

"Lot" shall mean the parcel identified as Block 462, Lot 6 and currently known by street address 125 Third Street, Brooklyn, New York.

"Make-up Contribution" shall have the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"Management Fee" shall have the meaning set forth in Section 5.6(c) of this Agreement.

"Managing Member" shall mean Developer Member, or any Person who becomes a substituted Managing Member as may be herein expressly provided and who is listed as a Managing Member of the Company in the books and records of the Company, in such Person's capacity as the Managing Member of the Company.

"Member Nonrecourse Deductions" shall have the meaning set forth in Section 4.2(b) of this Agreement.

"Members" shall mean the Developer Member and the Investor Members and all other Persons admitted as additional or substituted Investor Members pursuant to this Agreement, so long as they remain Members. Reference to a "Member" means any one of the Members.

"Membership Interest Purchase Price" shall have the meaning set forth in Section 9.2(b) of this Agreement.

"Net Losses" shall mean, with respect to any fiscal period of the Company, the net losses of the Company for such period for federal income tax purposes including as appropriate each item of income, loss, deduction or credit entering into such determination, as determined by the regular accountants of the Company.

"Net Profits" shall mean with respect to any fiscal period of the Company, the net profits of the Company for such period for federal income tax purposes including, as appropriate, each item of income, loss, deduction or credit entering into such determination, as determined by the regular accountants of the Company.

"Non-Approving Member" shall have the meaning set forth in Section 9.2(b) of this Agreement.

"Percentage Interest" shall mean the percentage interest of each Member, as such percentage shall be adjusted from time to time in accordance with the provisions hereof. The Percentage Interest of the Investor Members as of the date hereof is set forth on Schedule A annexed hereto. The combined Percentage Interests of all Investor Members shall at all times equal 100%.

"Permitted Transferee" subject to the limitations set forth in any Loan Document affecting the Property, shall mean (A) with respect to a Member (or Persons comprising such Member) who is an individual, such individual's spouse, children (natural and legally adopted) or grandchildren (a "Family Member") or a trust of which one or more Family Members are the sole beneficiaries; (B) with respect to a Member which is a partnership, corporation or limited liability company, such Member's Affiliates, current partners, shareholders, members, directors and/or executive officers, as the case may be; (C) with respect to a Member which is a trust, the existing beneficiaries and/or trustors of such trust; (D) with respect to any Member, a corporation, partnership, limited liability company or other entity, all of which interests therein are owned by the transferring initial Member or its Affiliates or Family Members; (E) with respect to any Member (or Person comprising such Member), any other Member (or Person comprising such Member).

"Person" shall mean an individual, corporation, limited liability company, limited partnership, general partnership, joint venture, company, trust, bank or other entity.

"Project" shall mean the construction and development of a multi-family development project on the Property, including a certain number of rental residential units (and, as the context shall require, shall also mean the Company's action in prosecuting the development, construction, marketing and sale of units therein). Final determination of unit count will be subject to market conditions and/or Department of Buildings approval.

"Project's Appraised Value" shall have the meaning set forth in Section 5.2(e).

"Property" shall mean the Lot and all improvements located thereon.

"Regulations" shall mean the Treasury Regulations promulgated under the Code or any predecessor as such regulations may be amended from time to time (including the corresponding provisions of succeeding regulations).

"Requisite Investor Member Vote" shall mean the affirmative vote of Investor Members holding 55% of the Percentage Interests held by all Investor Members.

"Requisite Unaffiliated Investor Member Vote" shall mean the affirmative vote of Investor Members holding 55% of the Percentage Interests held by all Unaffiliated Investor Members.

"Shortfall Amount" shall have the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"Shortfall Notice" shall have the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"Tax Matter Representative" shall have the meaning set forth in Section 7.6 of this Agreement.

"Transfer" shall have the meaning set forth in Section 6.1 of this Agreement.

"Transfer Date" shall have the meaning set forth in Section 4.1(b) of this Agreement.

"Treasury Regulations" shall mean the Income Tax Regulations promulgated under the Code or its predecessor, as such Regulations may be amended from time to time.

"Unaffiliated Investor Member" shall mean an Investor Member that is not the Developer Member or any Affiliate thereof.

2.2 **Captions**. The captions used in this Agreement are inserted for convenience and identification only and are in no way intended to define or limit the scope, extent or intent of this Agreement or any of the provisions hereof.

2.3 **Construction**. Whenever the singular number is used herein, the same shall include the plural, and the masculine, feminine and neuter genders shall include each other. Unless the context clearly requires otherwise, the words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision hereof. If any language is stricken or deleted from this Agreement (or any prior draft thereof), such language shall be deemed never to have appeared herein and no other implication shall be drawn therefrom.

3. CAPITAL; CONSTRUCTION LOAN; CAPITAL ACCOUNTS

3.1 **Capital Contributions; Investor Loans; Construction Loan; Interests**.

(a) Initial Capital Accounts. Each Member shall have an initial Capital Account balance equal to the initial Capital Contribution made by such Member to the Company in the amount set forth on Schedule A annexed hereto. Upon admission of Additional Members after the Initial Closing Date or contribution of Additional Contributions by any Investor Members, Schedule A annexed hereto shall be updated accordingly.

(b) Percentage Interests. Each Initial Investor Member shall have the Percentage Interest set forth in the definition of "Percentage Interest" herein and on Schedule A annexed hereto.

(c) Additional Contributions.

(i) Subject to and in accordance with the terms hereof, the Managing Member may call upon the Investor Members to make additional capital contributions to the Company in such amounts as the Managing Member shall in good faith determine are necessary for a legitimate Company purpose (each an "Additional Contribution"), including, but not limited to, if a lender demands an increase in budget after conducting its own cost analysis. The Managing Member shall do so by delivering to each Investor Member a notice (the "Contribution Notice") specifying: (i) the total amount of the Additional Contribution; (ii) each Investor Member's allocable portion of the Additional Contribution based on such Member's Percentage Interest; and (iii) the use of the requested funds. The Contribution Notice shall also state whether the Developer Member desires to fund a portion of the Additional Contribution, *pari passu*.

(ii) Within thirty (30) days from the date of the delivery to all of the Investor Members of a Contribution Notice, the Developer Member (if it determines to do so) shall fund its share of the applicable Additional Contribution (in which case the Developer Member shall receive a credit to its Capital Account) and each Investor Member shall advance or cause to be advanced to the Company its Percentage Interest of the Investor Member's share of the applicable Additional Contribution. (A Member who does so contribute shall sometimes be referred to hereinafter as a "Contributing Member".) If any Investor Member shall fail to contribute all or any portion of its Percentage Interest of such Additional Contribution within the applicable period of time (hereinafter a "Declining Member"), then the Managing Member shall send a second notice to the Declining Member stating the amount of the Declining Member's shortfall (the "Shortfall Amount") and if such Declining Member fails to contribute such Shortfall Amount within five (5) days of receipt of such notice, the Managing Member shall provide written notice thereof to all other Members (the "Shortfall Notice"). Each Contributing Member, pro rata in the proportion that the Percentage Interest of each bears to the cumulative Percentage Interest of all of the Contributing Members, shall have the right, but not the obligation, within ten (10) days after receipt of the Shortfall Notice to make a make-up contribution (a "Make-up Contribution") equal to such pro rata share of the Shortfall Amount. If a Make-up Contribution is made by a Contributing Member, the Percentage Interests of such Contributing Member shall be recalculated, so that the Declining Member's Percentage Interest shall be reduced and the Percentage Interest of such Contributing Member shall be increased, computed as if the Percentage Interest of the Declining Member were equal to the following: (A) such Member's aggregate Capital Contributions divided by (B) the aggregate Capital Contributions of all Members including the Make-up Contribution. If the Contributing Members fail to fund the entire Shortfall Amount, then the Developer Member shall have the right to do so as a Make-up

Contribution (in which case the Developer Member shall receive a credit to its Capital Account). If the Developer Member elected to fund its share of the Additional Contribution, but then fails to do so within the applicable thirty (30) day period, then (i) the Managing Member shall notify the Investor Members of such fact, (ii) the Managing Member shall send a new Contribution Notice for such amount to the Investor Members (and all of the provisions above with respect to funding an Additional Contribution shall apply with respect thereto).

(e) [Intentionally Omitted].

(f) Construction Funding.

(i) The Members acknowledge and agree that the Company has or will obtain a construction loan, secured by the Project, to fund the construction of the Project. The Managing Member shall execute and deliver any required lender guaranty required in connection with any financing entered into by the Company and requested by the lender. Managing Member shall also be obligated to provide any environmental indemnity and /or completion guaranty required by the construction lender. To the extent feasible, any such financing shall permit any Investor Member to transfer its Interest to a Permitted Transferee. Additionally, if so unanimously approved by the Members, the Managing Member shall be authorized to obtain for and on behalf of the Company a mezzanine loan toward the purchase of the Property and/or the duration of the development. No Member or any of its Affiliates shall have any liability under or in connection with any third-party debt of the Company, including liability with regard to any environmental matters, non-recourse carve-outs, fraud, intentional misconduct, theft or other commonly called "bad-boy acts" or with regard to any other matter unless otherwise approved in writing by such Member or its Affiliate.

3.2 **No Withdrawal of Capital Contributions**. Except upon dissolution and liquidation of the Company or as otherwise set forth herein, no Member shall have the right to withdraw, reduce or demand the return of its Capital Contributions, or any part thereof, or any distribution thereon. Except as otherwise provided herein, no Member shall have the right to receive assets other than cash in connection with a distribution or return of capital.

3.3 **No Personal Liability for Return of Capital Contributions**. Except as otherwise required by the Act, the Members shall not be personally liable for the return or repayment of any Capital Contribution.

3.4 L**iability of Members and Their Affiliates**; **Member Guaranties.** Except as otherwise provided by applicable law or herein, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company; no Member or Person Affiliated with a Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or being a Person Affiliated with a Member.

3.5 **No Priority**. Except as may be otherwise expressly provided for in this Agreement, no Member shall have priority over another Member as to return of Capital Contributions or allocations of income, gain, profits, losses, credits or deductions or as to distributions.

3.6 **No Interest**. Except as expressly provided for by this Agreement, no interest shall be paid on all or any part of a Member's Capital Account.

3.7 **No Obligation to Restore Negative Balances in Capital Accounts**. No Member shall have an obligation, at any time during the term of the Company or upon its liquidation, to pay to the Company or any other Member or third party an amount equal to the negative balance in such Member's Capital Account.

3.8 **Capital Accounts.**

(a) The Company shall maintain a separate capital account ("Capital Account") for each Member and, if the Developer Member funds Make Up Contribution, then also for the Developer Member and their legal representatives, successors and permitted assigns.

(b) Capital Account of each such Member shall be maintained in accordance with Section 1.704-1(b) of the Regulations as in effect on the date of this Agreement and shall be interpreted and applied in a manner consistent with such Regulations. If the Managing Member shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with Regulation Section 1.704-1(b), the Managing Member may make such modifications, provided that such changes have no financial impact on the amount distributable to a Member under Sections 4.3 and 8.2.

(c) The Capital Account of each Member shall consist of the amount of cash and the fair market value of the property (as determined in good faith by the Managing Member) contributed by such Member to the Company (net of liabilities securing such contributed property assumed by the Company or subject to which the Company takes the contributed property) increased by allocations of Net Profits, and of tax-exempt income, if any, and decreased by allocations of Net Losses, by distributions and withdrawals of cash and property (to the extent of the fair market value thereof, net of liabilities securing such property assumed by the Member or subject to which the Member takes the property) and by expenditures defined in Section 705(a)(2)(B) of the Code (or which are treated as Section 705(a)(2)(B) expenditures under Regulation 1.704-1(b)(2)(iv)(i)).

(d) In the event of a transfer of an Interest or any portion thereof in accordance with the terms of this Agreement, whether or not the purchaser, assignee or successor-in-interest is then a Member, the person or entity so acquiring such Interest or any portion thereof shall acquire the Capital Account or portion thereof of the Member formerly owning such Interest, adjusted for distributions of Available Cash theretofore made and allocations of Net Profits and Net Losses through the effective date of the transfer. The cost of computing such adjustment shall be borne by the Member disposing of such Interest.

4. PROFITS, LOSSES AND DISTRIBUTIONS

4.1 **General**.

(a) The Net Profits and Net Losses of the Company shall be determined for each fiscal year in accordance with the accounting method followed by the Company for federal income tax purposes. Except as otherwise provided herein, whenever a proportionate part of the Net Profit or Net Loss is credited or charged to a Member's Capital Account, every item of income, gain, loss, deduction or credit entering into the computation of such Net Profit or Net Loss shall be considered either credited or charged, as the case may be, in the same proportion to such Member's Capital

Account, and every item of credit or tax preference related to such Net Profit or Net Loss and applicable to the period during which such Net Profit or Net Loss was realized shall be allocated to such Member in the same proportion.

(b) On the last day of the month in which a new Member is admitted to the Company, or a valid transfer of all or part of a Member's Interest is consummated (the "Transfer Date"), the books of the Company shall be closed in accordance with Section 706(d) of the Code, and consistent therewith: (i) items of income, deduction, gain, loss and/or credit of the Company that are recognized prior to the Transfer Date shall be allocated among those Persons who were Members in the Company prior to the Transfer Date in accordance with their respective Interests prior to the Transfer Date; and (ii) items of income, deduction, gain, loss and/or credit of the Company that are recognized after the Transfer Date shall be allocated among the Persons who were Members in the Company after the Transfer Date in accordance with their respective Percentage Interests after the Transfer Date.

4.2 **Allocation of Net Profits and Net Losses**.

(a) Allocation of Net Profits and Net Losses. Subject to any allocations required under Section 4.2(b), Net Profits and Net Losses shall be allocated to the Members in the ratio of their Percentage Interests.

(b) Special Allocation Provisions. (i) Notwithstanding anything to the contrary contained in Section 4.2 hereof, any and all items of loss and deduction and any and all expenditures described in Section 705(a)(2)(B) of the Code (or treated as expenditures so described pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations) (collectively, "Member Nonrecourse Deductions") that are (in accordance with the principles set forth in Section 1.704-2(i)(2) of the Regulations) attributable to Member Nonrecourse Debt (as such term is defined in Section 1.704-2(b)(4) of the Regulations) shall be allocated to the Member that bears the economic risk of loss pursuant to Section 1.752-2(b) of the Regulations for such Member Nonrecourse Debt. If more than one Member bears such economic risk of loss, such Member Nonrecourse Deductions shall be allocated between or among such Members in accordance with the ratios in which they share such economic risk of loss. If more than one Member bears such economic risk of loss for different portions of a Member Nonrecourse Debt, each such portion shall be treated as a separate Member Nonrecourse Debt.

(ii) (A) Except to the extent provided in Sections 1.704-2(f)(2), (3), (4) and (5) of the Regulations, if there is, for any fiscal year of the Company, a net decrease in Company Minimum Gain (as such term is defined in Sections 1.704-2(b)(2) and (d) of the Regulations), there shall be allocated to each Member, before any other allocation pursuant to Section 4.2 hereof is made under Section 704(b) of the Code of Company items for such fiscal year, items of income and gain for such year (and, if necessary, for subsequent years) equal to such Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of such total net decrease multiplied by the Member's percentage share of the Company's Minimum Gain at the end of the immediately preceding taxable year, determined in accordance with Section 1.704-2(g)(1) of the Regulations. Items of income and gain to be allocated pursuant to the foregoing provisions of this Section 4.2(b)(ii)(A) shall consist first of gains recognized from the disposition of items of Company property subject to one or more Nonrecourse Liabilities (as defined in Section 1.704-2(b)(3) of the Regulations) of the Company, and then of a pro rata portion of the other items of Company income and gain for that year.

(B) Except to the extent provided in Section 1.704-2(i)(4) of the Regulations, if there is, for any fiscal year of the Company, a net decrease in Member Nonrecourse Debt Minimum Gain (as defined in Section 1.704-2(1)(2) of the Regulations), there shall be allocated to each Member that has a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Fiscal Year before any other allocation pursuant to Section 4.2 hereof (other than an allocation required pursuant to Section 4.2(b)(ii)(A)) is made under Section 704(b) of the Code of Company items for such fiscal year, items of income and gain for such year (and, if necessary, for subsequent years) equal to such Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. The determination of a Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain shall be made in a manner consistent with the principles contained in Section 1.704-2(g)(1) of the Regulations. The determination of which items of income and gain to be allocated pursuant to the foregoing provisions of this Section 4.2(b)(ii)(B) shall be made in a manner that is consistent with the principles contained in Section 1.704-2(f)(6) of the Regulations.

(iii) In the event any Member unexpectedly receives an adjustment, allocation or distribution described in clauses (4), (5) and (6) of Regulation Section 1.704-1(b)(2)(ii)(d) that results in such Member having a negative balance in its Capital Account in excess of the amount such Member is required to restore upon a liquidation of the Company (or of such Member's interest in the Company), then, after any allocations required by Section 4.2(b)(ii) hereof, such Member shall be allocated income and gain in an amount and manner sufficient to eliminate such excess as quickly as possible. To the extent permitted by the Code and the Regulations, any special items of income or gain allocated pursuant to this Section 4.2(b)(iii) shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to this Section 4.2, so that the net amount of any items so allocated and the subsequent Net Profits and Net Losses allocated to the Members pursuant to Section 4.2 shall, to the extent possible, be equal to the net amounts that would have been allocated to each such Member pursuant to the provisions of Section 4.2 if such unexpected adjustments, allocations or distributions had not been made.

(iv) Any item of Company income, gain, loss, deduction or credit attributable to property contributed to the Company, solely for tax purposes, shall be allocated among the Members in accordance with the principles set forth in Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value at the time such property was contributed to the Company.

(v) Notwithstanding the other provisions of this Section 4.2 to the contrary, Net Losses shall not be allocated to a Member to the extent the allocation would create or increase a negative balance in such Member's Capital Account if at that time any other Member has a positive Capital Account; in such event, Net Losses shall be allocated only to Members with positive Capital Accounts until all Members' Capital Accounts have been reduced to zero or are negative, and thereafter all Net Losses shall be allocated to the Members in the ratio of their Percentage Interests or as otherwise provided herein. Notwithstanding the other provisions of this Section 4.2, if at any time any Net Loss has been allocated to any Member pursuant to this clause (v), all Net Profits arising thereafter shall first be specially allocated to the Members who received allocations of Net Losses pursuant to this clause(v) (in proportion to the maximum allocation to which each such Member is then entitled under this clause (v)) until the aggregate amount of Net Profits specially allocated to each such Member pursuant to this clause (v) equals the aggregate amount of Net Losses theretofore allocated to such Member pursuant to this clause (v).

4.3 **Distributions of Available Cash**.
Distributions of Available Cash shall be made to the Members from time to time as determined by the Managing Member as follows:

(i) *first,* to the Investor Members that made Investor Member Loans, pro rata, based on the balances of their respective Investor Member Loans, in the order in which such Investor Member Loans were made, until each such Investor Member has received in the aggregate under this Section 4.3(a)(i) the entire Investor Member Loan Return due such Investor Member with respect to its Investor Member Loan through the date of distribution;

(ii) *second*, to the Investor Members that made Investor Member Loans, pro rata, based on the balances of their respective Investor Member Loans, in the order in which such Investor Member Loans were made, until each such Investor Member has received, in the aggregate under this Section 4.3(ii), such Investor Member's entire unpaid Investor Member Loan balance.

(iv) *third,* to the Members that made Make-up Contributions, pro rata, based upon their respective aggregate Make-up Contribution balances, until each such Member shall have received a return of such Make-up Contributions;

(vi) *fourth,* to the Members with positive Adjusted Capital Contribution balances, pro rata in accordance with such positive balances until no Investor Member has a positive Adjusted Capital Contribution balance; and

(vii) *Lastly,* eighty percent (80%) to the Investor Members, pro rata based upon their respective Percentage Interests and twenty percent (20%) to the Developer Member.

4.4 **Incorrect Distributions.** To the extent distributions pursuant to this Article 4 were incorrectly made, as determined by financial statements of the Company, the recipients shall promptly repay all incorrect payments and/or the Company shall have the right to set off any current or future amounts owing to such recipients against any such incorrectly paid amounts except that the obligation to make a payment of an over-distribution shall expire with respect to any claim thereof not made in writing within one year after the date of dissolution of the Company.

4.5 **Distributions in Kind**. If any proceeds available for distribution consist of items other than cash (including, but not limited to notes, mortgages and payments in kind), the Members shall be entitled to their pro rata shares of each such asset, in accordance with the aggregate amounts of proceeds due them, respectively. In determining the Capital Accounts of the Members for purposes of Section 3.8, the amount by which the fair market value of any property to be distributed to the Members exceeds or is less than the tax basis of such Assets, to the extent not otherwise recognized by the Company shall be taken into account as if such gain or loss were recognized by the Company.

5. MANAGEMENT OF THE COMPANY

5.1 **Management Powers of the Managing Member**.

(a) Except as expressly limited by the provisions of this Agreement or by the Act, the

Managing Member shall have the full, exclusive and absolute right, power and authority to manage and control each and every aspect of the business of the Company and its property, assets and affairs.

(b) No Member, by reason of his or its status as such, shall have any authority to act for or bind the Company but shall have only the right to vote on or approve the actions, if any, specified herein to be voted on or approved by the Members.

(c) Subject to the restrictions set forth in this Agreement, Managing Member shall faithfully, competently and prudently manage and administer the day-to-day business and affairs of the Company including without limitation, the development and construction of the Project. The Managing Member shall perform all of its obligations hereunder in an efficient, thorough, businesslike manner, devoting its prompt attention to the business of the Company. Managing Member shall at all times perform its duties and responsibilities in compliance with all Laws and this Agreement and in the best interest of the Company (as opposed to the interest of any particular Member. The Managing Member shall at all times act in a fiduciary capacity with respect to the proper protection of and accounting for the Project and all proceeds thereof, and dealing at "arms-length" with all third parties and, except as expressly authorized under the provisions of this Agreement, not making any payment to or entering into any arrangement with any Affiliate of the Managing Member, not taking or permitting any Affiliate of the Managing Member to take any action which would benefit any other property owned, managed or represented by Managing Member or any Affiliate to the detriment of the Project, and otherwise serving the interests of the Company and the Project at all times.

(d) The Managing Member shall have the power and authority to act for and to bind the Company. Any third party may rely on the execution of any document by the Managing Member on behalf of the Company as binding the Company.

(e) Without limiting the generality of the duties of the Managing Member set forth in this Agreement, the Managing Member shall cause the Company, at a minimum, to obtain and maintain, without interruption, the insurance coverages listed on Schedule 2 attached hereto, for the benefit of the Company and each Member, but only to the extent of such party's interest in the Property.

5.2 **Managing Member**.

(a) Developer Member shall be the sole initial Managing Member of the Company.

(b) The Managing Member shall continue to serve in such capacity until he/it resigns, retires, dies, becomes incapacitated, becomes Bankrupt or; if he/it is removed for cause, which, for purposes hereof, shall include the following acts if committed against the Company: gross negligence, theft, embezzlement, fraud, misappropriation of funds or conviction of a felony relating to the Company.

(c) If the Managing Member resigns, then the Managing Member shall have the sole right and authority to appoint the successor Managing Member. If the Managing Member fails to appoint a successor Managing Member, the Investor Members, by a Requisite Unaffiliated Investor Member Vote, shall elect and appoint a successor Managing Member and shall have the further right to remove and appoint all successor Managing Members.

(d) A Requisite Unaffiliated Investor Member Vote shall be required to remove the Managing Member for cause and to appoint a successor Managing Member.

(e) Ariel, Amit and/or Bradfield (the "DM Principals") shall be personally involved in the management of the Company and the Project, and shall devote to the Company and the Project a substantial amount of his time, and in any event not less than the amount of time required to manage the affairs thereof. The DM Principals shall undertake to follow this Section 5.2(e). Should a Requisite Unaffiliated Investor Member Vote at any time determine that the DM Principals have failed to comply with the foregoing requirements of this Section 5.2(e) after (i) their having given notice thereof in reasonable detail to the DM Principals and (ii) the DM Principals having failed thereafter to correct such compliance failure (if capable of cure) within 30 days of the giving of such notice (for the avoidance of doubt, so long as one or more DM Principals complies with the requirements of this Section 5.2(e), then the obligations of the DM Principals hereunder shall have been deemed satisfied), then the Unaffiliated Investor Members, acting by a Requisite Unaffiliated Investor Members Vote, shall be entitled to remove the Managing Member and appoint a successor Managing Member in accordance with Section 5.2(d), provided the Unaffiliated Investor Members shall have theretofore (x) caused the purchase of the entire Percentage Interest of the Developer Member at a cash purchase price equal to the distributions that Developer Member would have received assuming that the Project were sold for the then-value of the Project as determined by an appraisal of the Project to be conducted at that time by an independent appraiser selected in good faith jointly by the Developer Member and the Unaffiliated Investor Members (the "Project's Appraised Value"), free and clear of all liens, pledges, security interests and other encumbrances (other than liens incurred for the Company's benefit), and the Company was liquidated in accordance with Section 8.2 and (y) procured the release of the Developer Member from all obligations under any guaranties it shall have provided (in whatever capacity) in connection with any loans or other obligations of the Company.

5.3 **No Other Management Powers by Members**. Except as may be expressly provided in this Agreement or as otherwise required by law, the Members (as members) shall have no voice or participation in the management of the Company's business, and no power to bind the Company or to act on behalf of the Company in any manner whatsoever.

5.4 **Consent of the Members; Ratification of Certain Acts**: **Ownership and Control of Managing Member**.

(a) Subject to the provisions of this Agreement, the Members hereby expressly acknowledge and agree that by the execution of this Agreement they consent to all of the rights, power and authority of the Managing Member under this Agreement, to the free and unrestricted exercise thereof and to the doing of any act that the Managing Member has the right, power or authority to do under this Agreement. The Members hereby ratify and confirm in all respects all actions heretofore taken, and all instruments and agreements heretofore executed and delivered, by the Managing Member in the name and on behalf of the Company.

(b) The Members acknowledge and agree that the powers and rights granted and delegated to the Managing Member in this Agreement were so provided in reliance on the experience and expertise of Amit, Ariel and/or Bradfield. Accordingly, if Managing Member, or any successor Managing Member of the Company, at any time hereafter is no longer controlled, directly or indirectly, by (i) Amit, Ariel and/or Bradfield and/or (ii) any Affiliate of Amit, Ariel and/or Bradfield

(an "DM Principal Controlled Entity"), or if each of Amit, Ariel and Bradfield Cease to Function as the controlling Persons of Managing Member or any successor Managing Member of the Company, then in any such case the Managing Member or any applicable successor shall be deemed to have resigned effective as of the time that the Managing Member was no longer an DM Principal Controlled Entity or that each of Amit, Ariel and Bradfield Ceased to Function as the controlling Person as above-described. For purposes of the forgoing, "Ceased to Function" shall mean with respect to Amit, Ariel or Bradfield, as applicable (i) is deceased, (ii) is mentally disabled from carrying on his responsibilities, (iii) informs the Investor Members in writing that he will not continue to be involved in the management of Managing Member or any applicable successor, and/or (iv) resigns from his positions of Control of the Managing Member or an applicable Affiliate. Thereafter and notwithstanding Article 5 of this Agreement to the contrary, but subject to the approval rights of any applicable lender, the Investor Members, by a Requisite Unaffiliated Investor Member Vote, shall elect and appoint a successor Managing Member and shall have the further right to remove and appoint all successor Managing Members.

5.5 **Restrictions on Actions**. Notwithstanding anything in this Agreement to the contrary, the Managing Member shall not take any of the following actions on behalf of the Company unless approved by a Requisite Investor Member Vote except that approval of the action described below in clause (h) shall require a Requisite Unaffiliated Investor Member Vote:

(a) Any confession of a judgment against the Company;

(b) A change in the nature of the principal business of the Company;

(c) Filing a petition in or arranging among creditors for Bankruptcy of the Company;

(d) Entering into a merger or consolidation under the Act, or any transaction on behalf of the Company which constitutes a "conversion" within the meaning of the Act;

(e) The acquisition of additional real property by the Company;

(f) The disposition of the Project in its entirety;

(g) The decision to convert the Project into condominiums or other use materially different from the Business Plan;

(h) Any transaction between the Company on the one hand and any Affiliate of the Company or Affiliate of an Affiliate of the Company (which, for the avoidance of doubt, shall exclude Allocated Expenses);

(i) Any borrowings by the Company excluding any loans contemplated by the budget and Business Plan of the Company as presented to the Investor Members on the date of this Agreement;

(j) After the completion of the initial construction of the Project, the expenditure in one or a series of related transactions for capital improvements to the Project of more than $300,000; or

(k) Any material change in the types of insurance coverages required to be maintained by

the Company.

Unless otherwise set forth in this Agreement for matters that will require a Requisite Unaffiliated Investor Member Vote, any matter required to be voted on by the Investor Members will require a Requisite Investor Member Vote. Matters requiring the vote of the Investor Members may be initiated by the Managing Member through requests via email. Investor Members shall vote in response to such request by a return email, and the Managing Member may notify the Investor Members the results of such vote via email. Notwithstanding the foregoing, if there is a proposal to structure any sale of the Project in its entirety, or any part thereof, by the Company as a tax deferred exchange under Section 1031 of the Code instead of distributing the proceeds as Available Cash following such sale, there shall be a vote by the Investor Members and each Investor Member shall likewise put the decision to a vote of its members (the "Sub-Tier Members"). If an Investor Member objects (a "Dissenting Investor Member") and /or if some, but not all, of the Sub-Tier Members object (each a "Dissenting Sub-Tier Member"), then in no event shall an election to proceed with an exchange transaction be binding on any Dissenting Investor Member and/or Dissenting Sub-Tier Member that voted against such transaction, and in no event shall the cash that shall otherwise be distributable directly to the Company to any Dissenting Investor Member and/or indirectly to a Dissenting Sub-Tier Member be transferred to an accommodator or similar facilitator of a tax deferred exchange, but such cash shall be segregated from any cash being used to fund an exchange so it shall be readily available by the Company for distribution to (i) the Dissenting Investor Member concurrent with the withdrawal by any Dissenting Investor Member from the Company and (ii) to the Investor Member in which any Dissenting Sub-Tier Members are members, so that it shall be available to such Investor Member for distribution to its Dissenting Sub-Tier Members concurrent with the withdrawal by the Dissenting Sub-Tier Members from such applicable Investor Member.

5.6 **Reimbursement**.

(a) Except as provided below, the Managing Member and each Investor Member and any Affiliate of a Member serving as an officer, agent or employee of the Company, shall not be entitled to compensation for such Person's services unless a majority of Unaffiliated Investor Members vote in favor thereof based upon their Percentage Interests prior to payment of such compensation. The Managing Member and each Member and any Affiliate of a Member serving as an officer, agent or employee of the Company, shall be entitled to reimbursement for all expenses reasonably incurred by such Person in the performance of such Person's duties. Without limiting the foregoing, the Company shall pay or reimburse for all direct expenses of the Company (including Allocated Expenses), including without limitation, (i) the actual cost of goods and materials used for or by the Company, for organization expenses incurred to form the Company (including, without limitation, legal and accounting fees), and (ii) legal, audit, accounting and consulting fees and expenses (including any accounting fees paid to any Affiliate of a Member).

(b) Pursuant to a development agreement to be entered into, the Company will engage an Affiliate of the Developer Member to act as development manager for a development fee equal to five percent (5%) of the aggregate Project cost less the cost of the Property (the "Development Fee") paid to the Developer Member (or its designated Affiliate) as follows: (i) a portion thereof (the "Base Development Fee") paid on a monthly basis (in level monthly payments) commencing on the date on which approval is first granted for the construction of the building(s) for the Project, through the date of final completion of the Project, and (ii) the balance thereof on a monthly basis based upon Hard Costs incurred in the prior month, commencing on the first day of the month subsequent to the

month when construction of the Project has commenced and ending in the month immediately after the month in which substantial completion of the Project has occurred. If the Company elects to sell the property prior to construction, the Developer Member (or its designated Affiliate) will be entitled to all monthly management payments for the period between the acquisition and the sale of the Property.

(c) Pursuant to a property management agreement to be entered into, the Company will engage an Affiliate of the Developer Member to act as property manager for a property management fee equal to six percent (6%) of the gross revenues from the Property (the "Management Fee") paid on a monthly basis to the Developer Member (or its designated Affiliate) based upon gross revenues received in the prior month, commencing on the first day of the month subsequent to the month when the Project has been completed. In the event that an Affiliate of the Developer Member is not engaged pursuant to this Section 5.6(c), before the Company engages a third party development manager, the Managing Member shall obtain proposals from three (3) experienced management companies.

(d) The Company shall pay the Developer Member a fee equal to $270,000.00 upon the satisfaction of the following conditions: (1) installation of foundation elements sufficient for 421a-vesting have been installed, (2) a subdivision and merger of the lots is achieved, and (3) acceptance into the Brownfield Cleanup Program (the "BCP"), as evidenced by a signed Brownfield Cleanup Agreement.

5.7 **Outside Interests, Conflicts**.

(a) Except as otherwise expressly provided for in this Agreement, any Member, Managing Member or Affiliate of any Member or Managing Member shall have the right to engage in and/or possess an interest in any other business of every kind, nature and description, independently or with other Persons, irrespective of whether competitive with any property or business directly or indirectly owned or engaged in by the Company. Neither the Company nor any Member shall have or be entitled to any rights, solely by virtue of this Agreement, in and to such independent ventures or to the income and profits derived therefrom, nor shall any such Member, Managing Member or such Affiliated Person have any obligation whatsoever to offer, share or offer to share any business opportunity of any kind to or with the Company or any other Member. The Members hereby waive any and all rights and claims which they may otherwise have against such other Members, Managing Member and their Affiliated Persons.

(b) The Members acknowledge that the Managing Member is engaged, and will continue to be engaged, in other business activities and will not be devoting full time to the business of the Company. It is understood that such businesses and interests may place demands upon the Managing Member which may conflict with the demands of the business of the Company.

5.8 **Indemnification**.

(a) The Company (but not the Members personally) shall indemnify and defend the Managing Member and his or its agents and Affiliates against and hold it harmless to the maximum extent permitted by law from any and all losses, judgments, costs, damages, liabilities, fines, claims and expenses (including, but not limited to, reasonable attorneys' fees and court costs, which shall be paid by the Company as incurred) that may be made or imposed upon such Persons by any third

party and any amounts paid in settlement of any third party claims sustained by the Company; provided, however, that this indemnity shall only apply in instances where the acts or omissions giving rise to losses, judgments, costs, damages, liabilities, fines and expenses do not constitute gross negligence, willful misconduct or fraud.

(b) The rights to indemnification and advancement of expenses set forth above shall be contract rights, shall include legal costs and expenses incurred by the Managing Member in seeking to enforce its rights to this indemnity, shall continue as to an indemnitee who has ceased to be affiliated with the Company or the Managing Member, shall inure to the benefit of the personal representative, successors and assigns of an indemnitee and are exclusive of any other right that any Person may have or hereafter acquire and shall include legal costs and expenses incurred by the Managing Member in seeking to enforce its right to this indemnity.

(b) The Company at its expense may maintain insurance to protect itself and the Managing Member, any agent or any Affiliate, against liability, loss or expense whether or not the Company would have the power to indemnify such Person under the Act.

5.9 **Limitations on Liability of the Managing Member.** Neither the Managing Member nor its Affiliated Persons shall be liable to the Company or its Members for any loss or damages resulting from errors in judgment or for any acts or omissions within the scope of the authority granted to the Managing Member under this Agreement or by law, unless such act or omission was determined by a final judgment of a court of competent jurisdiction to have resulted from an act of fraud, gross negligence, misappropriation of funds or theft.

5.10 **Managing Member.** The Managing Member or other officer of the Company may resign at any time without prejudice to any rights of the Company under any contract to which the Managing Member or other officer of the Company are party, by giving written notice to the Members. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. RESTRICTIONS ON THE DISPOSITION OF AN INTEREST

6.1 **Generally**. Except as otherwise expressly provided for in this Agreement, including without limitation Section 6.2, no Member may, directly or indirectly, sell, transfer, assign, or otherwise convey, or mortgage, pledge, hypothecate or otherwise dispose of (collectively, "Transfer") all or any part of his or its Membership Interest in the Company, without the prior written consent of the Managing Member. Any attempt to Transfer a Membership Interest of a Member in violation of this Agreement shall be of no force or effect and shall not be recognized by the Company. For the purposes hereof, a direct or indirect Transfer by a Member shall include a Transfer of an ownership interest (including any interest as a trustee) in any entity which is a Member.

6.2 **Permitted Transfers**. Notwithstanding Section 6.1 to the contrary, but subject in all events to Section 6.3 below and the limitations set forth in the Loan Documents, if any, a Member may Transfer all or part of its Membership Interest or allow the Transfer of direct or indirect ownership interests in such Member or in the partners, members or shareholders thereof, as follows, in each case, without the consent of the Managing Member:

(a) if the proposed transferor is a natural Person, by succession or testamentary disposition upon his death, provided that such Transfer is to a Person that is otherwise a Permitted Transferee;

(b) if the Transfer is merely of an Economic Interest; or

(c) to any Permitted Transferee.

6.3 **Restrictions on Transfers/Impermissible Transferees**. (a) All Transfers, directly or indirectly, of all or any portion of a Membership Interest, including without limitation Transfers to Permitted Transferees, shall be subject to the following restrictions: (i) no Transfer shall be made to any person or entity who is not reputable and financially able to perform the obligations of a Member hereunder (including without limitation, any indemnity obligations contained herein or in the Loan Documents); (ii) no Transfer of a Membership Interest shall be made which results, or would result upon a foreclosure of any security interest, in a termination of the Company within the meaning of the Act; (iii) no Transfer of a Membership Interest shall be made which violates the provisions of any Loan Documents evidencing and securing the repayment of monies loaned to the Company, if and to the extent that any such Transfer is restricted by such Loan Documents, or any provision of this Agreement; (iv) no Transfer shall be made if it results in the release of liability of a Guarantor (hereinafter defined) unless and until a replacement Guarantor is approved by any benefited lender of such guaranty and (v) no change in ownership of any Membership Interest shall be binding against the other Members unless approved by the Managing Member except as otherwise provided in Section 6.2. All Transfers, whether directly or indirectly, of all or any portion of a Membership Interest in contravention of this Agreement shall be void.

(b) If any Member shall Transfer any of its Membership Interest in the Company in contravention of the express terms of this Agreement, the Member Transferring any such Membership Interest shall indemnify and hold the Company and other Members harmless from and against any and all loss, cost, claim, liability, damage or expense which it or they may incur or suffer (including attorneys' fees and disbursements) in enforcing or attempting to enforce the provisions hereof.

(c) A prospective transferee (other than an existing Member) of a Membership Interest may be admitted as a Member with respect to such Membership Interest ("Substituted Member") only as permitted in this Agreement. Any prospective transferee of a Membership Interest shall be deemed an Economic Interest Holder and, therefore, the owner of only an Economic Interest until such prospective transferee has been admitted as a Substituted Member. Except as otherwise permitted in the Act, prior to being admitted as a Substituted Member any such Economic Interest Holder shall be entitled only to receive allocations and distributions under this Agreement with respect to such Membership Interest and shall have no right to vote or exercise any rights of a Member. Until the Economic Interest Holder becomes a Substituted Member, the Member Transferring any such Membership Interest will continue to be a Member and to have the power to exercise any rights and powers of a Member under this Agreement, including the right to vote in proportion to the Percentage Interest that the Member Transferring any such Membership Interest would have had if the assignment had not been made.

6.4 Conversion to Tenancy in Common. Subject to the approval of any applicable lender, Managing Member shall use commercially reasonable efforts to accommodate a request by

any Member that interests in the Property be held as tenants in common for purposes of the tax deferred exchange under Section 1031 of the Code in connection with a disposition of the Property.

7. BOOKS, RECORDS AND REPORTS

7.1 **Company Documents**. The Managing Member shall maintain at the principal office of the Company the following documents: (a) a current list of the full name and last known business address of each Member; (b) a copy of the Certificate of the Company, together with executed copies of any powers of attorney pursuant to which such certificate or any amendment thereto has been executed; (c) copies of the Company's federal, state and local income tax returns and reports, if any, for each fiscal year during which the Company has been in existence; (d) copies of this Agreement, as it may be amended and/or restated, and as then in effect, and (e) copies of any financial statements of the Company for each fiscal year during which the Company has been in existence. Such documents are subject to inspection and copying at the reasonable request, and at the expense, of any Member during ordinary business hours and on reasonable prior written notice.

7.2 **Financial Books**. The Members shall keep or cause to be kept complete and accurate financial books with respect to the Company's business.

7.3 **Bank Accounts**. The funds of the Company shall be deposited in such amounts in such bank account or accounts as shall be designated by the Managing Member, and withdrawals therefrom shall be made upon the signature of such Person or Persons as shall be designated in writing by the Managing Member. The funds of the Company shall be maintained in a segregated account(s) and shall not be commingled with the funds of any other Person, including without limitation the Managing Member, and, if not immediately required for Company business, may be temporarily invested in such manner as the Managing Member shall determine.

7.4 **Reports**. The Managing Member, at the expense of the Company, shall cause to be prepared and distributed to each Person who was a Member or Economic Interest Holder during any fiscal year of the Company:

(a) within (thirty) 30 days after the end of each calendar quarter, a letter setting forth a summary of information relating to the Project as may be useful to the Members in evaluating the status and performance of the Project and which shall include the following: (i) so long as there is ongoing construction a report on the progress of construction, (ii) a report on any sales and marketing activity, (ii) a balance sheet for such quarter, (iii) an income statement for such quarter, (iv) a variance report with respect to the previous quarter, (v) the current month bank statement and reconciliation;

(b) within one hundred twenty (120) days after the end of each fiscal year of the Company, all information relating to the Company that is necessary for the preparation of the Members' federal, state and local income tax returns;

(c) within one hundred twenty (120) days after the end of each fiscal year of the Company, an annual financial statement of the Company prepared on a federal income tax basis compiled or reviewed by independent public accountants selected by the Managing Member (the "Accountants"); and

(d) any other information that may be reasonably requested by any Member.

7.5 **Tax Returns**. The Managing Member shall, at the expense of the Company, retain the Accountants and cause to be prepared all tax returns for the Company and shall further cause such returns to be timely filed with the appropriate authorities. It is contemplated that the Company will be classified as a "partnership" for federal, state and local income tax purposes. The Company and its Members will take such reasonable action as may be necessary or advisable, and as determined by the Managing Member, including the amendment of this Agreement to cause or ensure that the Company shall be treated as a "partnership" for federal, state and local income tax purposes.

7.6 **Tax Matters.** The Managing Member is hereby designated the "partnership representative" of the Company for purposes of Section 6223(a) of the Code (the "Tax Matters Representative"). The Members are specifically directed and authorized to take whatever steps the Managing Member deem necessary or desirable to perfect any such designation, including filing any forms or documents with the IRS and taking such other action as may from time to time be required under the Regulations (including appointing a "designated individual" of the Tax Matters Representative (as such term is defined in Regulations Sections 301.6223-1(b)(3))) and, upon request of the Tax Matters Representative, the Members shall execute any forms or statements required in connection therewith. The Tax Matters Representative (a) shall manage audits of the Company conducted by the IRS or any other taxing authority pursuant to the audit procedures under the Code and the Regulations promulgated thereunder or other applicable law; provided that the Tax Matters Representative shall give the Members notice of such audits and allow the Members to participate, and (b) is authorized to represent the Company in connection with all examinations of the Company's affairs by tax authorities, including administrative and judicial proceedings, provided that the Tax Matters Representative shall not extend the statute of limitations, settle any tax audit, proposed adjustment or other proceeding on behalf of the Company, or take any action that has an adverse effect on any Member without the written consent of such Member. Third-party, out-of-pocket expenses actually incurred by any Member as the Tax Matters Representative or in a similar capacity as set forth in this Section 7.6 shall be at the expense of the Company. Such Company expenses shall include reasonable attorneys' fees, charges and disbursements, fees of other tax professionals, accountants, appraisers and experts and filing fees. If the Company receives a notice of final partnership adjustment from the IRS, the Tax Matters Representative may, with respect to any applicable year, cause the Company to (i) elect the application of Section 6226 of the Code with respect to any imputed underpayment arising from such adjustment, and (ii) furnish to each Member and former Member (as applicable), a statement of such Member's share of any adjustment to income, gain, loss, deduction or credit (as determined in the notice of final partnership adjustment). If and to the extent the Company does not elect to apply Section 6226 of the Code to any adjustment, then Tax Matters Representative shall use commercially reasonable efforts to allocate the burden of any taxes, interest, penalties and related expenses that are payable by the Company or any of its subsidiaries as a result of such adjustment (such taxes, interest, penalties and related expenses, "Audit Related Taxes"), to the Members to which such Audited Related Taxes are attributable. In furtherance, and not in limitation, of the preceding sentence, (x) each Member (while it is a Member and after it ceases being a Member) hereby agrees to pay to the Company, within thirty (30) days following a written demand by the Company, such Member's (or former Member's) allocable share of any Audited Related Taxes, (y) such contribution shall neither be treated as a Capital Contribution nor result in an increase to such Member's Capital Account, and (z) the Company shall be entitled to withhold pursuant to Section 7.8 from any distributions otherwise payable to a Member such Member's allocable share of any Audited Related Taxes. Furthermore, each Member hereby agrees that, while it is a Member and after it ceases being a Member, it shall provide such information and take such other actions as may be requested by the Tax Matters Representative (A) in connection

with an audit, including, without limitation, amending prior year returns and providing evidence thereof to the Company, providing information to the Company regarding their prior year returns, and (B) to enable the Company to make elections and/or computations in connection therewith. If any state, local or non-U.S. tax law provides for a "tax matters partner", "partnership representative" or person having similar rights, powers, authority or obligations, the Tax Matters Representative shall also serve in such capacity, and shall have all rights, powers and privileges, as well as limitations and qualifications, as are the same or substantially similar as those as are set forth in this Section 7.6, and thus, without limitation, shall be entitled to make any comparable elections, determinations or payments to those set forth in this Section 7.6. The foregoing provisions shall survive the dissolution of the Company. For the avoidance of doubt, the rights and authority granted to the Tax Matters Representative under this Section 7.6 shall apply notwithstanding any other provision of this Agreement. The rights of the Tax Matters Representative and the obligations of the Members set forth in this Section 7.6 and in Section 7.8 shall survive the dissolution, liquidation and termination of the Company, the termination of this Agreement, and/or a Transfer of a Member's interests in the Company

7.7 **Fiscal Year and Accounting Method**. The Company shall adopt a fiscal year ending on the last day of such month of each year and a method of accounting selected by the Managing Member with the advice of the Accountants, but which in all events shall be appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement; provided, however, that the Managing Member in his sole discretion may, subject to any approval required by the Internal Revenue Service and the applicable state taxing authorities, at any time change the Company's method of accounting.

7.8 **Tax Withholding**.

(a) To the extent that the Tax Matter Representative determines that the Company is subject to any Taxes, the Company shall be entitled to deduct, withhold, and/or pay such Taxes.

(b) Any Taxes withheld from an actual distribution to a Member shall, for all purposes of this Agreement, be treated as a distribution to such Member of the same type and character as the distribution giving rise to the deduction, withholding or payment obligation. Any Taxes otherwise imposed upon the Company with respect to a Member (including a Member's share of any elective entity level tax, but not including any entity-level tax that is not elective and that is imposed upon the Company without respect to the identity of any Member) shall, for all purposes of this Agreement, be treated as a distribution to such Member.

(c) In order to comply with Section 1446 of the Code, the Company shall withhold an amount otherwise distributable to a Member hereunder, and shall apply the amount so withheld, as required by Section 1446, unless the Member shall have delivered to the Company a FIRPTA certification in form reasonably approved by the Tax Matter Representative and dated and executed exactly as required thereby. Notwithstanding the preceding sentence, a certification properly delivered to the Company shall not be effective to prevent withholding if the Company shall have received the certification more than three years preceding the date of a distribution or if the Company has actual knowledge that the Member is not a "United States person" (as that term is defined in Section 7701(a)(30) of the Code.

7.9 **Title to Company Assets**. Title to, and all right and interest in, the Company's assets,

shall be acquired in the name of and held by the Company, or, if acquired in any other name, be held for the benefit of the Company.

8. DISSOLUTION AND TERMINATION OF THE COMPANY

8.1 **Dissolution**. The Company shall be dissolved and terminated and its affairs shall be wound up upon the earliest to occur of the following:

(a) the express written consent of the Members holding not less than two thirds of the Interests outstanding;

(b) the expiration of the term of the Company (as set forth in Section 1.6); or

(c) the entry of a decree of judicial dissolution of the Company.

8.2 **Liquidation**.

(a) In the event of dissolution under Section 8.1, unless otherwise unanimously agreed to by the Members, each of the then unsold assets of the Company shall be sold for cash or distributed in kind, as the Managing Member shall determine.

(b) Following the sale of the Company's assets, the cash assets of the Company (after payment of all liabilities and expenses of the Company and the creation of any reserve for expenses as reasonably determined by the Managing Member) shall be paid and distributed as follows:

(i) *first,* to the Investor Members that made Investor Member Loans, pro rata, based on the balances of their respective Investor Member Loans, in the order in which such Investor Member Loans were made, until each such Investor Member has received in the aggregate the entire Investor Member Loan Return due such Investor Member with respect to its Investor Member Loan;

(ii) *second*, to the Investor Members that made Investor Member Loans, pro rata, based on the balances of their respective Investor Member Loans, in the order in which such Investor Member Loans were made, until each such Investor Member has received in the aggregate his entire unpaid Investor Member Loan balance.

(iii) *third,* to the Members that made Make-up Contributions, pro rata, based upon their respective aggregate Make-up Contribution balances, until each such Member shall have received a return of such Make-up Contributions;

(iv) *fourth,* to the Members with positive Adjusted Capital Contribution balances, pro rata in accordance with such positive balances until no Investor Member has a positive Adjusted Capital Contribution balance;

(v) *fifth*, to the Developer Member (or its designated Affiliate) the payment of any remaining unpaid Development Fees and Management Fees until paid in full; and

(vi) *lastly,* eighty percent (80%) to the Investor Members, pro rata based upon their respective Percentage Interests, and twenty percent (20%) to the Developer Member.

(c) Upon dissolution, the Members shall look solely to the assets of the Company for the return of their Capital Contributions. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Managing Member, who is hereby authorized to do any and all acts and things authorized by law for these purposes.

8.3 **Termination**. Upon the completion of the distribution of Company assets as provided in Section 8.2, the Company shall be terminated, and the Managing Member or other Person acting as liquidator shall cause Certificate of Dissolution to be filed in accordance with the Act and shall take such other actions as may be necessary to terminate the existence of the Company.

9. PURCHASE OPTION; ADMISSION AND WITHDRAWAL OF A MEMBER

9.1 **Right of First Refusal.**

(a) During the term of this Agreement, no Member shall either directly or indirectly Transfer any of its Membership Interests except for (i) a Transfer consented to by the Managing Member pursuant to Section 6.1, (ii) a Permitted Transfer under Section 6.2 above, or (iii) a sale of all (but not less than all) of its Membership Interests as hereinafter provided.

(b) If any Investor Member (the "Selling Member") wishes, directly or indirectly, to transfer all of its Membership Interests (the "Offered Membership Interests") through voluntary sale or other disposition, the Selling Member shall first obtain a bona fide written offer from the proposed purchaser and notify all the other Members of the identity of the proposed purchaser, the number of Offered Membership Interests (which must be all of the Membership Interests owned by the Selling Member) and the proposed price and terms of sale. The other Investor Member(s) shall thereupon have right of first refusal to purchase all (but not less than all) of the Offered Membership Interests at the price and on the terms offered by the proposed purchaser. In order to exercise such right, the other Investor Member(s), must, within thirty (30) days after receiving such notice from the Selling Member, deliver to the Selling Member a written notice specifying its irrevocable election to exercise such rights. If more than one remaining Investor Member(s) wish to purchase the Offered Membership Interests, said remaining Investor Member(s) shall all have the rights to make such purchase proportionate to their Percentage Interests prior to the proposed sale.

(c) If the other Investor Member(s) fail to exercise the right to purchase within the time period provided herein with respect to all of the Offered Membership Interests, then the Developer Member shall have the right to purchase all of the Offered Membership Interests at the price and on the terms offered by the proposed purchaser. In order to exercise such right, the Developer Member, must, within ten (10) days after receiving notice that the Investor Member(s) failed to exercise the right to purchase from the Selling Member, deliver to the Selling Member a written notice specifying its irrevocable election to exercise such rights. If the Developer Member acquires the Offered Membership Interests, the Developer Member shall be an Investor Member with respect to such acquired interest.

(d) If the other Investor Member(s) and the Developer Member fail to exercise the right to purchase within the time periods provided herein with respect to all of the Offered Membership Interests, Selling Member shall be free for a period of 120 days thereafter to sell the Offered Membership Interests to the proposed purchaser identified in the Selling Member's notice of intended

sale, provided that the following conditions are satisfied:

(i) the Offered Membership Interests are sold at the same price and on the same terms and conditions as set forth in the Selling Member's notice of intended sale; and

(ii) the purchaser agrees to be bound by all the terms of this Agreement. Upon expiration of such one hundred twenty (120)-day period and if the closing does not occur, the requirements of this subsection shall be reinstated in full.

(e) If the Member(s) exercises their right to purchase the Offered Membership Interests, the closing for such purchase of offered Membership Interests shall occur no later than the 60th day following the date the Selling Member gives the notice provided for above**.**

For avoidance of doubt, the Members acknowledge that the rights set forth in this Section 9.1 shall not apply to any Permitted Transferee under Section 6.2 above.

9.2 **Sale of the Project.**

(a) It is the business plan of the Company to develop the Project and rent apartment units to third party tenants. If at any time any Member (the "Initiating Member") desires to effectuate the sale of the entire Project in its entirety pursuant to a bona fide written offer ("Buyout Offer") from any Person ("Bona Fide Property Purchaser") other than a Member or an Affiliate of a Member, then the Initiating Member shall give written notice thereof (the "Buyout Offer Notice") to each Member, which Buyout Offer Notice shall set forth the identity of the Bona Fide Property Purchaser and the cash price at which Bona Fide Property Purchaser has offered to purchase the Project (the "Buyout Offer Terms") free and clear of all liens, pledges, security interests and other encumbrances (other than liens incurred for the Company's benefit).

(b) Not later than ten (10) days after the Initiating Member has caused the Buyout offer Notice to be mailed, the Managing Member shall call a meeting of the Members to take place no later than fifteen (15) days after the Buyout Notice has been mailed. At such meeting, the Members shall decide whether to accept or reject the Buyout Offer If any Member votes to accept the Buyout Offer, any non-approving Member (the "Non-Approving Member") shall have the right, within fifteen (15) Business Days of said vote, to inform the approving Members (the "Approving Members") that it wishes to purchase their entire Membership Interest in the Company, at a price equal to that which such Approving Members would individually have received if the Buyout Offer was accepted and effected and the Company was liquidated in accordance with Section 8.2 ("Membership Interest Purchase Price"). If the Non-Approving Member does not wish to purchase the Membership Interest of the Approving Member, or fails to inform the Approving Member within the specified time frame mentioned above, then the Buyout Offer must be rejected. If more than one Non-Approving Member shall exercise the foregoing right, then the Membership Interest Purchase Price, unless otherwise agreed, shall be allocated among such exercising Non-Approving Members in proportion, as nearly as practicable, to the Percentage Interests then held of record by such Non-Approving Members.

(c) The closing of the sale of the Membership Interest to the Non-Approving Members in accordance with Section 9.2 (b) shall take place not later than four (4) months after the giving of the Membership Interest Purchase Notice. The Non-Approving Members shall have the right to

designate the time, date and place of the applicable closing within the time period specified in this section (provided, however, that, to the extent the Membership Interest shall be sold to more than one Non-Approving Member, the closing of such sale shall occur on such day mutually agreed to by the purchasing Non-Approving Members). At the closing (i) the Selling Member shall pay any transfer or similar taxes other than income taxes arising out of such transfer, (ii) the Selling Member's Membership Interest shall be free and clear of any liens, pledges, security interests and other encumbrances or any interests of any other person (other than liens incurred by the Company), and (iii) the Selling Member shall execute any and all documents required to fully transfer good and clear title (other than liens incurred by the Company) to such Membership Interest to such Non-Approving Member(s) and any other documentation reasonably required by such Non-Approving Member(s).

9.3. Developer Member's Purchase Option

(a) If at any time any the Investor Members vote to (i) effectuate the sale of the entire Project pursuant to Section 5.5(f), or (ii) convert the Project into condominiums or other use materially different from the Business Plan pursuant to Section 5.5(g), then the Managing Member or an Affiliate of the Developer Member, shall have the option by delivery of a written notice (the "DM Buyout Notice") to each Investor Member which DM Buyout Notice shall set forth the purchase price of the Investor Members' Membership Interests based on amount to be negotiated in good faith between the Investor Members and the Developer Member (the "DM Buyout Offer Terms") free and clear of all liens, pledges, security interests and other encumbrances (other than liens incurred for the Company's benefit), and the Company was liquidated in accordance with Section 8.2.

(b) The closing of the sale of the Membership Interest in accordance with Section 9.3(a) shall take place not later than four (4) months after the giving of the DM Buyout Notice. The Developer Member shall have the right to designate the time, date and place of the applicable closing within the time period specified in this section. At the closing (i) the Investor Members shall pay any transfer or similar taxes other than income taxes arising out of such transfer, (ii) the Investor Members' Membership Interest shall be free and clear of any liens, pledges, security interests and other encumbrances or any interests of any other person (other than liens incurred by the Company), and (iii) the Investor Members shall execute any and all documents required to fully transfer good and clear title (other than liens incurred by the Company) to such Membership Interest to the Developer Member and any other documentation reasonably required by the Developer Member.

9.4 Compliance With Law; Legend

(a) No party hereto shall transfer any Membership Interests unless such transfer is made (i) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and is qualified under applicable state securities or blue sky laws or (ii) without registration under the Securities Act and qualification under applicable state securities or blue sky laws as a result of the availability of an exemption from registration and qualification under such laws. The Company may at its option request a legal opinion as to the availability of an exemption from registration and qualification under the Securities Act and applicable state securities or blue sky laws for any transfer requested.

(b) Upon initial issuance and thereafter until transferred pursuant to an effective registration statement under the Securities Act and qualified under applicable state securities or blue sky laws, the certificate or certificates representing any Membership Interests issued from and after

the date hereof shall bear a legend reading substantially as follows:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION OR PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER

(c) Each Member hereby agrees that, until the expiration or termination of this Agreement, each outstanding certificate representing any Membership Interests issued from and after the date hereof held by such Member shall also bear a legend reading substantially as follows:

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF ("TRANSFERRED") WITHOUT COMPLYING WITH, THE PROVISIONS OF THE OPERATING AGREEMENT BY AND AMONG THE MEMBERS OF THE COMPANY A COPY OF WHICH IS ON FILE WITH THE COMPANY. IN ADDITION TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SUCH AGREEMENT, NO TRANSFER OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER (THE "ACT") AND ALL APPLICABLE STATE SECURITIES LAWS OR (B) IF SUCH TRANSFER IS EXEMPT FROM THE PROVISIONS OF THE ACT AND, IF REQUIRED BY THE COMPANY, THE COMPANY HAS BEEN FURNISHED WITH AN OPINION OF COUNSEL FOR THE HOLDER OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE, WHICH OPINION AND COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE COMPANY, TO THE EFFECT THAT THE PROVISIONS OF CLAUSE (A) OR (B) ABOVE HAVE BEEN SATISFIED AND THAT THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF THE AFORESAID AGREEMENT.

9.5 Transfer on Legal Proceedings: The Members agree that the interests of the Company would be seriously affected by any sale or disposition of any Member's Membership Interest by any legal or equitable proceedings against such Member initiated by any third party. Accordingly, it is hereby covenanted and agreed that if (i) there is a Bankruptcy of a Member; (ii) any portion of the Membership Interests of any Member is attached (after such Member has been provided the opportunity to object to such attachment in a legal procedure and his objection was denied by a final decision of the appropriate court); (iii) any final judgment is obtained in any legal or equitable proceeding against any Member and the sale of any portion of his Membership Interests is contemplated or threatened under legal process as a result of such judgment; (iv) any execution process is issued against any Member or against any of his Membership Interests; (v) there is instituted by or against any Member any other form of legal proceeding or process by which the transfer of all or any portion of the Membership Interests of such Member becomes imminent (i.e., such Membership Interests may be sold or transferred either voluntarily or involuntarily within ninety (90) days), then and in any such event, and upon the receipt by the Company of a legal opinion of its counsel that this Section has been triggered, the other Members shall have the option (subject to such

requirements and restrictions imposed by the Securities Act and state securities laws) to purchase all, but not less than all, of such Member's Membership Interests of the Company in accordance with the procedures set forth herein and in the same manner as if the Company and the other Members had received a notice pursuant to right of first refusal herein, on the date that the Member, subject to any such proceeding, receives notice of an event described above.

9.6 Change in Control of Entity Members. No Member (including without limitation any Permitted Transferee that has become a Member or has been admitted as a Substituted Member) that is a corporation, partnership, limited liability company, trust or any other form of entity shall permit any transfers of equity interests in such Member if such transfer would result in a change of voting control of such Member. If any such Member permits any such transfer, then, notwithstanding any other provision of this Agreement, such Member shall thereafter have no right to exercise any rights with respect to its Interest other than the rights to share in the profits and the losses of the Company, to receive distributions of Available Cash and to assign its Interest pursuant to this Article 9. The restrictions of this Section 9.5 shall not apply to any transfer of an equity interest in a Member to (a) a spouse or children (natural or legally adopted) of the transferring equity owner of such Member or (b) a corporation, partnership, limited liability company or other entity all or a majority of which interests therein are and continue to be owned by the transferring equity owner of such Member. The Investor Member that is an entity hereby represents to the Company that it is controlled solely by the individual signing on behalf of such Investor Member and that such control derives from the unrestricted ownership by such individual of all or a majority of the outstanding equity of such entity.

10. APPLICABLE LAW

10.1 **Applicable Law**. This Agreement and the rights and obligations of the parties hereto shall be interpreted in accordance with the laws of the State of Delaware without giving effect to principles of conflict of laws.

11. MISCELLANEOUS PROVISIONS

11.1 **No Third-Party Beneficiary**. None of the provisions of this Agreement shall be for the benefit of, or enforceable by, any person who is not a party to this Agreement, or the successor or permitted assigns of such a party.

11.2 **Notices**.

(a) All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be addressed to the Members at their addresses set forth on Schedule A, or to such other addresses, including email addresses, as may have been specified in a written notice duly given to the others.

(b) Any notices addressed as aforesaid shall be delivered by hand or overnight courier. Notices delivered by hand or overnight courier shall be deemed delivered upon receipt if before 5:00 p.m. on a business day, otherwise on the next business day or at such time as delivery thereof is refused.

11.3 **Severability**. If any covenant, condition, term, or provision of this Agreement is illegal, or if the application thereof to any Person or in any circumstance be judicially determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant,

condition, term, or provision to Persons or in circumstances other than with respect to which it is held invalid or unenforceable, shall not be affected thereby, and each covenant, condition, term, and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.4 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which, for all purposes, shall be deemed an original and all of such counterparts, taken together, shall constitute one and the same agreement and shall be binding on the Members even if all Members are not signatories to the same counterpart. Counterparts of this Agreement may be delivered by facsimile or email.

11.5 **Entire Agreement; Amendments**. This Agreement and any agreements referred to herein constitute the entire agreement of the parties relating to the subject matter hereof, and together they supersede and replace any prior agreement or understanding between some or all of the parties pertaining thereto. Except as otherwise expressly provided for, this Agreement may not be changed or modified, except by unanimous action of all of the Members.

11.6 **Further Assurances**. The Members will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purposes of this Agreement, including, without limitation, such amendments to this Agreement as the Managing Member may determine to be reasonably necessary or advisable to ensure that the Company will be classified and treated as a partnership for federal, state and local income tax purposes.

11.7 **Successors and Assigns**. Subject in all respects to the limitations on transferability contained herein, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, administrators, personal representatives, successors, and permitted assigns of the respective parties hereto.

11.8 **Waiver of Action for Partition**. Each of the parties hereto irrevocably waives, during the term of the Company and during the period of its liquidation following any dissolution, any right that it may have to maintain any action for partition with respect to any of the assets of the Company.

[Signature pages follow.]

SIGNATURE PAGES TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF THIRD ST DEVELOPMENT LLC

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

DEVELOPER MEMBER:

GOWANUS GP VENTURES LLC, a
Delaware limited liability company

By: _____
Yossef Meir Ariel
Manager

INVESTOR MEMBERS:

SIGNATURE PAGES TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF THIRD ST DEVELOPMENT LLC
(continued)

Eyal Benyosef, an individual

SIGNATURE PAGES TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF THIRD ST DEVELOPMENT LLC
(continued)

ORANGE GOWANUS LLC, a
New York limited liability company

By: _____
Name: Andrew Bradfield
Title: Authorized Signatory

SIGNATURE PAGES TO
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF THIRD ST DEVELOPMENT LLC
(continued)

PCLING LLC, a New York limited liability company

By:_____
Yossef Ariel
Member

SCHEDULE A

The Members

Name	Percentage Interest	Profit Participation	Initial Capital Contribution
Eyal Benyosef	64.57%	51.66%	$5,500,000.00
Orange Gowanus LLC	23.48%	18.78%	$2,000,000.00
PCLING LLC	11.74%	9.39%	$1,000,000.00
Gowanus GP Ventures	0.21%	20.17%	$18,000.00

* OM Member (as defined in the operating agreement for the Developer Member) will provide no less than $4,000,000 of the required equity capital for the Company within 180 days from the date hereof, and shall have the right to provide an additional $2,000,000 of the required equity capital of the Company.

** STE Member (as defined in the operating agreement for the Developer Member) will provide no less than $14,000,000 of the required equity capital for the Company.

SCHEDULE B

INSURANCE REQUIREMENTS

(i) Commercial General Liability insurance on the broadest forms available for similar risks, written on an "occurrence policy form," against all claims for bodily injury, disease or death, property damage, personal injury and contractual liability (deleting any exclusion restricting coverage for contractual obligations for claims occurring on, in or about the Property and adjoining premises, explosion, collapse, and underground property damage) in an amount of not less than One Million Dollars ($1,000,000) arising out of any one occurrence and not less than Two Million Dollars ($2,000,000) annual aggregate.

(ii) During any period of construction, repair, restoration, renovation or replacement of the Property, the Company shall cause the general contractor to maintain commercial liability insurance (or the Company's and contractor's protective liability insurance in the name of the Company and each member thereof), with extension for, but not limited to, products/completed operations, with limits of not less than Five Million Dollars ($5,000,000) per occurrence. The Company shall also cause the general contractor to require its subcontractors of any tier to provide confirmation of commercial liability coverage (including products/completed operations, if applicable) with a limit of not less than One Million Dollars ($1,000,000). The general contractors shall have the Company included on the insurance required herein as additional insureds.

(iii) Excess Liability Coverage of at least Two Million Dollars ($2,000,000).

(iv) Comprehensive crime insurance (including Employee Dishonesty) with limits and terms reasonably acceptable to the Managing Member or a fidelity bond reasonably acceptable to the Managing Member.

(v) Upon development, the Company shall maintain "all risk" builder's risk insurance during construction and an "all risk" property insurance upon completion in the amount of the replacement cost of the Property. In addition, upon development and construction of the Property, Managing Member shall maintain (A) Transit Coverage as may be needed for the specific job (e.g., builder's risk during construction and all risk upon completion), and (B) to the fullest extent available, coverage for defective workmanship, faulty workmanship, and under insured contractors.

(vi) At any time an employee is hired by the Company, Managing Member will maintain Workers' Compensation and Employer's Liability insurance (Five Hundred Thousand Dollars ($500,000) each accident, Five Hundred Thousand Dollars ($500,000) disease for each employee, and One Million Dollars ($1,000,000) disease policy limit), or their equivalent, for all its employees (if any), and will cause any of its agents, contractors and subcontractors of any tier to maintain similar insurance for all their respective employees, to the fullest extent required under the laws of the jurisdiction in which the Property is located.

(vii) The Company will cause any professional consultants, including architects and engineers, to maintain (and Managing Member shall maintain) coverage in limits of not less than One Million Dollars ($1,000,000).

(viii) In addition to the above, the Company shall maintain all insurance, surety and fidelity bonds in amounts and for such periods that are deemed to be prudent, or are customarily maintained by persons or entities operating properties of like kind, construction and occupancy in the locality of the Property, including, automobile liability insurance and any insurance reasonably required by Investor Members for any activities that are permitted or occur at the Property.

(ix) All insurance required herein shall be issued by insurance companies of recognized good standing, with a rating of at least A+VII in Best's Key Rating Guide, and must be licensed to do business in the state in which the Property is located. Coverage under blanket policies may be extended by endorsements provided the insurers meet the requirements stipulated herein. Each policy shall not have more than a twenty-five thousand dollars ($25,000) deductible for any occurrence, except for mandatory deductibles where required under local regulations, or when required by insurers for specific catastrophic perils

(x) The Company shall obtain, before the expiration date of each such policy, original policies (or renewals or extensions of the insurance afforded thereby) or certified duplicates thereof, or binders evidencing such insurance, or endorsements, or certificates thereof acceptable to Investor and which shall include provisions to the effect that the Investor Members shall be given at least 30 days' prior written notice of cancellation of or any material change in any policy.

(xi) For all policies for which the insurer has purchased reinsurance, the Company shall request a "cut-through" clause allowing recovery directly from the reinsurer In the event of the insurer's insolvency or cessation of insurance operations.

(xii) Managing Member shall immediately notify each Investor Member of any cancellation of, non-renewal, or such material change as may adversely affect any insurance policy or coverage in force. Each policy shall contain a provision obligating the insurer to send at least thirty (30) days' prior written notice to each Investor Member and any party included as an additional insured or loss payee notifying them of the intent to cancel or make such change.

(xiii) The Company shall be solely responsible for, and promptly pay when due, any and all premiums on all such insurance.

EXHIBIT C

BUSINESS PLAN

The Project is intended to comprise one or two new construction buildings with approximately 100,000 zoning square and will yield new development gross square footage of approximately 125,000 square feet.

The Project as currently conceived will include:

1. Approximately 90 to 100 market-rate residential apartments
2. Approximately 25 to 35 residential apartments with income restrictions for eligible tenants
3. Approximately 6,000 square feet of general retail space
4. Approximately 6,000 square feet of "Gowanus Mix" space, as that term is defined in the New York City Zoning Resolution

The Project is intended to be developed as a rental property, and may be retained for a long-term hold or sold after the Project has achieved a stabilized level of occupancy.

The current plan for the development of the Property, including the number of rental residential units in the Property, and the economic projections of income and expenses of the Property following completion of the development of the Property, is subject to its qualification under Section 421-a, Chapter 6 of Title 28 of the Rules of the City of New York, or the so-called Affordable Housing Program in New York. Qualification under this program will require the Company to comply with certain development requirements, and certain rental residential units in the Property will be subject to limitation on the amount of rent that may be charged therefor. In return therefor, the Company will also be entitled to tax incentives including reduction of real property taxes for period after development of the Property. There is no assurance that the Property will qualify for the Affordable Housing Program. The Property is anticipated to qualify for the 421-a program, subject to the requirement that an initial foundation element be installed at the Property pursuant to a lawfully-issued New York City building permit no later June 15, 2022. A foundation-only permit to commence such foundation work has been applied for, and the Company believes such permit can be obtained before the end of April 2022. If the Company is unable to install such foundation element by June 15, 2022, development of the Property may be delayed pending the approval of a new version of the 421-a program by New York State Governor Hochul (the current proposed version of which would result in very few changes to the currently planned development of the Property).

The Property is located within the Gowanus Special District, an 82-block rezoning initiated by the New York City Department of City Planning which was ratified by the NYC City Council in November 2022 via the Uniform Land Use Review Procedure (ULURP) rezoning process. The ULURP process includes a 4-month period after ratification, during which certain legal challenges can be filed contesting the rezoning. The Company and its land use counsel believe that the chance of success for any such challenge to the Gowanus rezoning is extremely low. However, the existence of a pending challenge could make it more difficult for the development of the Property to obtain a low-rate construction loan. This could cause delays for the project or potentially force the Company to take higher cost senior construction financing. In addition, for the Property to comply with zoning regulations, the Property (after development) will apply for the Mandatory Inclusionary Housing program administered by the New York City Department of Housing Preservation and Development, which will require that 20 to 30 percent of the residential units at the Property (as developed)

be set aside for tenants who comply with certain income restriction bands.

The Company intends to directly or indirectly finance a portion of the purchase price of the Property with a mortgage loan and to defer a portion of the purchase Price of the Property in the form of seller take-back financing, as well as to finance the development of the Property. The Company intends to refinance all of the foregoing loans after completion of the development, but there can be no assurance that the Company will be successful in obtaining a refinancing on terms that are feasible, and so may be forced to sell the Property at an inopportune time for less than the Members' assessment of its full value; if it is unable to do so and thereby repay the Loan, it may become subject to financial penalties and other remedies, including foreclosure on the Property.

The Company intends to take out insurance to cover the Property from certain risks. The costs of such insurance will be paid by the Company.

The Company expects to utilize, where appropriate, one or more third parties to assist with acquiring, developing, constructing, sub-dividing, managing, leasing, renting and/or disposing of the Property.

The Property has two existing open air parking lots, which are within the footprint of the planned new development. This will allow the installation a drilled or driven pile foundation element without requiring any physical demolition of any existing improvements at the site. Such pile will be installed from grade-level, so will not require any excavation or support of excavation work during or prior to commencement of the work.

To comply with the zoning regulations for the Property, the Project will apply for the Mandatory Inclusionary Housing program administered by the New York city Department of Housing Preservation and Development, which will require that 20-30 percent of the residential units at the new building be set aside for tenants who comply with certain income restriction bands.

Subsurface soil investigations that identified soil contamination on the Property. The Property has been submitted into the New York State Brownfield Cleanup Program (the "***BCP***"). The Project is anticipated to qualify for the BCP and to have a signed BCP Agreement by the end of March 2022. The BCP will entitle the individual upstream (direct and indirect) owners of the Property to multiple New York State income tax credits. The NYS Department of Environmental Control administers the BCP and will approve the scope of work that must be completed in order to obtain the tax credits. The Developer does not expect to have the approved scope until the summer of 2022. Completion of the soil remediation will require the demolition of the existing improvements at the Property.

Langan Engineering has been engaged as environmental engineer, Sive Paget has been engaged as environmental counsel and Bousquet Holstein has been engaged as tax credit counsel. These three consultants have collectively provided their input as to the value of the tax credits, with a total of approximately $3.6MM.