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Attorneys for Plaintiff

KEYPORT TOWERS & MARINA, LLC Plaintiff, v. MICHAEL G. TENNYSON, MARK SROUR, KEYPORT MJGS SROUR, LLC, GARY MASON; and ECKERT SEAMAN CHERIN & MELLOTT, LLC Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MONMOUTH COUNTY DOCKET NO. MON-L- CIVIL ACTION **COMPLAINT WITH JURY DEMAND**

The Plaintiffs by and through the undersigned counsel, through this amended complaint, alleges as follows:

1. Plaintiff Keyport Towers & Marina, LLC is a limited liability company authorized to do business in the State of New Jersey owning real property at 165 West Front Street, Keyport, New Jersey (hereinafter referred to as the "The Company").
2. Defendant Michael Tennyson is a resident of Monmouth County, State of New Jersey residing at 2808 Concord Drive, Wall, New Jersey (hereinafter referred to as the "Defendant Tennyson").
3. Defendants Mark Srour and Keyport MJGS Srour, LLC conducting business in the State of New Jersey, Monmouth County (hereinafter referred to collectively as the "Defendant Srour").
4. Defendant Gary Mason is a former attorney at law of the State of New Jersey having

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been disbarred by Order of the New Jersey Supreme Court date January 12, 2021, conducting business in the State of New Jersey, Monmouth County (hereinafter referred to as the "Defendant Mason").

5. Defendant Eckert Seamans are attorneys at law, conduct business in Monmouth County, State of New Jersey (hereinafter referred to as "the Attorney Defendant").

GENERAL ALLEGATIONS AS TO ALL COUNTS

A. The Company.

6. On May 15, 2024, the Company adopted a Members' Consent Resolution (hereinafter the "May 2024 Resolution").
7. On May 15, 2024, the Defendants Tennyson and Srour executed an Amendment to the Operating Agreement (hereinafter the "May 2024 Amendment").
8. Defendants Tennyson and Srour executed the May 2024 Resolution.
9. Defendants Tennyson and Srour executed the May 2024 Amendment.
10. The May 2024 Resolution and the May 2024 Amendment were approved by the Attorney Defendant. Exhibit A.
11. The May 2024 Resolution and the May 2024 Amendment, *inter alia*:
    a. Affirmed and reinstated the Operating Agreement dated as of March 1, 2021 (hereinafter the "Operating Agreement"), Exhibit B;
    b. Rescinded, revoked and declared null and void all prior writing(s) or other documents claiming to be an operating agreement; and
    c. Approved the withdrawal and dissociation of Defendants Tennyson and Srour as members, their resignation as managers from the Company and the transfer of 100% of the membership interest in the Company effective May 15, 2024.
12. **The Operating Agreement**.

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i. **Management**.

13. Since May 15, 2024, the Operating Agreement has not been amended.

14. Since May 15, 2024, Thomas Galante has served as the sole manager of the Company.

15. The Company owns property located at 165 West Front Street, Keyport, New Jersey (hereinafter referred to as the "Property"), operates a marina and has sought approval for the development and construction of 177 residential units and the refurbishing and expansion of the adjacent marina (the "Project").

16. Since May 15, 2024, the Company has operated the marina, made improvements to the Property, repairs to the marina, payments to lenders, creditors and investigated and remediated environmental conditions and has pursued governmental approvals for the Project.

17. Section 3.1 of the Operating Agreement vests the manager with the exclusive authority to act and conduct the business of the Company.

18. Since May 15, 2024, Defendants have not been appointed nor authorized to act on behalf of or conduct the business of the Company.

19. The Company has directed that Defendant Eckert Seaman take no action as its counsel on any matter or in any capacity, has specifically advised that it does not waive any conflict of interest.

ii. **Prohibited Member Payments and Distributions.**

19. Section 4.3 of the Operating Agreement states that no member shall be entitled to "fees, commissions or other compensation from the Company for any services rendered to or performed for the Company as a Member".

20. Section 5.8 of the Operating Agreement prohibits any distribution if the Company would not be able to pay its debts as they become due in the ordinary course of business.

C. The Company Debts.

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21. On September 23, 2021, the Company entered into a loan agreement with Sachem Capital,

Corporation (hereinafter the "Sachem Loan").

22. On April 28, 2023, the Company entered into a loan agreement with the Edward Happle Revocable Trust Agreement (2017) (hereinafter the "Happle Trust Loan").
23. The Company has other debts and obligations including but not limited to fines and penalties due and owing to the New Jersey Department of Environmental Protection, water, sewer, county and municipal taxes due to the Borough of Keyport (hereinafter the "Governmental Obligations").
24. The Sachem Loan was a debt that required payment in the ordinary course of business.
25. The Happle Trust Loan was a debt that required payment in the ordinary course of business.
26. The Governmental Obligations were debts that required payment in the ordinary course of business.
27. The debt under the Sachem Loan were not paid as they became due by the Company.
28. The debt under the Happle Trust Loan were not paid as they became due by the Company.
29. The Governmental Obligations were not paid as they became due by the Company.
30. The Defendants Tennyson, Mason and the Attorney Defendant received funds from the Company while obligations that were then due and owing in violation of the Operating Agreement.

D. **The PSE&G Agreement**.

31. On February 26, 2024, Defendants Tennyson and Mason caused to be executed on behalf of the Company an Option Agreement to Purchase Easement with PSEG Services Corporation (hereinafter "the PSE&G Agreement").

32. The PSE&G Agreement violates a Consent Order entered by the Superior Court on February 28, 2022.

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33. Payments under the PSE&G Agreement are Company property governed by the Operating

Agreement.

34. Defendants Tennyson, Srour and Mason have not accounted for nor applied funds received pursuant to the PSE&G Agreement to the ordinary course business obligations of the Company including but not limited to the payment of the Sachem Loan, the Happle Trust Loan or the Governmental Obligations.

E. **Marina Income**.

35. The Company receives payments from customers for use of the marina and other marina services, including the purchase of gasoline and the retail of boat slips (the Marina Income”).

36. The Marina Income is Company property governed by the Operating Agreement.,

37. Defendants Tennyson and Mason have received Marina Income and have not applied the funds received to the ordinary course business obligations of the Company including but not limited to the payment of the Sachem Loan, the Happle Trust Loan or the Governmental Obligations.

38. Defendants Tennyson and Mason have received and retained funds from the PSE&G Agreement and the Marina Income in violation and breach of the Operating Agreement.

F. **Payments to the Attorney Defendant**.

39. Section 6.7 of the Operating Agreement requires the consent of all Company Managers for payments of more than $10,000.00.

40. The Operating Agreement prohibits member distributions while ordinary course business obligations remain unpaid.

41. The Attorney Defendant received payment(s) for professional services not performed on behalf of the Company.

42. The payments to the Attorney Defendant were made from funds of the Company.

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43. The Attorney Defendant received funds from the Company while ordinary course business obligations that were then due and owing in violation of the Operating Agreement.

44. The Attorney Defendant received funds from the Company while ordinary course business obligations of the Company under the Sachem Loan, the Happle Trust Loan or the Governmental Obligations were unpaid.

45. As a direct and proximate result, the Company has been harmed.

FIRST COUNT
(Breach Of Contract – Damages)

46. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

47. The Operating Agreement required approval to undertake certain conduct and prohibited certain actions.

48. The Operating Agreement prohibits the payment(s) to member(s) of Company funds for services performed on behalf of the Company.

49. The Operating Agreement prohibits the distribution of Company funds while ordinary course business obligations remain unpaid.

50. Defendant Tennyson received funds for services performed on behalf of the Company.

51. Defendants Tennyson, Srour, Mason and the Attorney Defendant received distribution of Company funds while ordinary course business obligations remain unpaid.

52. Defendants must return funds received by them in violation of the Operating Agreement.

53. The Operating Agreement has specific requirements for payment and distribution of funds to protect the Company and ensure that ordinary business obligations are timely paid from available funds.

54. Defendants' receipt of funds while ordinary course business obligations remain unpaid

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violated Company's Operating Agreement.

55. The property of the Company is likely to disappear if the actions of the Defendants are permitted and the improperly paid or distributed funds are not disgorged.

56. At all relevant times, Defendants Tennyson and Srour were parties to the Company's Operating Agreement.

57. The payments of Company funds to members for services performed on behalf of the Company is a breach of the Operating Agreement.

58. The distribution of funds while ordinary course business obligations remain unpaid is a breach of the Operating Agreement.

59. The payment and distribution of Company funds without all required manager approvals is a breach of the Operating Agreement.

60. As a direct and proximate result, Defendants Tennyson and Srour have breached the Operating Agreement, caused the plaintiff costs and fees, and have otherwise damaged the plaintiff.

SECOND COUNT
(Ultra Vires)

61. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

62. Defendant Tennyson's execution of the PSE&G Agreement was not permitted under the Operating Agreement, or a Consent Order entered by the Superior Court on February 22, 2022.

63. Defendant Tennyson's receipt of funds from the PSE&G Agreement were not authorized under the Operating Agreement.

64. The payment of Company funds received pursuant to the PSE&G Agreement was not authorized under the Operating Agreement.

65. After May 15, 2024, Defendants Tennyson, Mason and/or the Attorney Defendant were

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not authorized to communicate with PSE&G representatives regarding the PSE&G Agreement.

66. After May 15, 2024, Defendants Tennyson, Mason and/or the Attorney Defendant was not authorized to communicate with investor(s), lender(s) and others regarding the Company, the Property or the Project.

67. After May 15, 2024, Defendants Tennyson, Mason and/or the Attorney Defendant communicated with PSE&G representatives regarding the PSE&G Agreement and with investor(s), lender(s) and others regarding the Company, the Property or the Project.

68. The PSE&G Agreement was entered through *ultra vires* acts is void or voidable.

69. As a direct and proximate result, the Plaintiff has been damaged.

THIRD COUNT
(Breach of Fiduciary Duty Common Law)

74. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

75. Defendants Tennyson and Srour owed the Company a fiduciary duty.

76. Defendants Tennyson and Srour violated their fiduciary duty as set forth above.

77. Defendants Tennyson, Srour, Mason and the Attorney Defendant received funds that were not for services rendered or while ordinary course business obligations remain unpaid in violation of the Operating Agreement and require disgorgement.

78. Defendants Tennyson and Srour permitted funds of the Company to be paid to others for services not provided to the Company or while ordinary business obligations remained unpaid in violation of the Operating Agreement and require disgorgement.

79. As a direct and proximate result of the actions of Defendants Tennyson and Srour aforesaid, the Company has been damaged.

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FOURTH COUNT
(Breach of Implied Covenant of Good Faith and Fair Dealing)

80. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

81. Every agreement entered into in New Jersey contains an implied covenant of good faith and fair dealing by the parties.

82. The Operating Agreement contained an implied covenant of good faith and fair dealing.

83. Defendants Tennyson and Srour actions as set forth herein is a breach of the covenant of good faith and fair dealing as it attempts to improperly end run the rights and prohibitions in the Operating Agreement and more.

84. As a direct and proximate result , Plaintiff has been damaged.

FIFTH COUNT
(Tortious Interference)

85. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

86. By Order of the New Jersey Supreme Court, Defendant Mason was not permitted to conduct himself in a manner on behalf of other individuals or entities.

87. Defendant Mason acted on behalf of the Company in connection with and execution of the PSE&G Agreement. Tennyson consented to his conduct.

88. After May 15, 2024, Defendants Tennyson and Mason, communicated with and directed PSE&G to refrain from communicating with or providing information to the Company's manager and/or its representative, unlawfully interfering with the PSE&G Agreement.

89. Defendants Tennyson and Mason are not a parties to the PSE&G Agreement.

90. Defendants acted with acting with improper and unlawful malice.

91. The Company has incurred damages, which include, but are not limited to, pecuniary loss, the loss of opportunities to advance the Project and the need to change

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the Project.

92. As a direct and proximate result, the Company has been damaged in an amount to be determined at trial, including punitive damages.

SIXTH COUNT
(Conversion)

93. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

94. Defendant Mason retained Marian Income that that was Company property.

95. Defendant Mason retained funds from the Sachem Loan and Happle Loan that was Company property.

96. Defendant Mason retained funds from the PSE&G Agreement that was Company property.

97. Defendant Tennyson retained funds from the Sachem Loan and Happle Loan that was Company property.

98. Defendant Tennyson retained funds from the PSE&G Agreement that was Company property.

99. Defendant Tennyson took possession, control of Company property and were permitted to deprive Plaintiff of the funds to pay the Sachem Loan, the Happle Loan and the Governmental Obligations.

100. Defendant Mason's retention of funds of the Company is a conversion.

101. Defendant Tennyson's retention of funds of the Company is a conversion.

102. As a direct and proximate result, Plaintiff has been damaged.

SEVENTH COUNT

(Attorney Defendants - Professional Malpractice)

103. Plaintiff repeats and reiterates the above allegations as if set forth herein at length.

104. The Attorney Defendant was counsel to the Company, having an attorney client relationship with the Company.

105. The Attorney Defendant concurrently had an attorney client relationship to Defendants Tennyson and Srour.

106. The interests of the Company, the Defendants Tennyson and Srour, were in conflict.

107. The interests of Defendants Tennyson and Srour were in conflict.

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108. After May 15, 2024, the Attorney Defendant communicated with representatives of PSE&G regarding and on behalf of the Company without authorization.

109. After May 15, 2024, the Attorney Defendant communicated with investor(s), lender(s) and others regarding the Company, the Property and/or the Project without authorization.

110. The Attorney Defendant knew or should have known that written authorization was required of others to enter the PSE&G Agreement, disburse Company funds or to make payments more than $10,000.00.

111. The Attorney Defendant should have known that the conveyance required under the PSE&G Agreement violated the Consent Order entered by the Superior Court.

112. The Attorney Defendant should have known that the conveyance required under the PSE&G Agreement damaged the Project.

113. The Attorney Defendant knew or should have known the Operating Agreement required written approval of all managers for the use of Company property to secure the Happle Loan.

114. The Happle Loan was entered on behalf of the Company during the time that the Attorney Defendants were counsel to the Company.

115. The Happle Loan was secured by Company property without the required written approval of all managers as set forth in the Operating Agreement.

116. The Attorney Defendant knew or should have known that the conveyance under the PSE&G Agreement, the damage to the Project, the restrictions and/or undertaking acts outside the ordinary course of activity without the required written approval from all managers violated the Operating Agreement.

117. The Attorney Defendant failed to properly protect the Company and with regards to the failure to have the terms and conditions of the Operating Agreement complied with.

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118. The Attorney Defendant is an attorney at law who holds himself out as competent in the

field of law.

119. The Attorney Defendant had the duty to exercise the knowledge, skill, and ability and devotion ordinarily possessed and employed by members of the legal profession similarly situated in connection with the discharge of the responsibilities to the Company and to utilize reasonable care and prudence in connection with those responsibilities.

120. The Attorney Defendant breached the duties by failing to exercise the knowledge, skill, ability, and devotion ordinarily possessed and employed by members of the legal profession similarly situated in connection with the discharge of the responsibilities.

121. The Attorney Defendant breached the duty to utilize reasonable care and prudence in connection with the above responsibilities.

122. The Attorney Defendant was negligent as set forth above.

123. The Attorney Defendant's negligence is the direct and proximate cause of damages suffered by the Company.

124. The Attorney Defendant received Company funds that were not for services rendered or while ordinary course business obligations remain unpaid are in violation of the Operating Agreement and must be disgorged.

125. As a direct and proximate result, Plaintiffs have been damaged.

WHEREFORE, Plaintiff demands judgment:

A. specifically enforcing the Operating Agreement and for damages, punitive damages, attorneys fee, costs of suit and whatever other relief the Court may deem just and proper.

B. declaring the actions set forth herein to be null, void and of no effect and *ultra vires*, for damages, punitive damages, costs of suit and attorney's fees.

C. to pay compensatory damages together with interest, penalties, pre-judgment, and post-judgment interest;

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D. to pay reasonable attorney's fees as allowed by law;

E. to pay costs of suit;

F. to disgorge any funds received from the Company; and

G. for such further relief as the Court may deem fair, just, equitable, and proper.

DESIGNATION OF TRIAL COUNSEL

Keith A. McKenna, Esq. is hereby designated trial counsel in this matter.

The McKenna Law Firm, LLC
Attorneys for Plaintiff

Keith A. McKenna

____

Dated: August 4, 2024 Keith A. McKenna

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JURY DEMAND

Plaintiff hereby demands trial by a jury on all issues in the within matter.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action, other than a prior actions involving certain Defendants in the Superior Court of New Jersey, Monmouth County, Chancery Division, docket number MON-C-157-21 and MID-L-6398-21.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

Pursuant to Rule 1:38-7 (c), the undersigned certifies that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future.

The McKenna Law Firm, LLC
Attorneys for Plaintiffs

Keith A. McKenna

Dated: August 4, 2024 Keith A. McKenna

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EXHIBIT A

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MEMBERS' CONSENT RESOLUTION APPROVING TRANSFER OF MEMBERSHIP INTERESTS

In accordance with the Operating Agreement of Keyport Towers & Marina, LLC, a New Jersey limited liability company (the "Company"), the undersigned Members of the Company adopt the following resolutions by written unanimous consent of the Members dated May 15, 2024.

WHEREAS, pursuant to the Company's Operating Agreement, the Members unanimously agree that Michael Tennyson and Mark Srour, individually, and on behalf of Keyport MJGS Srour, LLC, may withdraw and dissociate as Members, and resign as Managers and shall be permitted to assign their Membership Interests to 165 West Front Street Purchaser, LLC;

Based upon the foregoing Recital, the Members unanimously agree to the following:

RESOLVED, that Michael Tennyson and Mark Srour, individually, and on behalf of Keyport MJGS Srour, LLC, affirm and restate the Operating Agreement dated as of March 1, 2021 (the "Operating Agreement") and unanimously and unconditionally rescind, revoke and declare null and void any document or other writing claiming to be an Operating Agreement of the Company after that date;

RESOLVED, that Michael Tennyson and Mark Srour, individually, and on behalf of Keyport MJGS Srour, LLC were admitted as Members of the Company;

RESOLVED, that pursuant to the Operating Agreement, the Members unanimously approve the transfer and assignment of the membership interests of Michael Tennyson and Mark Srour, individually and on behalf of Keyport MJGS Srour, LLC, to 165 West Front Street Purchaser, LLC;

RESOLVED, that pursuant to the Operating Agreement, the Members unanimously approve the withdrawal and dissociation of Michael Tennyson and Mark Srour, individually and on behalf of Keyport MJGS Srour, LLC, from the Company effective May 15, 2024;

RESOLVED, that pursuant to the Operating Agreement, the Members unanimously approve and accept the resignation of Michael Tennyson and Mark Srour, individually and on behalf of Keyport MJGS Srour, LLC, as Managers of the Company effective May 15, 2024;

RESOLVED, that pursuant to the Operating Agreement, the Members unanimously approve that 165 West Front Street Purchaser, LLC shall be admitted as a Member with all rights, privileges and obligations of a Member effective May 15, 2024;

RESOLVED, that the Operating Agreement be amended to name Thomas Galante as the sole Manager of the Company;

RESOLVED, that effective May 15, 2024, Schedule A of the Company's Operating Agreement is amended to reflect the substitution of 165 West Front Street Purchaser, LLC for Michael Tennyson and Mark Srour, individually, and on behalf of Keyport MJGS Srour, LLC, holding 100% of the Membership Interests in the Company.

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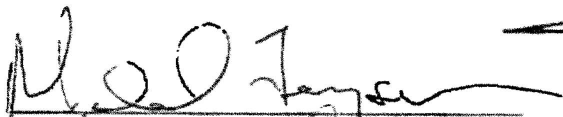
FURTHER RESOLVED, that any and all documents executed and acts done in connection with the foregoing resolutions or to effectuate the purposes of these resolutions are hereby in all respects ratified and confirmed:

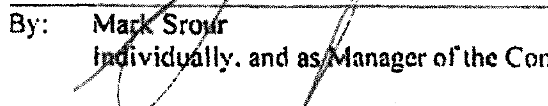
WE CERTIFY that the foregoing resolutions (a) are adopted by the verbal and written consent of the Members of the Company, (b) have not been repealed, annulled, altered, or amended in any respect but remain in full force and effect, (c) based upon the Operating Agreement as set forth herein, are not contrary to or in conflict with any provisions of the Operating Agreement of the Company and the transactions contemplated herein will not result in a violation or a default under any instrument or agreement to which the Company is a party.

This document shall be binding if executed with an original signature, by facsimile signature, by email through portable document format ("**pdf**") signature or by DocuSign electronic signatures and may be signed in counterparts.

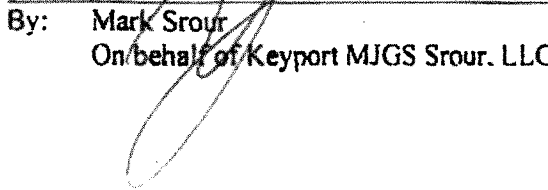
IN WITNESS WHEREOF, the undersigned Members have signed this Consent Resolution on the 15th day of May 2024.



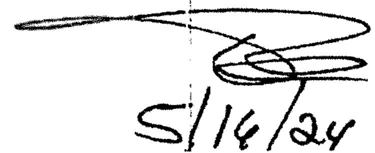
By: Michael Tennyson,
Individually, and as Manager of the Company



By: Mark Srour
Individually, and as Manager of the Company



By: Mark Srour
On behalf of Keyport MJGS Srour, LLC



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AMENDMENT TO OPERATING AGREEMENT OF

KEYPORT TOWERS & MARINA, LLC

This Amendment to the Operating Agreement (the "May 2024 Amendment") of Keyport Towers & Marina, LLC, a New Jersey limited liability company (the "Company"), effective May 15, 2024 is by and among Michael Tennyson and Mark Srour, individually, and as authorized representative of Keyport MJGS Srour, LLC (the "Members"), 165 West Front Street Purchaser, LLC (the "Substituted Member") and the Company.

WHEREAS, the Members hold a membership interest in the Company; and

WHEREAS, Michael Tennyson and Mark Srour, individually, and as authorized representative of Keyport MJGS Srour, LLC, by unanimous consent of the Members, wish to assign their membership interests, rights, titles and obligations in the Operating Agreement and the Company to the Substituted Member; and

WHEREAS, the Company is a member managed Company;

NOW, THEREFORE, as of this 15th day of May 2024, it is agreed as follows:

1. The Members affirm and restate the Operating Agreement dated as of March 1, 2021 (the "Operating Agreement") and unanimously and unconditionally rescind, revoke and declare null and void any document or other writing claiming to be an Operating Agreement of the Company after that date.

2. The Members assign to and the Substituted Member hereby assumes all membership interests, rights, titles and obligations as a member of the Company pursuant to an Assignment and Assumption of Membership Interests dated May 15, 2024, ("Assumption Agreement"), the Consent Resolution of the Members, and the Operating Agreement.

3. The Members acknowledge and agree that under the Operating Agreement, as Amended, that 165 West Front Street Purchaser, LLC is admitted as a Member with all rights, privileges and obligations of a Member.

4. The Members acknowledge and agree that under the Operating Agreement, as Amended, any reference to the term "Manager" or "Managing Member" shall by amended to reflect that neither Michael Tennyson or Mark Srour are a Manager and that Thomas Galante is the sole Manager of the Company.

5. 165 West Front Street Purchaser, LLC acknowledges and agrees that it is bound as a member of the Company to all terms and conditions under, and ancillary documents related

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to. the Operating Agreement and all other agreements entered into by the Company with third parties.

6. In all instances throughout the Operating Agreement where Michael Tennyson and Mark Srour are identified or referenced as Managers. they shall be replaced by Thomas Calante.

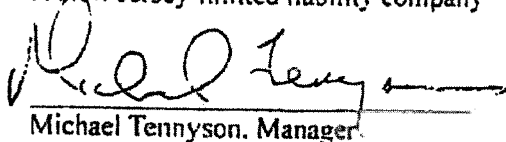
7. Pursuant to the Operating Agreement. the Assumption Agreement and the Members' Consent Resolution. the Members hereby consent to the assignment referenced herein and shall hereafter recognize 165 West Front Street Purchaser, LLC as a member of the Company in place of Michael Tennyson and Mark Srour. individually. and as authorized representative of Keyport MJGS Srour. LLC.

8. This Amendment may be executed in any number of counterparts, including facsimile or scanned PDF documents. Each such counterpart. facsimile or scanned document shall be deemed an original instrument and all of such counterparts together, constitute one and the same instrument.

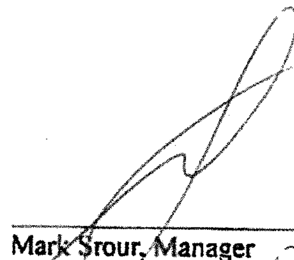
IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Operating Agreement of Keyport Towers & Marina LLC. a New Jersey limited liability company. as of the day and year first written above.

COMPANY

Keyport Towers & Marina. LLC
A New Jersey limited liability company

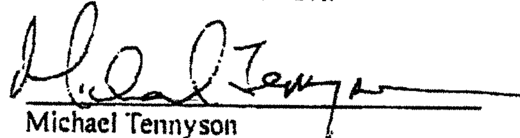


Michael Tennyson. Manager



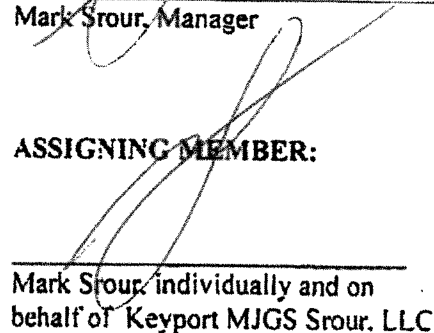
Mark Srour, Manager

ASSIGNING MEMBER:



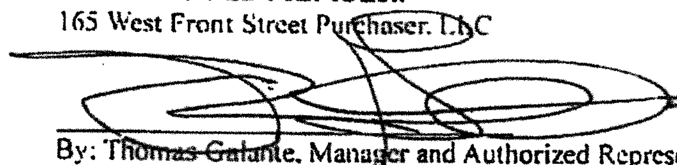
Michael Tennyson

ASSIGNING MEMBER:



Mark Srour, individually and on behalf of Keyport MJGS Srour. LLC

SUBSTITUTED MEMBER:
165 West Front Street Purchaser. LLC



By: Thomas Galante. Manager and Authorized Representative

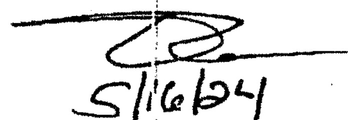


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EXHIBIT B

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OPERATING AGREEMENT
OF
KEYPORT TOWERS & MARINA, LLC,
a New Jersey limited liability company

This Operating Agreement of **KEYPORT TOWERS & MARINA, LLC**, a New Jersey limited liability company (the "Company" or "LLC") is dated as of March 1, 2021, ("Effective Date") by and among the Company, and the members set forth on Schedule A hereto. The members are sometimes referred to collectively herein as "Members" and each individually as a "Member". The Members, membership interests of each member, and class of each member is as set forth on Schedule A, attached hereto and incorporated herein by reference.

WHEREAS, the Company was formed by the filing of its Certificate of Formation on February 15, 2021 and

WHEREAS, the Company is currently under contract pursuant to that certain Agreement of Sale and Purchase, dated February 12, 2021 (the "**PSA**"), to purchase the property known as 165 West Front Street, in the Township of Keyport, County of Monmouth, State of New Jersey, and designated as Lots 6, 8, 8.01, 9, 10, 10.02, 11, 11.01, 12, 13, 14 and 14.01 in Block 21 (the "**Property**"), wherein the Company is the purchaser ("**Purchaser**") and TNSD Investments, LLC, the current owner of the Property is the seller ("**Seller**"); and

WHEREAS, the Company and its Members intend to develop the Property for residential purposes and to operate the existing Marina; and

WHEREAS, the Members desire to enter into this Agreement to formally define and express all the terms and conditions of the Company as of the Effective Date, and to set forth the rights and obligations of the Members with respect thereto and to further the goals and interests of the Members and the Company;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto by this Agreement set forth the operating agreement for the Company under the laws of the State of New Jersey upon the terms and subject to the conditions set forth herein.

ARTICLE 1
ORGANIZATIONAL MATTERS

1.1 **Capitalized Terms**. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Glossary of Terms and Interpretation, attached as Exhibit A hereto and incorporated herein by reference.

1.2 **Name**. The name of the Company, **KEYPORT TOWERS & MARINA, LLC** shall be used at all times in connection with the business and affairs of the Company.

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1.3 **Term**. The Company commenced upon the filing of the Certificate, and shall continue in perpetual existence until it is dissolved and terminated in accordance with this Agreement.

1.4 **Office and Agent**. The registered office and registered agent of the Company shall be Michael G. Tennyson, 494 Sycamore Avenue, Suite 201, Shrewsbury, New Jersey 07702. The principal place of business and mailing address of the Company shall be 494 Sycamore Avenue, Suite 201, Shrewsbury, New Jersey 07702 and the initial agent at that office for service of process of the limited liability company shall be Michael G. Tennyson, or such other place as a majority of the Managing Members shall determine. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Members shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Managing Members shall fail to designate a replacement registered agent or change of address of the registered office, the Members may designate a replacement registered agent or file a notice of change of address.

1.5 **Purpose and Powers of the Company**. The purpose of the Company is the (i) acquiring, owning, developing, and selling, holding, improving, operating, managing, leasing, transferring and exchanging the Property; (ii) obtaining financing in connection with the Property, and (iii) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing, and to develop the Property in furtherance of the Project. Further, The Company may also engage in all other business and investment activities permitted under the Act. The Company has all the powers available to it as a limited liability company under the laws of the State of New Jersey and may become authorized to do business in other states as is necessary in the conduct of its business

1.6 **Title to Company Property.** All of the Company's right, title and interest in any tangible property, intangible property, real property, personal property and other assets acquired by the Company shall be held in the name of the Company as an entity. No Member shall have an ownership interest in any property of the Company in his or her individual name or right, and each Member's Company Interest shall be personal property for all purposes.

1.7 **Agreement, Effect of Inconsistencies with Act.** It is the express intention of the Members that this Agreement shall be the sole source of agreement of the parties as to the subject matter hereof. Except to the extent a provision of the Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Code Regulations, or unless a provision of this Agreement is expressly prohibited or ineffective under the Act, the Agreement shall govern, even when inconsistent with, or different from, the provisions of the Act or any other law or rule. To the extent any provision of the Agreement is prohibited or ineffective under the Act, the Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of the Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members hereby agree that each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any Member for any action or refusal to act taken in good faith reliance on the terms of this Agreement. The Members and the Company hereby agree that the duties and obligations imposed on the Members

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shall be those set forth in this Agreement, which is intended to govern the relationship among the Company and Members, notwithstanding any provision of the Act or common law to the contrary.

1.8 **Members and Membership Interests**. The initial members of the Company are the Members executing this Agreement as of the date of this Agreement as members, each of which is admitted to the Company as a member effective contemporaneously with the execution by such Person of this Agreement. No new members may be admitted to the Company without the consent of the Managing Members in their sole and absolute discretion. The Members shall initially consist of one (1) class known as the Class A Members. The Membership Interests of the Members, collectively, shall consist of ten thousand (10,000) Membership Units. The names and addresses of the Members and their respective Membership Interests and Membership Units in the Company shall be as set forth on Exhibit A hereto. In the event that any Member shall transfer all or any portion of such Member's Membership Units in the Company, and/or a new Member is admitted to the Company, the Members shall prepare or cause to be prepared an amendment to Exhibit A of this Operating Agreement to properly reflect the names and addresses of the Members and their respective Membership Interests following such transaction. The Members may, by unanimous vote, permit the admission of Class B Member who will have no voting rights nor rights of consent (except for consent rights as expressly provided herein in Section 3.1 (b)(ii) and (iii) below).

ARTICLE 2
CAPITAL CONTRIBUTIONS

2.1 **Capital.**

(a) **Initial Capital Contributions.** Concurrently with the execution and delivery of this Agreement, the Members shall each make the initial Capital Contributions to the Company in the amount as set forth on Schedule A, or as may otherwise be set forth in the books and records of the Company. Except as otherwise provided in this Agreement, no interest shall be paid on any Capital Contributions.

(b) **Additional Capital Contributions.** If a majority of the Managing Members unanimously determine that the Company shall require any funds, in addition to the Initial Capital Contribution for its purposes at any time, then the Managers shall be entitled to give a notice (**"Call Notice"**) stating that funds are required, the purposes therefore and the amounts required to be contributed by each of the Members and the Members shall contribute such funds to the Company as Additional Capital Contributions, in each case in accordance with their respective Percentages. Each of the Members shall be required to fund its required Additional Capital Contribution within fifteen (15) days after receiving the applicable Call Notice. Notwithstanding the foregoing, Capital Calls may only be made on the Class A Members, the Class B Member having no obligation to make any additional contributions, Capital or otherwise. At such time, and at any time, that any Person shall contribute cash and/or property to the Company as a Capital Contribution in exchange for a Membership Interest in the Company, such contribution shall be recorded in the books and records of the Company, and such record shall include the following:

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(i) The name of the Member making the Capital Contribution; and

(ii) The amount of cash and/or a complete description of the property contributed by such Person, including the fair market value thereof (as agreed to by such Person and the Company); and

(iii) The number of Membership Units issued to such Person, if any, in exchange for such contribution; and

(iv) The Members' adjusted Membership Interests in the Company.

(c) **Failures to make Required Additional Capital Contributions.** If any Class A Member fails to make its required Additional Capital Contribution when due, such Member shall be a **"Defaulting Member"**. In any such event, the Remaining Class A Members (**"Remaining Members"**) and the Company shall be entitled to the following rights and remedies with respect to the Defaulting Member (all of which shall be cumulative and none of which shall be exclusive):

(i) The Remaining Members shall be entitled to make the Defaulted Contribution of the Defaulting Member on behalf of the Defaulting Member. In such event, the amounts contributed by the Remaining Members on behalf of the Defaulting Member shall constitute a loan from the contributing Remaining Members to the Defaulting Member (each, a **"Contribution Loan"**) and shall bear interest from the date the Contribution Loan is paid by the Remaining Member to the Company to the date the Contribution Loan is paid by the Defaulting Member in full at six percent (6%). The Remaining Members shall be entitled to bring proceedings for the collection of any such loans at any time and shall be entitled to recover from the Defaulting Member Interest and their costs and expenses of collection, including reasonable attorneys' fees. The Remaining Members shall be entitled to make portions of a Defaulted Contribution on behalf of a Defaulting Member in proportion to their respective Percentages, and if any of the Remaining Members shall elect not to make its permitted portion of any such Defaulted Contribution, the other Remaining Members (in proportion to their respective Unrecovered Capital, if more than one) shall be entitled to contribute any such portion of such Defaulted Contribution.

(ii) If the Remaining Members shall not elect to make the Defaulted Contribution on behalf of a Defaulting Member, then the Defaulting Member shall continue to be liable to make such Defaulted Contribution to the Company. The Company, by a vote of those Remaining Members holding greater than fifty percent (>50%) of the Percentages held by the Remaining Members, shall be entitled to bring proceedings against the Defaulting Member for collection of the Defaulted Contribution, and the Company shall be entitled to recover from the Defaulting Member its costs and expenses of collection, including reasonable attorneys' fees.

(iii) A Defaulting Member shall continue to be a Defaulting Member until (i) any loans made to such Member pursuant to **Section 2.1 (c) i)** and any

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related interest, costs and expenses of collection for which the Defaulting Member is liable shall have been repaid in full, and/or (ii) in the event that the provisions of **Section 2.1 (c) ii)** are applicable, the Defaulted Contribution and any related interest, costs and expenses of collection for which the Defaulting Member is liable shall have been paid in full.

(iv) A Defaulting Member shall not be entitled to receive any Cash Distributions so long as it is a Defaulting Member. If the provisions of **Section 2.1.(c) i)** are applicable, all Cash Distributions to which the Defaulting Member shall otherwise be entitled shall be paid to the Remaining Members, pro rata in accordance with the portion of the Defaulted Contribution paid by each Remaining Member until all Contribution Loans, and all related costs and expenses, shall be repaid in full to the Remaining Members. After all of the Remaining Members shall have received the return of their Contribution Loans and all related costs and expenses, Cash Distributions shall be made to the Members as provided in **Section 5.2.** If the provisions of **Section 2.1 (c)(ii)** are applicable, any Cash Distributions to which a Defaulting Member shall otherwise be entitled shall be withheld by the Company until the Company has received the entire Defaulted Contribution from the Defaulting Member, plus all related costs and expenses of collection. After the Company shall have recouped the entire Defaulted Contribution and all related costs and expenses of collection, the Defaulting Member shall be paid its share of all Cash Distributions, pro rata according to the Member's then-current Percentage.

(v) In lieu of pursuing remedies pursuant to **Section 2.1(i), (ii), (iii) or (iv)**, the Remaining Members may elect to dilute the Defaulting Member's membership interest, as the same appears on Exhibit A hereto, or any subsequent amendment of Exhibit A, *pari passu*, as a ratio of the total Capital Contributions. By way of example, if the Members each contributed $200,000 as part of the initial Capital Contributions, for a total of $600,000 in Capital Contributions, and pursuant to a Call Notice issued in accordance with **Section 2.1(b)** the Company authorizes additional Capital Contributions in the amount of $200,000 per Member, any Defaulting Member would forfeit 16.67 of his membership interest which would be allocated equally among the Remaining Members.

2.2 **Maintenance of Capital Accounts**. The Company shall maintain a Capital Account for each Member in accordance with the provisions of the Code and the Treasury Regulations, including Section 704(b) of the Code and Regulations thereunder, and this Operating Agreement shall be interpreted consistently therewith. Each Member's capital account shall be equal to the value of the property and assets contributed by such Member to the Company, from time to time, as set forth in the books and records of the Company, and shall be adjusted as follows:

(a) Each Member's and Transferee's Capital Account shall be increased by: (i) the amount of money contributed by such Member or Transferee to the Company; (ii) the fair market value of any property contributed by such Member or Transferee to the Company (net of liabilities secured by such contributed property that the Company assumes or is considered to assume or take subject to under Section 752 of the Code); (iii) allocations of Net Profits of the Company; (iv) allocations of income described in Section 705(a)(1)(B) of the Code; and (v) any

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items of income or gain that are taken into account in determining capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) on account of any adjustment to the adjusted tax basis of any Company assets pursuant to Section 734(b) or Section 743(b) of the Code.

(b) Each Member's and Transferee's Capital Account shall be decreased by: (i) the amount of money distributed to such Member or Transferee by the Company; (ii) the fair market value of property distributed to such Member or Transferee by the Company (net of liabilities secured by such distributed property that such Member or Transferee assumes or is considered to assume or take subject to under Section 752 of the Code); (iii) allocations of expenditures described in Section 705(a)(2)(B) of the Code; (iv) any items of loss that are taken into account in determining capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) on account of any adjustments to the adjusted tax basis of any Company assets pursuant to Section 734(b) or Section 743(b) of the Code; and (v) allocations of Net Losses and deductions of the Company.

(c) In the event of a sale, gift or other disposition of a Membership Interest in the Company by a Transferring Member, subject to the transfer restrictions set forth in this Operating Agreement, the Capital Account of the Transferring Member shall become the Capital Account of the Transferee of such interest, in accordance with applicable Treasury Regulations.

(d) The manner in which Capital Accounts are to be maintained pursuant to this Section 9.03 is intended to comply with the requirements of Treasury Regulations Section 1.704-1(b)(2)(iv). If, in the opinion of the Company's tax advisors, the manner in which Capital Accounts are maintained pursuant to the preceding provisions of this Article 2 should be modified in order to comply with such Section 1.704-1(b)(2)(iv) of the Code and the Treasury Regulations thereunder, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between the Members, as set forth in this Operating Agreement, including, without limitation, the distribution provisions set forth in Article 2 hereof.

(e) Neither the Members nor any Transferee shall have any obligation to the Company arising solely from the existence of a negative balance in any Member's or Transferee's Capital Account.

2.3 **No Priority.** No Member shall be entitled to any distributions from the Company or to withdraw or demand the return of any part of his, her or its capital contribution except as set forth herein. No Member shall have the right to demand or receive property other than cash in return for his, her or its capital contribution or as a distribution. No Member shall have priority over any other Member either as to the return of his, her, or its capital contribution to the Company or as to any distributions except as specifically provided for herein.

2.4 **Members' Loans.** If any Member shall lend any money to the Company, the amount shall not be an additional capital contribution of such Member, but shall be a debt due from the Company to such Member, bearing a preferred rate of interest at six percent (6%), and to be repaid prior to any Cash Distributions being paid to the Members, or upon the dissolution of the Company prior to any net proceeds of sale being distributed to the Members, whichever is the first to occur.

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2.5 **Return of Capital Contributions.** No Member shall have the right to demand the return of its Capital Contributions, except as specifically set forth in this Agreement. No Member shall have priority over the other Members as to the return of its capital contributions to the Company or as to any other distributions.

2.6 **No Additional Members by Payment of Capital Contribution.** Except as otherwise provided in this Agreement, no Person shall be admitted as a Member to the Company through payment of a Capital Contribution, assumption of one or more Company liabilities, allocation of one or more Company liabilities under Code Section 752, or in any other manner, without the consent of the majority of Members.

ARTICLE 3
MANAGING MEMBERS

3.1 **Authority of the Managing Members.**

(a) The Members hereby appoint David Tennyson ("D. Tennyson"), Michael G. Tennyson ("M. Tennyson") and Thomas Galante ("Galante") as the co-Managing Members of the Company. The Managing Members shall have full and complete authority to direct and conduct the business, affairs, operations and activities of the Company in their sole discretion, after obtaining a vote of the majority of the Managing Members. It is acknowledged and agreed that, except as otherwise expressly contemplated herein, D. Tennyson and M. Tennyson in their capacity as Managing Members, may, on behalf of the Company, have the express authority to take such acts, and execute such documents or other instruments, to operate the Property on a day-to-day basis, including:

(i) maintenance of the Property;

(ii) hire such construction personnel, contractors, or workmen as they reasonably deem appropriate, to maintain the daily operations and condition of the Property, and to pay reasonable costs and fees in furtherance of the maintenance of the Property, which shall be expenses of the Company;

(iii) pay costs incurred in operating the Property; and

(iv) pay all utility and other costs to operate the Property.

Galante, in his capacity as a Managing Member, may, on behalf of the Company, have the express authority to operate, on a day to day basis, Harbor View Marina, LLC, the business entity that controls the operation of the marina component of the Property.

(b) Notwithstanding the foregoing or anything to the contrary herein or otherwise, only and solely upon the unanimous written approval of the Managing Members shall any individual Managing Member, on behalf of the Company, have the power and authority to take such acts, and execute such documents or other instruments to:

(i) lease or sell in whole or in part the Property at any time upon, and then only upon such terms as a majority of the Managing Members reasonably deems appropriate;

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(ii) place mortgages on, borrow against, or finance or refinance any or all of the Company's Property, but only for the benefit of the Company and not for the benefit of any other entity;

(iii) authorize or effect a liquidation, dissolution or winding-up of the Company

(iv) approve a merger, conversion, or domestication of the Company ;

(v) Any sale of the Company, the business of the Company or all or substantially all of the assets of the Company;

(vi) Engaging in business in any jurisdiction which does not provide for the registration of limited liability companies;

(vii) amend this Operating Agreement; or

(viii) undertake any other act outside the ordinary course of the Company's activities;

The forgoing provisions set forth in Section 3.1 (b) shall be referred to herein as "Major Decisions".

(c) The Members acknowledge and agree that the Company shall utilize the services of Green Field Builders Group, LLC ("Green Field") as the construction manager for the construction of the project on the Property on the terms and conditions as determined by a majority of the Managing Members and memorialized into a Construction Management Agreement by and between the Company and Green Field (the "CMA"). Green Field shall retain T. Galante Construction, Inc. (or some other entity designated by Galante) as the general contractor for the project on the Property subject to customary AIA documents. With respect to the Company's management of construction for the Company's project on the Property pursuant to the CMA, control of same and decision making authority shall be vested in M. Tennyson (the "**Construction Manager**"), but only to the extent such decision or other action by Construction Manager would not cause the Contract Sum (as defined in the CMA) paid in exchange for the Work (as defined in the CMA) and all other obligations of Green Field under the CMA to exceed the guaranteed maximum price ("GMP"). For the avoidance of doubt, to the extent a decision or action related to construction management also relates to the Company's financial affairs, Construction Manager shall only have decision making authority if such decision or action would not cause the Contract Sum to exceed the GMP, and if the GMP would be so exceeded, decision making authority shall be vested exclusively in the Members. By way of example, and not of limitation, Construction Manager shall have unilateral authority to approve change orders related to the Project, so long as such change order does not cause the Contract Sum to exceed the GMP. To the extent such a change order would cause the Contract Sum due under the CMA to exceed the GMP, the Construction Manager shall not have unilateral authority to approve such change order, and instead the Members shall be vested with all such decision-making authority. The Construction Manager may sign documents on behalf of the Company, so long as the approval required under this Agreement has been previously obtained.

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(d) The Members acknowledge and agree that the Company shall utilize the services of Ashling Development, LLC ("Ashling") as the owner's representative in connection with the development of the project on the Property on the terms and conditions as determined by a majority of the Managing Members and memorialized into an Owner's Representative Agreement.

3.2 **Conflicts of Managing Members.** The Managing Members shall devote to the business of the Company such time as is necessary for the proper performance of its duties. The Managing Members may engage in any other business or investment, whether or not in competition with the Company, and may pursue any other business opportunity without first offering it to the Company.

3.3 **Indemnity.** The Company shall indemnify and hold the Managing Members harmless from any third-party claims brought against it for any act or omission taken or not taken on behalf of the Company so long as the indemnitee has not acted illegally.

3.4 **Initial Managing Members; Removal of Managing Members.** The initial Managing Members of the Company shall be as set forth in Section 3.1 above. The Managing Members, in their sole discretion may at any time resign as a Managing Member, but may not under any circumstance appoint any successor. Upon resignation or other removal as a Managing Member, the remaining Managing Members shall be the only managing Members of the Company unless or until such time the remaining Managing Members appoint a new Managing Member.

ARTICLE 4
RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 **No Liability of Members.** Notwithstanding anything to the contrary herein or otherwise, neither the Members nor the Managing Members shall have any personal liability for: (a) the performance, or the omission to perform, any act or duty on behalf of the Company if, in good faith, the Member or Managing Member determined that such conduct was in the best interests of the Company and such conduct did not constitute fraud or willful misconduct; (b) the termination of the Company and this Agreement pursuant to the terms hereof; or (c) the performance, or the omission to perform, on behalf of the Company any act in good faith reliance on advice of legal counsel, accountants or other professional advisors to the Company.

4.2 **Authority.** Except as otherwise expressly contemplated herein, only the Managing Members, may bind the Company. No Member, acting unilaterally, shall have the power or authority to bind the Company in any manner whatsoever.

4.3 **Compensation.** Except as otherwise set forth herein, no Member shall be entitled to any fees, commissions or other compensation from the Company for any services rendered to or performed for the Company as a Member.

4.4 **Meeting of Members.** The Managing Members may call meetings of Members for informational purposes. Each Class A Member shall have voting rights, and each Member shall be entitled to one (1) vote on any issue or discussion put to a vote of the Members. Management, including the authority to amend this Agreement, is vested fully in the Managing Members except as otherwise contemplated herein. The Managing Members are hereby expressly authorized,

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without further consent of the Members, upon a written vote of a majority of the Managing Members, to amend the Certificate and this Operating Agreement and to add or refine the purpose for the entity language as may be required by any lender to the Company.

4.5 **Representations and Warranties.** Each Member represents and warrants to the Company and each other Member that such Member acquired his, her, or its Company Interest for the Member's own account as an investment and without an intent to distribute the Interest.

4.6 **Conflicts of Interest.** A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. A Member may engage in any other business or investment, whether or not in competition with the Company, and may pursue any other business opportunity without first offering it to the Company.

4.7 **Indemnification of Members; Managing Members.** The Company, its receiver or its trustee shall indemnify, defend and hold each Member and Managing Member (and their respective heirs, personal representatives, and successors) harmless from and against any expense, loss, damage or liability incurred or connected with, or any claim, suit, demand, loss, judgment, liability, cost or expense (including reasonable attorneys' fees) arising from or related to, the Company or any act or omission of a Member or Managing Member on behalf of the Company, arising on or after the Effective Date, and amounts paid in settlement of any of the foregoing, provided that the same were not the result of fraud or willful misconduct on the part of the Member or Managing Member against whom a claim is asserted. The Company shall advance to any Member or Managing Member (and their respective heirs, personal representatives, and successors) the costs of defending any claim, suit or action against such Person if the Person undertakes to repay the funds advanced, with interest and arranges to secure such repayment (in such manner as shall be determined in the sole discretion of the Company), if the Person is not entitled to indemnification under this Section. The Company shall have the right to assume the defense of any party entitled to indemnification pursuant to this Section.

ARTICLE 5
DISTRIBUTIONS AND ALLOCATION

5.1 **General Provisions.** After paying the Company's expenses, including establishing a reserve in an amount determined from time to time by a majority of the Managing Members, and after paying any Construction Management Fee and Owner's Representative fee, the Managing Members may from time to time make Distributions in such amounts as determined by them. Notwithstanding anything to the contrary herein or otherwise, no such Distributions are guaranteed. Further, any Distributions shall only be made to the Class A Members, and then pro rata to such Class A Member's Percentage Interest. The source of the cash for Distributions shall be any combination of operating revenues or refinance proceeds. However, any Net Profit resulting from a sale of the Property, whether in a single sale or a series of sales to a *bona fide* third party purchaser, shall not be subject to the provisions of Section 5.2. Rather, such Net Profit shall be allocated by and amongst the Members, including any Class B Members. The Net Profit shall be distributed to the Members, including the Class B Members, at the time of the sale.

5.2 **Flow of Distributions and Allocations.**

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(a) One hundred percent (100%) of Distributions shall be made in proportion to each Class A Member's Percentage Interest until they shall have received one hundred percent (100%) of their Total Capital Contribution. Each Distribution to each of them shall be debited against their respective amounts of Total Capital. While Distributions are being made in this way, Income from Operations, Losses from Operations, Income and Gain from Dispositions, and Capital Losses shall be allocated to each Member pro-rata.

(b) Notwithstanding the distribution set forth in Paragraph 5.2(a) above, in the event there remains any outstanding Member Loans, said loans shall be repaid first, prior to any remaining distribution pursuant to this article.

(c) The foregoing allocations are subject to the requirements of Section 704(c) of the Code.

5.3 **Company Minimum Gain Interests.** If there is a net decrease in Company Minimum Gain (as defined in Regulation Section 1.704-2(d)) for a taxable year, each Class A Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Class A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year. A Class A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company property shall equal the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in Company Minimum Gain is caused by the revaluation. A Class A Member is not subject to the Company Minimum Gain Interests requirement of Regulation Section 1.704-2 to the extent the Member's share of the net decrease in Company Minimum Gains caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Class A Member bears the economic risk of loss (within the meaning of §1.752-2 of the regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

5.4 **Member Minimum Gain Interests.** If during a taxable year there is a net decrease in a Class A Member Minimum Gain, any Class A Member with a share of that Member Minimum Gain (as determined under § 1.704-2 (i) (5) of the Regulations) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Class A Member is not subject to this Member Minimum Gain Interests, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member nonrecourse liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly an LC nonrecourse liability. The amount that would otherwise be subject to the Class A Member Minimum Gain Interests is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Interests to the extent provided under the Regulations issued pursuant to § 704(b) of the Code.

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5.5 **Qualified Income Offset.** In the event any Class A Member, in such capacity, unexpectedly receives an off-settable decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of Company income and gain for each year) in an amount and manner sufficient to offset such off-settable decrease as quickly as possible.

5.6 **Additional Allocations.**

(a) In the event any Class A Member's Company interest shall change during any taxable year, notwithstanding any other provision of this Agreement, the Company's tax advisor or accountant, in a manner consistent with the requirements of the Code or equivalent legislation and applicable Treasury Regulations, shall allocate the Company's Income or Loss and each item of income, deduction or credit of the Company with respect to such Class A Member in a manner which takes into account his varying Company interests during such taxable year. The allocations under this subsection shall be binding on all Class A Members.

(b) If the Code or any applicable Treasury Regulation shall require that any item of income, deduction, gain, loss or credit of the Company be allocated among the Class A Members in a manner inconsistent with the allocations provided for in this Agreement in order to be respected by the Internal Revenue Service, then, notwithstanding any other provision of this Agreement, the Company's accountant shall reallocate all such items in a manner which conforms with the Code or any applicable Treasury Regulations and most closely approximates the allocations otherwise provided for in this Article. The allocations under this subsection shall be binding on all Class A Members.

(c) The Class A Members are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by the provisions of this Article in reporting their shares of Company income, gain, loss and deduction for Federal income tax purposes.

5.7 **Incorporation of Harbor View Marina, LLC**. Simultaneously with the execution of this Operating Agreement, the Operating Agreement of Harbor View Marina, LLC shall be amended such that the Company shall become the sole and one-hundred percent (100%) member of Harbor View Marina, LLC. All terms and conditions contained herein, including but not limited to terms and conditions related to profit and other distributions, additional capital contributions and allocations shall be incorporated into the Operating Agreement of Harbor View Marina, LLC.

5.8 **Additional Limitation upon Distributions.** , No distribution under Article 5 shall be paid if, after the distribution is made, (i) the Company would not be able to pay its debts as they become due in the ordinary course of the Company's activities; or (ii) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of Members whose preferential rights are superior to those of Members receiving the distribution.

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ARTICLE 6
RECORDS, REPORTS, AND TAXES

6.1 **Fiscal Year.** The fiscal year of the Company shall be the calendar year. The Company's method of accounting shall be as determined by the Managing Members.

6.2 **Books and Records.** The Managing Members shall choose an accountant or a firm of certified public accountants to keep the books and records of the Company. The Company's accountant shall issue annual financial reports for the Company to the Members. All of the books and records shall at all times be maintained at the principal office of the Company or at the office of the Company's accountant, or at such other place as the Managing Members shall determine. . The Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing addresses of the Manager, the Members and any Transferees, both past and present; and

(b) A copy of the Certificate of Formation of the Company and all amendments thereto; and

(c) Copies of the Company's federal, state, and local income tax returns and reports; and

(d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to the Members' obligations to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent Fiscal Years; and

(e) Any written consents for actions taken by the Manager and/or the Members without a meeting.

6.3 **Inspection**. The Company's books and records shall be open to inspection and examination by both the Class A and the Class B Members or their representatives during normal business hours. The records of the Company shall be maintained on a cash receipt and disbursement method of accounting.

6.4 **Tax Status.** Each of the Members hereby recognizes that the Company anticipates being recognized as a partnership for Federal and state tax purposes and it is anticipated that the Company payments to its Members will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code. The Managing Members shall use all reasonable efforts to cause the Company's accountants to prepare and make timely filings of all tax returns and statements which the accountants determine must be filed on behalf of the Company with any taxing authority. The Company's accountants shall provide a copy of such returns and statements to each Member prior to the due date (computed without regard to any extensions thereof) and actual filing of such return. Copies of such tax and information returns shall be kept at the principal office of the Company or at such other place as the Managing Members shall determine and shall be available for inspection by the Members or their representative during normal business hours.

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6.5 **Tax Returns; Elections.**

(a) M. Tennyson shall be the "tax matters partner" of the Company pursuant to Section 6231(a) (7) of the Code. The tax matters partner shall take such action as may be necessary to cause each Member to become a "notice partner" within the meaning of Section 6223 of the Code. The tax matters partner shall notify the Members of any audit or other matters of which the tax matters partner is notified or becomes aware.

(b) The Company's accountant and tax matters partner shall make all elections for Federal income tax purposes that they reasonably determine to be in the best interest of the Members.

(c) The Company may, but is not required to, make an election for Federal income tax purposes to the extent permitted by applicable law and regulations, as follows:

(i) in case of a transfer of all or part of any Members' Company Interest, the Company may elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws to adjust the basis of the assets of the Company pursuant to sections 734 and 743 of the Code; and

(ii) all other elections required or permitted to be made by the Company shall be made in such a manner as the Managing Members, in consultation with the Company's accountant, determines to be most favorable to the Members.

(d) No Member shall take any action or refuse to take any action which would cause the Company to forfeit the benefits of any tax election previously made or agreed to be made by the Company.

(e) To the extent required by the laws of any state, or local, or foreign government ("Taxing Jurisdiction") that collects tax, interest, or penalties (however designated) on any Member's share of the income or gain attributable to the Company, such Member (or any applicable assignee of such Member's interest), if required by the Taxing Jurisdiction, will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution. Where permitted by the rules of any Taxing Jurisdiction, the Company may file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform each affected Member of the amount of such tax, interest and penalties so paid.

6.6 **Withholding.** All amounts required to be withheld under Code Section 1446 or any other provision of federal, state or local law shall be treated as amounts actually distributed to the affected Member for all purposes under this Agreement.

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6.7 **Operating Account.** On the date hereof, a majority of the Managing Members shall appoint one of the Managing Members to establish, at the Company's expense, on behalf of the Company an Operating Account. All Revenue of the Company shall be deposited into the Operating Account. The Managing Members shall appoint Galante and D. Tennyson (or his successor) as the signatories (the "**Signatories**"). The signature of any of the Signatories, after approval by both of the Signatories, is required to endorse checks debited from the Operating Account on behalf of the Company. No expenditure greater than $10,000 may be made without the consent of both Signatories.

ARTICLE 7
NO WITHDRAWAL OF MEMBERS; LIMITED TRANSFER OF COMPANY INTERESTS

7.1 **General Restriction on Transfer.** No Member shall make any Disposition of his, her or its membership interest in the Company unless the Disposition is approved by a majority of the Managing Members or unless the Disposition is made in accordance with the provisions of this **Article 7**. Any Disposition contrary to the provisions of this **Article 7** shall be null and void. The Members agree that any proposed Disposition contrary to the provisions of this **Article 7** would result in irreparable harm to the Company and the other Members, and that the Company and the other Members shall each accordingly be entitled to injunctive relief in any court or other forum of competent jurisdiction for the purpose of restraining or rescinding such Disposition or offer of Disposition. This remedy shall be in addition to and not exclusive of any other remedy available to the Company or the other Members at law or in equity or pursuant to any other provision of this Agreement.

7.2 **Death, Incompetency, or Bankruptcy of a Member.** The Death, Incompetency, or Bankruptcy of any Member shall not dissolve or terminate the Company. Upon the Death, Incompetency, or Bankruptcy of any Member, such Member's legally authorized personal or other duly appointed representative (including but not limited to the guardian, heirs or other successor in interest) (whether an individual or individuals, the "**Representative**") shall have all of the rights of the Member, and be liable for all of the liabilities, if any of the Member in accordance with the terms and conditions of this Agreement. Except with respect to the Bankruptcy of a Member, the Representative shall become the successor substituted member of the Member's interest in the Company. In the event of a Bankruptcy, the Representative shall not be admitted as a member, and shall only have the rights of the Member for purposes of settling or managing his or her bankruptcy estate and shall have the power to assign the Member's interest in accordance with the terms of this **Article 7**. Further, in the event of the Bankruptcy of a Class B member, the only rights of the Representative shall be to the payment of such compensation or fees due such Member if and when such payment would otherwise have been made under this Agreement.

7.3 **Retirement, Surrender, Termination of Employment and Withdrawal.** A Member shall not have the right to retire, surrender his, her or its membership interests and voluntarily withdraw from the Company, pursuant to *N.J.SA. 5S 42:2C-45* and *46* of the Act without the consent of the majority of the Managing Members. In the event of an attempted resignation of a Member without the aforesaid consent of the Managing Members, the resignation shall be considered null and void and without force and effect.

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7.4 **Compensation of Bankrupt or Insolvent Member**. Upon the bankruptcy or insolvency of a Class A Member (the "Disposing Member") from the Company, the remaining Member(s) shall distribute to the bankrupt Member's estate or legal representative, the Fair Market Value of the Disposing Member's interest as of the effective date of the Bankruptcy. Upon payment of the Fair Market Value to the Disposing Member, the Disposing Member shall assign his, her or its membership interest in the Company either to the Company, in redemption of the membership interest, or to another Member or Members, as the Managing Members may so direct, after which, neither the Disposing Member nor his estate will have any further interests or rights in the Company.

7.5 **Fair Market Value**. For purposes of this Agreement, the Fair Market Value of the Disposing Member's membership interest shall be determined and established based upon a determination of the value of the Property owned by the Company, net of any mortgages or other liens on the Property, multiplied by the Disposing Member's percentage membership interest in the Company, and then discounted by thirty-five (35%) percent. The value of the Property will not include any value attributable to goodwill, tradenames, or any other intangibles. The value of the Property will be based upon what the Property would sell for in the open market, to an independent, arm's-length, third party buyer. If the Disposing Member and the remaining Members cannot reach agreement on that value, then the Fair Market Value will be determined as follows: The Company will engage the services of a licensed real estate broker, who is familiar with the properties in the area in which the Property is located, or a licensed real estate appraiser, who will determine the value of the Property in comparison with properties similar in size and quality that have sold recently, adjusting the price according to factors specific to the Property or properties. The value will be reduced by any mortgage or other liens on the Property, in order to determine a net-value of the Property. The cost of the appraisal will be paid by the Company. If the parties do not agree with the Fair Market Value, (net appraised value), then the disagreeing party will have the right to engage their own real estate broker or appraiser to appraise the Property, at their own cost. If the parties still do not agree upon the value established by the second appraiser, then the parties will mutually agree upon a third appraiser, which cost will be paid equally by the disposing Member and the Company, and the third Appraiser shall review each of the first two appraisals and shall make a determination of the Fair Market Value by choosing one of the two appraisals, and the determination of the Fair Market Value by the third appraiser shall be dispositive.

7.6 **Payment of the Purchase Price to the Disposing Member.** Upon establishment of the Fair Market Value, the Disposing Party will be paid as follows: The Company will execute an unsecured promissory note to the Disposing Member or his Representative, in the full amount of the established Fair Market Value (the "Note"). The Note shall bear interest at the U.S. prime rate or the Wall Street Journal ("WSJ") prime rate, established on the date of the closing of the transfer of the Disposing Member's interest, plus one (1%) percent, and such Note will be due and payable in full on or before ten (10) years from the date of closing. In no event will the interest rate exceed five (5%) percent. The Note will amortize on a ten (10) year basis, and the Company will make monthly payments under the note to the Disposing Member on the first day of each month, beginning on the first day of the second full month after the closing, with all payments to be paid in arrears. Interest only for the month of closing will be paid from the day of the closing until the end of the month of closing. The non-disposing Member(s) shall have the right to prepay the note at any time. In the event the Representative should allege any default under the

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Note, the Representative must give the Company thirty (30) days' notice and the opportunity to cure any alleged default.

7.7 **Existing Liens.** In the event, at the time of closing of the purchase of the Disposing Member's interest under section 7.6, there exists any mortgage liens upon the Property and if such lien is under any Guaranty by the Disposing Member, the Disposing Member or his bankruptcy estate shall remain as a Guarantor on the existing lien, under the Guaranty.

7.8 **Effective Date of Withdrawal.** For financial and tax reporting purposes, every withdrawal or other transfer of any Company Interest or portion thereof shall be deemed to have occurred as of the close of business on the day of the month in which such event shall have in fact occurred, whether voluntary or involuntary and whether by death, incompetency, bankruptcy, retirement or other withdrawal of any interest of a Member in the Company.

7.9 **Conditions Applicable to Transfers.** Notwithstanding anything to the contrary contained in this Agreement:

(a) any sale, assignment or transfer, whether direct or indirect, of any Company Interest shall be made in full compliance with all applicable statutes, laws, ordinances, rules and regulations of all Federal, state and local governmental bodies, agencies and subdivisions having jurisdiction over the Company; and

(b) no change in ownership of the Company Interest of any Member shall be binding upon the Company or any other Member unless and until (1) true copies of instruments of transfer executed and delivered pursuant to or in connection with such transfer shall have been delivered to the Managing Members; (2) the transferee shall have delivered to the Managing Members an executed acknowledged assumption agreement pursuant to which and the transferee assumes all of the obligation of the transferor hereunder, and agrees to be bound by all of the provisions of this Agreement, and (3) such transfer otherwise accords in all respects with all applicable requirements and restrictions set forth herein regarding the assignment and transfer of Company Interests.

7.10 **Transferees by Operation of Law.** If, notwithstanding the provisions of this Article 7, any Person acquires all or any part of the Company Interest of a Member in violation of this Article 7 by operation of law, judicial proceeding, or otherwise, the holder(s) of said Company Interest shall be entitled to receive only the share of income, gain, deductions, credits, and losses and the return of contributions to which said Member would otherwise be entitled, and said Person shall have no right to participate in the management of the Company.

7.11 **Permitted Dispositions Without Consent**. Notwithstanding anything otherwise set forth in this Agreement, any Member may transfer, assign, sell or otherwise make any Disposition of all or any portion of his membership interest in the Company to: (i) any family member (inclusive of spouse, children, grandchildren or siblings)("Family Member") or any business entity in which the Member and/or any Family Member retains an ownership interest; (ii) any investor who, in exchange for the receipt of a membership interest in the Company, is making an injection of equity into the Company; or, (iii) any non-Family Member or non-investor who is purchasing less than fifty percent (50%) of a Member's membership interest and will only be an

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Economic Interest Holder, entitled to profit distributions, but shall have no role or participation in the management or operation of the Company or the Property, without the consent or approval of any other Members or Managing Members. The Member making any such Disposition of his membership interest shall provide the Company with written notice of such Disposition, including the names and contact information for any individual (or owner, shareholder, member of any business entity) who has acquired all or any portion of the Member's ownership interest, together with the percentage of the Member's membership interest that was part and parcel of any such Disposition.

ARTICLE 8
LIQUIDATION AND DISSOLUTION

8.1 **Dissolution.**

(a) Except as otherwise expressly provided herein, the Company shall be dissolved upon the occurrence of any of the following events:

(i) the divestiture by the Company of all or substantially all of its assets and any property, real or personal, that it may receive resulting from a sale, exchange or other disposition thereof;

(ii) the determination of a majority of the Class A Members;

(iii) upon the termination of the PSA, or the failure of the Company to acquire the Property; or

(iv) any other event which, under the Act, would cause the dissolution of a limited liability company unless a majority of the Members elect to continue the business of the Company.

(b) Dissolution shall be effective on the date of the event giving rise to the dissolution, but the Company shall not terminate until the assets thereof have been distributed in accordance with the provisions hereinafter set forth.

(c) The Company will not dissolve as the result of the death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member, or upon the occurrence of any other event which terminates the continued membership of a Member under this Agreement or under the Act. In such event, the remaining Members will take whatever steps may be required under the Act and this Agreement to continue the business of the Company

8.2 **Liquidating Trustee.**

(a) Upon dissolution of the Company, the liquidating trustee (who shall be the Managing Members) shall proceed diligently to wind up the affairs of the Company and distribute its assets in the following order of priority:

(i) to the payment of the debts and liabilities of the Company (other than those owed to Members;

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(ii) to the setting up of such reserves as the liquidating trustee may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company. Any such reserve may be paid over by the liquidating trustee to an escrow agent to be held for the purpose of disbursing such reserve in payment of any of the aforementioned contingencies. At the expiration of such period as the liquidating trustee shall deem advisable, the balance remaining shall be distributed in the manner provided below;

(iii) to the repayment of any loans and the interest thereon that may have been made by any of the Members to the Company, but if the amount available for such repayment shall be insufficient, then pro rata in accordance with the amounts of such advances;

(iv) to any credit balances in the Members' Capital Accounts pro rata; and

(v) of any balance remaining, to the Members pursuant to their Percentage Interests.

(b) Pending such distribution, the liquidating trustee shall continue to exploit the rights and properties of the Company consistent with the liquidation thereof, exercising in connection therewith all the power and authority of the Managing Members as set forth herein.

8.3 **Accounting on Dissolution or Other Termination.** Upon dissolution or other termination of the Company, the liquidating trustee shall cause the Company's accountant to make a full and proper accounting of the assets, liabilities, and operation of the Company, as of and through the last day of the month in which the dissolution occurs.

8.4 **Distribution in Kind.** No Member shall have the right to demand and receive property other than cash. The liquidating trustee shall, in any event, have the power to sell the Company's assets for cash in order to provide for payment of liabilities and establish a reserve or otherwise. All saleable assets of the Company may be sold in connection with any liquidation at public or private sale at such price and upon such terms as the liquidating trustee, in his sole discretion, may deem advisable. Any Member and any Person in which any Member is in any way interested or who is interested in any Member may purchase assets at such sale. Distributions of Company assets may be made in cash or in kind, in the sole and absolute discretion of the liquidating trustee.

8.5 **No Recourse Against Managers or Other Members for Return of Capital.** Members will look solely to the assets of the Company for the return of their Capital Contributions, which will be returned, if at all, from distributions, if any, made as provided in this Agreement, and they will have no recourse against any other Member or any Managing Member.

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ARTICLE 9
ALLOCATION RULES

9.1 **Allocations/Offsets.**

(a) Minimum Gain Chargeback. Notwithstanding any other provision of Section 4 or this Section 9, except to the extent that Section 1.704-2(f) of the Regulations (or any other applicable authority) provides an exception to the operation of the minimum gain chargeback requirement of the Regulations, if there is a net decrease in Minimum Gain during any Accounting Period, each Member shall be specially allocated items of income and gain for such Accounting Period in an amount equal to such Member's share of the net decrease in the Company's Minimum Gain (within the meaning of Regulations Section 1.704-2(g)(2)), determined in accordance with Regulations Section 1.704-2(g). In the event that the minimum gain chargeback requirement imposed by this subsection and Regulations Section 1.704-2(f) exceeds the Company's income and gains for the Accounting Period, the excess shall be treated as a minimum gain chargeback requirement, and shall be specially allocated under this subsection, in the immediately succeeding Accounting Periods until fully charged back. Allocations pursuant to this subsection shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto. The items to be allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j) of the Regulations. This subsection 9.1(a) is intended to comply with the minimum gain chargeback requirement in the Regulations and shall be interpreted consistently therewith.

(b) Member Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of Section 4 or this Section 10, except to the extent that Section 1.704-2(i)(4) of the Regulations (or any other applicable authority) provides an exception to the operation of the partner nonrecourse debt minimum gain chargeback requirement of the Regulations, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Accounting Period, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), as of the beginning of that Accounting Period, shall be specially allocated items of income and gain for such Accounting Period (and, if necessary, succeeding Accounting Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain shall be determined in a manner consistent with the provisions of Regulations Sections 1.704-2(j)(2) and 1.704-2(i)(4). Allocations pursuant to this subsection shall be made in proportion to the respective amounts required to be allocated to each Member pursuant to this subsection and Section 1.704-2(i)(4) of the Regulations. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and (j)(2) of the Regulations. This subsection 9.1(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Sections 1.704-1 (b)(2)(ii)(d)(4), (5), and (6), items of income and gain (consisting of a pro rata portion of each item of income, including gross income and gain) shall be specially allocated to that Member in an amount and manner sufficient to eliminate any Adjusted Capital Account Deficit created by such adjustments,

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allocations or distributions as quickly as possible; provided, however, that an allocation pursuant to this subsection shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section have been tentatively made as if this subsection were not a part of this Agreement.

(d) Gross Income Allocation. If any Member has a deficit Capital Account at the end of any Accounting Period that is in excess of the sum of the amount such Member is obligated to restore, or the amount such Member is deemed obligated to restore pursuant to the next to last sentences of Section 1.704-2(g)(1) and Section 1.704-2(i)(5) of the Regulations, the Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible; provided, however, that an allocation pursuant to this subsection shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section have been tentatively made as if this subsection and the qualified income offset provision set forth in the preceding subsection were not a part of this Agreement.

(e) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Company pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or (4), to be taken into account in determining Capital Accounts as a result of a distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts of the Members shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(f) Nonrecourse Deductions. Nonrecourse Deductions for any Accounting Period shall be specially allocated to the Members, in accordance with the Members' Membership Interests in the Company for the applicable Accounting Period.

(g) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Accounting Period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

(h) Corrective Allocations. The allocations set forth in the preceding subsections of this Section 9.1 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members and the Manager that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of income, gain, loss or deduction pursuant this subsection 9.1(h). Therefore, notwithstanding any other provision of Section 4 or this Section 9 (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of income, gain, loss or deduction in whatever manner they determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all items were allocated pursuant to Section 4. In making any

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allocation under this subsection, the Manager shall take into account future Regulatory Allocations under subsections 9.1(a) and (b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under subsections 9.1(f) and (g).

9.2 **Code Section 704(c).**

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

(b) If the Gross Asset Value of any asset of the Company is revalued pursuant to Section 1.8(p)(2), subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to allocations made under this Section 9 shall be made in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.2 are solely for income tax purposes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

(d) The provisions of this Section 9.2 are intended to comply with Code Section 704(c) and the Regulations promulgated thereunder. The Members shall make any modifications to this Agreement as may be required to comply with Section 704(c) and the Regulations thereunder.

9.3 **Other Allocation Rules.**

(a) Except as otherwise provided in this Agreement, items of income, gain, loss, deduction and credit shall be allocated among the Members for income tax purposes in a manner consistent with the allocations made for "book purposes" under Section 4 under this Section 9. Specifically, items of taxable income or loss corresponding to items which have been specially allocated pursuant to Section 9.1 shall be allocated for tax purposes in the same manner as those items are allocated for book purposes. Taxable income or loss for any Accounting Period which is not allocated pursuant to the preceding sentence and which is not otherwise allocated pursuant to Section 4 or this Section 9 shall be allocated among the Members for tax purposes in the same proportion that Profit or Loss has been allocated for that Accounting Period under Section 4.

(b) For purposes of determining the Profits, Losses or any other items allocable to any Accounting Period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

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

(d) Notwithstanding the other provisions of Section 4 of this Section 9, the Managing Members are authorized to make any adjustment in the allocation of Profits or Losses provided for in such Sections if the Managing Members consider in good faith that the adjustment is necessary and equitable to correct errors in allocations caused by errors in unaudited financial information or to correct inequities which may arise under this Agreement, including those which may result from there being multiple Accounting Periods during a single Fiscal Year or during the term of this Agreement rather than a single Accounting Period.

(e) Solely for purposes of determining each Member's share of "excess nonrecourse liabilities" of the Company, as such term is defined in Regulations Section 1.752-3(a)(3), each Member's Membership Interest in Profits for any Accounting Period shall be that Member's Membership Interest in the Company for that Accounting Period.

(f) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Company shall endeavor to treat distributions as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would not cause or increase an Adjusted Capital Account Deficit for any Member.

9.4 **Targeted Capital Account Balances.** The allocations in Section 9.1 are intended to comply with certain requirements of the Code and applicable Regulations, as well as produce final Capital Account balances that are at levels ("Target Final Balances") which would permit liquidating distributions to be made in a manner consistent with the distributions provided for in this Article. To the extent that the allocation provisions of this Agreement would not produce the Target Final Balances, the Managing Members are hereby authorized (in the year of liquidation, or if necessary and permissible under the Code, in immediately preceding years) to amend such provisions by allocating items of gross income, gain, income, or deduction in a manner to produce such Target Final Balances.

Article 10
GENERAL

10.1 **Notices.** Any notice or consent required or provided for by any provision of this Agreement shall be in writing and shall be deemed to have been duly and properly given or served for any purpose only if delivered personally, or by commercial overnight courier such as Federal Express with receipt acknowledged, or by registered or certified mail, return receipt requested together with another copy by ordinary United States mail, postage and charges prepaid and addressed to the Members at their respective mailing addresses set forth in the Company's books and records. Further, electronic transmissions, via facsimile or scanned/pdf shall be deemed sufficient notice and shall be deemed delivered upon sending. It shall be the responsibility of each Member to notify the Company and each of the other Members of any change in mailing address.

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10.2 **Further Assurances.** Each Member agrees to execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents, and to take all such further action and provide such information as may be required by law or deemed to be necessary or useful in furtherance of the Company's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

10.3 **Prohibition Against Partition.** Each Member hereby permanently waives and relinquishes any and all rights he, she, or it may have to cause all or any part of the Property of the Company to be partitioned, it being the intention of the Members to prohibit any Member from bringing a suit for partition against the Company, the other Members, or any of them.

10.4 **Waiver.** No consent or waiver, express or implied, by any Member to or of any breach or default by any other Member in the performance by any other Member of his, her or its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Member of the same or any other obligation of such Member hereunder. Failure on the part of a Member to complain of any act (or failure to act) of any other Member or to declare such other Member in default, irrespective of how long such failure continues, shall not constitute a wavier by such Member of his rights hereunder.

10.5 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10.6 **Additional Remedies.** The respective rights and obligations under this Agreement shall be enforceable by specific performance, injunction or other equitable remedy, but nothing contained herein shall limit or affect any other rights in equity or any rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties hereto that their respective rights and obligations hereunder shall be enforceable in equity as well as at law or otherwise. Further, if any Member has to institute a legal proceeding to enforce the Member's rights or the terms of this Agreement against any other Member or against the Company, the prevailing party may recover incurred legal fees from the losing party.

10.7 **Choice of Law and Forum.** This Agreement and all matters relating to the Company shall be governed and construed in accordance with the laws of the State of New Jersey.

10.8 **Amendments**. This Agreement may be modified or amended by the Managing Members subject to the limitations provided.

10.9 **Gender and Number.** Unless the context otherwise requires, when used herein, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter and vice versa.

10.10 **Benefit.** Subject to transfer restrictions set forth in Article 7, this Agreement is binding upon and inures to the benefit of the parties hereunder, their legal representatives, successors and permitted assigns.

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10.11 **Captions.** Captions are inserted for convenience only and shall not be given any legal effect.

10.12 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all signature pages, when taken together, shall constitute one document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Further, signatures submitted via facsimile or scanned/pdf delivery shall be deemed original signatures.

10.13 **Severability.** If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

10.14 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

10.15 **Arbitration.** In the event that any dispute shall arise among the Members hereto as to any matter or thing covered hereby or as to the meaning of this Operating Agreement, or to any state of facts that may arise, same shall be settled by the agreement of the Members or Managing Members, or if they are unable to agree, same shall be settled, by final and binding arbitration by the American Arbitration Association. Any claim for arbitration will be timely only if brought within the time in which an administrative charge or complaint must have been filed or, if any administrative charge is not involved, within the time set by the appropriate statute of limitations. The Members or Managing Members agree to utilize a single arbitrator who shall be a retired judge of the Superior Court in New Jersey. The arbitrator will handle the arbitration, in an expedited manner, within sixty (60) days from the date that arbitration is requested, unless otherwise mutually agreed by the Members. The arbitrator shall provide each Member or Managing Members with reasonable opportunity for pre-hearing discovery of information relevant to the claims and defenses raised in the arbitration and shall otherwise insure fairness and due process in the arbitration process and hearings. For issues involving pre-hearing discovery, procedures before and during the hearing and admissibility of evidence and other evidentiary matters that are not addressed, the arbitrator shall be guided, but not controlled by, the New Jersey Rules of Civil Procedure and the New Jersey Rules of Evidence. In seeking such guidance from these Rules, the arbitrator shall balance the need for fairness and due process against the purposes of arbitration to provide a quicker, less costly and less cumbersome process than the courts for the resolution of disputes. Any award rendered by the arbitrator shall be final, binding upon the Members and the Managing Members, and shall not be subject to appeal. Any action to confirm such award may be entered in any New Jersey court having jurisdiction thereof. Each party shall be responsible for such party's own attorneys' fees and each party shall share equally in the cost of arbitration, subject to each party's right to seek an award of attorneys' fees and costs incurred in the arbitration.

10.16 **Force Majeure.** A Member will be free of liability to the Company where the Member is prevented from executing such Member's obligations under this Operating Agreement

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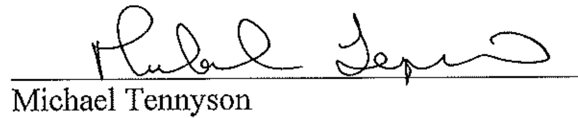
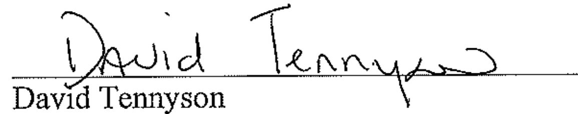
in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Member has communicated the circumstance of the event to the other Members and where the Member has taken any and all appropriate action to satisfy such Member's duties and obligations to the Company and to mitigate the effects of the event.

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

MEMBERS:



Michael Tennyson



David Tennyson

HVM HOLDINGS, LLC

BY:____________________________
Thomas Galante, Authorized Rep.

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SCHEDULE A

MEMBERS, MEMBERSHIP INTEREST, and CAPITAL CONTRIBUTION

Class A Members	Percentage Interest	Capital Contribution
Michael Tennyson	33.33%	$100,000.00
David Tennyson	33.33%	$100,000.00
HVM Holdings, LLC	33.33%	$100,000.00

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EXHIBIT A

GLOSSARY OF TERMS AND INTERPRETATION

1. Definitions. Capitalized terms and other terms contained and used in the Agreement which are not specifically defined herein shall have the meanings ascribed to them in the Act. The capitalized terms contained and used in this Agreement which are defined below shall have the respective meanings ascribed to them as follows:

"Act" means the New Jersey Limited Liability Company Act, as it may be amended from time to time.

"Agreement" means this Operating Agreement as it may be amended, modified, supplemented or restated from time to time in accordance with the terms and limitations set forth in this Agreement.

"Bankruptcy" means, with respect to any Member, that such Member shall have (1) made an assignment for the benefit of creditors; (2) filed a voluntary petition in bankruptcy; (3) been adjudicated bankrupt or insolvent; (4) filed a petition or answer seeking voluntarily any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (5) filed an answer or other pleading admitting or failed to contest the material allegations of an involuntary petition filed in any proceeding set forth in (4) above; or (6) sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of all or any substantial part of his, her, or its properties; or if 30 days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 150 days after the appointment, without his, her, or its consent or acquiescence, of a trustee, receiver, or liquidator for the Member or Manager, of all or any substantial part of his, her, or its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

"Capital Account" means the account established and maintained for each Member on the books of the Company for accounting and tax reporting purposes. A Member's capital account is increased by (a) additional cash contributions, if any, made by the Member to the Company, (b) the fair market value of any property contributed by the Member to the Company (net of any liability assumed by the Company and any liability to which such property is subject), and (c) the amount of any income (including income exempt from federal income tax) or gain allocated to the Member for federal income tax purposes; and decreased by (1) the amount of any Distributions of cash made to the Member, (2) the fair market value of any Distributions of property made to the Member (net of any liability assumed by the Member and any liability to which such property is subject), and (3) the amount of any losses allocated to the Member for federal income tax purposes, accounting principles, all in accordance with federal tax accounting principles. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Treasury Regulation Section 1.704-l(b) and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation. All Members acknowledge that Capital Accounts are distinguished from and accounted for separately from Adjusted Capital.

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"Capital Gain" means gain realized on the sale of a capital asset.

"Capital Loss" means loss realized on the sale of a capital asset.

"Certificate" means the Certificate of Formation filed or to be filed with respect to the Company as that Certificate of Formation may be amended, modified or supplemented from time to time in accordance with the provisions of this Agreement.

"Class A Member" means those Class A members set forth on Schedule A of this Agreement.

"Class B Member" means those Class B members set forth on Schedule A of this Agreement.

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

"Construction Loan" shall mean the loan made to the Company for the purpose of constructing the Project.

"Developer" shall mean the Company.

"Distributions" means cash or other property paid out by the Company to the Members. The repayment of any Members' loans made to the Company, and any payment of fees to a Member or reimbursement of disbursements shall not be considered Distributions. No Member shall be entitled to charge any overhead or indirect costs to the Company. All services provided to the Company by any of the Members or related entities shall be at market rates with a reasonable profit.

"Economic Interest Holder" means an individual or entity that owns an economic interest in the Company but is not a Member and does not have the other membership rights.

"Income and Gain from Dispositions" means all net income and gain recognized by the Company for federal income tax purposes resulting from the sale or other disposition of all or a substantial portion of the Property or other capital asset.

"Income from Operations" means all income and gain recognized by the Company for federal income tax purposes, other than Income and Gain from Dispositions.

"Company" has the meaning set forth in the preamble hereto.

"Company Interest" refers to a Member's entire right, title and interest in the Company.

"GAAP" means generally accepted accounting principles.

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"Losses from Dispositions" means all net losses recognized by the Company for federal income tax purposes resulting from the sale or other disposition by the Company of all or a substantial portion of the Property or other capital asset.

"Losses from Operations" means all losses recognized by the Company for federal income tax purposes other than Losses from Dispositions.

"Members" has the meaning set forth in the preamble hereto.

"Net Profit" means the difference between the sales price (in one or a series of *bona* fide sales to an unrelated third party) less the purchase price the LLC paid for the Property, less carrying costs (which shall be limited to interest on any institutional debt, insurance premiums and real property taxes, if any, less the Due Diligence Extension Payment, the Initial Deposit and all out of pocket costs as defined in and as attached as an exhibit to the Agreement to Assign the RAS, less usual and customary closing costs incurred in connection with the sale, including but not limited to transfer taxes, bulk sales taxes (to the extent actually paid), broker commissions to unrelated third parties, and legal fees incurred in connection with such sale.

"Percentage Interest" means the interest of each Member in the Company as set forth in Schedule A.

"Person" means any individual, corporation, partnership (general or limited), association, limited liability company, trust, estate or other entity.

"Project" means the development and construction of a multi-family building or buildings on the Property.

"Property" means all those certain lots, tracts and/or parcels of land, as defined in the preamble of this Agreement.

"State" means the State of New Jersey.

"Total Capital" means the total amount of cash and the fair market value of any property contributed to the Company by each Member.

"Unrecovered Capital" means as to each Member (i) the amount of its original capital contribution plus (ii) all of that Member's subsequent contributions to capital less (iii) all returns of (i) and (ii).

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