

Thomas P. Sayer, Jr.
Attorney at Law
Serving the Hospitality Industry

August 2, 2024

Neli N. Palma
Supervising Deputy Attorney General
State of California
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

Original Via FedEx
Copy Via Email: Neli.Palma@doj.ca.gov

Re: Lake Park Senior Living - 1850 Alice St., Oakland. CA 94612
Change in RCFE Operator to Calson Senior Living

Dear Ms. Palma:

This is regarding a change of manager for the RCFE portion of Lake Park Senior Living, 1850 Alice St., Oakland. CA 94612 ("**Lake Park**") pursuant to Section III (b) of the September 23, 2023 Conditions of Sale (the "**Conditions**") for the purchase and sale transaction between California-Nevada Methodist Homes, a California nonprofit public benefit corporation, and Pacifica Companies LLC, a California limited liability company and its affiliates.

Amendment Request. We respectfully request several amendments to the Conditions to enable Calson Care Oakland, LLC, a California limited liability company ("**CSL**"), to operate the RCFE portion of Lake Park. The previously approved RCFE operator, Northstar Senior Living Inc. ("**Northstar**"), has agreed to terminate its Management Agreement with Pacifica's single-asset entity, LAKE MERRITT SENIOR LIVING LLC, a California limited liability company ("**LMSL**").

The requested amendments would (1) substitute CLS for Northstar in Section I of the Conditions; and (2) make any conforming changes.

Circumstances Requiring Amendment. A change of the RCFE operations from Northstar to CSL will improve the resident satisfaction and long term financial viability of the community.

Consistency of Amendment with Conditions. The requested amendment is tailored to simply replace Northstar at Lake Park with CLS. This amendment would leave intact all other components of the Conditions and thus would serve the public interest. In fact, the amendment would enhance protections of the public because Calson is a local Bay Area-based Operator with several neighboring communities and a corporate staff all located in close proximity.

Notification of Residents. Once approved by the AG, LMSL will send a detailed notice to RCFE residents and their families describing the change in RCFE operators.

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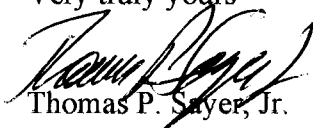
Supporting Documents. The following documents are attached to support this amendment request:

1. ~~Articles of Organization of CALSON. This document identifies the date of formation, structure, purpose, and manager of CALSON.~~
2. Operating Agreement of CALSON. This document identifies the governance structure of CALSON and its Members.
3. Management Agreement between LMSL and CALSON. This document describes the management of the RCFE by CALSON to enable CALSON to operate the RCFE as the licensed operator.

For all of the foregoing reasons, we respectfully request your Office's approval of the proposed amendments as soon as possible.

Thank you very much for your consideration.

Very truly yours


Thomas P. Sayer, Jr.

Enclosures

cc: Adam Bandel
Deepak Israni

CALSON MANAGEMENT: OVERVIEW

CALSON MANAGEMENT

Calson Management (“Calson”) is a second-generation, family-owned and operated group with over 30 years of experience in the Senior Housing industry. The company’s mission is to serve the health needs & improve the quality of life for aging seniors who need assistance with daily activities. Calson Management provides a full suite of services and solutions for every aspect of a Senior Living project, including but not limited to pre-development, development, owner’s representation, horizontal and vertical construction as well as long term operations. The company is vertically-integrated with a built out corporate team, lead by COO Sadek Nassar and VP of Operations Alana Reyes. Calson has focused operations that target the California market, as although California is the sixth youngest state, it is projected to age faster than the entire nation.

Calson’s current portfolio includes 12 properties across California, including over 1,000 units of Senior Housing inventory with an aggregate market value of more than \$650 million. The company is extremely active and growth-oriented, with three other communities currently under construction and two other Projects currently into the development process, totaling an aggregate of 545 units in the pipeline.



Our Senior Housing Mission

The mission of our proposed Seniors Housing Community is to serve the health needs and improve the quality of life for aging seniors who need assistance with daily activities of living. The Community will be a comforting environment, deftly incorporating safety and supportive cues throughout. The building design incorporates a secured environment for memory care residents along with courtyards, walking paths, emergency nurse call systems and 24-hour supervised care by care staff. Amenities include activity areas, rooftop garden, cafe, movie theatre, activities room, library and a wellness center.

MANAGEMENT TEAM



Jason Reyes

Managing Partner

- Leadership of Calson since 2012
- Emphasis on long-range planning, acquisitions, financing, project development, and lease-up



Alana Reyes

VP of Operations

- Over 30 years of experience in senior living
- She began her career as a Social Services Director and Admissions Coordinator in a skilled nursing facility

CALSON: DEVELOPMENT EXPERIENCE

\$900M+ Operating, Under Construction or Entitled Senior Living Developments

Opened Jan. 2014

Vacaville, CA

Cornerstone Assisted Living

\$22M Development

107 Units



Opened Jan. 2021

Vallejo, CA

The Lodge At Glen Cove Senior Living

\$42M Development

141 Units



Opened Sep. 2016

Fairfield, CA

Rockville Terrace Senior Living

\$36M Development

148 Units



Opened May 2023

Santa Rosa, CA

The Lodge At Piner Senior Living

\$33M Development

92 Units



Opened April 2019

Bakersfield, CA

The Palms at San Lauren Senior Living

\$18M Development

68 Units



Opened Feb. 2024

Dixon, CA

Farmstead at Dixon

\$24M Development 86

Units



Opened March 2018

Vacaville, CA

Vaca Valley Living

A Memory Care Community

\$17M Development

50 Units



Opened May 2024

Mountain View, CA

Villa Toscana

\$32M Development 60

Units



CALSON: DEVELOPMENT EXPERIENCE

UNDER CONSTRUCTION

Under Construction

Opening Q1 2024

Los Gatos, CA

\$66M Development

113 Units



Under Construction

Opening Q4 2024

Campbell, CA

\$47M Development

86 Units



Under Construction

Opening Q1 2025

Soquel, CA

\$30M Development

82 Units



CALSON: DEVELOPMENT EXPERIENCE

FULLY ENTITLED

Livermore, CA

Shovel Ready
\$62M Development
125 Units



Dublin, CA

Construction Drawings (Memory Care)
\$31M Development
53 Units



Dublin, CA

Construction Drawings (Assisted Living)
\$49M Development
84 Units

San Luis Obispo, CA

Shovel Ready
\$45M Development
101 Units



Orcutt, CA

Construction Drawings (Phase I)
\$40M Development
105 Units

San Jose, CA

Shovel Ready
\$105M Development
165 Units

CALSON'S EQUITY PARTNER OVERVIEW - \$75M COMMITMENT

RSF Partners ("RSF") is a private equity firm based in Dallas, TX that invests in real estate assets and related companies. The firm focuses primarily on the senior living sector and opportunistic commercial real estate investments, implementing an adaptive approach to evolving market conditions. Since its founding in 1998, RSF has invested over \$1 billion in discretionary private equity capital across all real estate product types, layers of the capital stack, and regions of the United States.



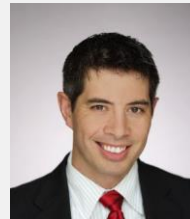
RSF invests in senior living properties and related operating entities through acquisitions of existing senior living assets as well as through the development of new facilities. RSF invests across the full continuum of care and targets markets with supply/demand mismatches and high barriers to entry. Given RSF's 20-year successful track record of investing in this space, RSF leverages its experience and expertise to navigate substantial operational and regulatory complexities to make strategic investments in senior living facilities. RSF invests in standalone facilities and on a programmatic basis, either in joint ventures with operators or as a facility's landlord.

MANAGEMENT TEAM



Christopher Mahowald
Managing Director

Christopher Mahowald serves as the President of RSF Partners, Inc. and of the General Partner. Since January 1998, Mr. Mahowald has been responsible for originating, structuring and executing opportunistic real estate investments on behalf of RSF. Prior to forming RSF, Mr. Mahowald was a founder and/or principal of three institutional discretionary equity real estate funds (Colony Capital, Brazos Fund, LP and Lone Star Opportunity Fund, LP) and was a key investment officer in various real estate related investment activities at Keystone, Inc. (formerly the Robert M. Bass Group).



Sebastian Brown
Senior Director, Senior Living

Sebastian Brown oversees RSF's Seniors Housing group. Prior to joining RSF Partners, Mr. Brown was a Director of Asset Management with Hudson Americas, the asset management division of Lone Star Funds. During his tenure with Hudson, he managed more than \$2 billion of assets, with experience in both real estate equity investments and distressed loans. Prior to Lone Star, Mr. Brown completed over 250 Seniors Housing appraisals and market studies while at James Brown Associates, and he led over 100 acquisitions and development projects during his three-and-a-half years at Canyon Creek Development.



Quality, Commitment, Care for All



202462418262



STATE OF CALIFORNIA
Office of the Secretary of State
ARTICLES OF ORGANIZATION
CA LIMITED LIABILITY COMPANY

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 657-5448

For Office Use Only

-FILED-

File No.: 202462418262

Date Filed: 5/29/2024

B2775-0676 05/29/2024 12:10 PM Received by California Secretary of State

Limited Liability Company Name	
Limited Liability Company Name	Calson Care Oakland, LLC
Initial Street Address of Principal Office of LLC	
Principal Address	4950 ALLISON PARKWAY SUITE A VACAVILLE, CA 95688
Initial Mailing Address of LLC	
Mailing Address	4950 ALLISON PARKWAY SUITE A VACAVILLE, CA 95688
Attention	
Agent for Service of Process	
Agent Name	Jaon Reyes
Agent Address	4950 ALLISON PARKWAY SUITE A VACAVILLE, CA 95688
Purpose Statement	
The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.	
Management Structure	
The LLC will be managed by	One Manager
Additional information and signatures set forth on attached pages, if any, are incorporated herein by reference and made part of this filing.	
Electronic Signature	
<input checked="" type="checkbox"/> By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.	
<i>Jason Reyes</i>	<i>05/29/2024</i>
Organizer Signature	Date

OPERATING AGREEMENT
OF
CALSON CARE OAKLAND, LLC
A California Limited Liability Company

In accordance with the California Revised Uniform Limited Liability Company Act and, subject to the Articles of Organization, THE REYES FAMILY TRUST (individually a “Member” and collectively the “Members”) enter into this operating agreement (“Agreement”) of CALSON CARE OAKLAND, LLC, a California limited liability company (the “Company”) on May 29, 2024 (the “Effective Date”).

RECITALS

WHEREAS, in accordance with the California Revised Uniform Limited Liability Company Act, the Members desire to enter into this Agreement to delineate their rights and liabilities as Members of the Company; and

WHEREAS, the Members likewise desire to enter into this Agreement to provide for the Company’s management as well as to address other matters pertaining to the Company’s continued existence and operation.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions specified in this Agreement, the Members agree as follows:

SECTION 1 DEFINITIONS

The following capitalized terms shall at all times have the meaning set forth within this Section:

1.1. “Articles” shall mean those certain Articles of Organization duly filed with the California Secretary of State’s Office on May 29, 2024, wherein the Company was originally formed.

1.2. “Assignee” shall mean any Person to whom or to which an Economic Interest has been assigned but who has not been admitted as a Member of the Company.

1.3. “Available Cash” shall mean the amount of cash that the Manager deems available for distribution, in the exercise of reasonable business judgment, taking into account the total cash contributed to or generated by the Company, less any applicable cash expenditures, compensation for services paid to the Manager, debt servicing or operating expenses, as well as any amounts reasonably appropriate to set aside for reserves, including amounts set aside for future improvements to or acquisitions of real property.

1.4. “Bankruptcy” shall mean the (i) initiation of any proceeding against any Member under federal or state laws for the relief of debtors including the filing of a voluntary or involuntary petition in bankruptcy; (ii) the adjudication of any Member as insolvent or bankrupt; (iii) the assignment of any Member’s property for the benefit of creditors; (iv) the appointment of a receiver, trustee or a conservator of any substantial portion of the Member’s assets; or (v) the seizure by a sheriff, receiver, trustee or conservator of any substantial portion of a Member’s assets whenever the Member fails to obtain a dismissal of the proceeding or removal of the conservator, receiver or trustee within thirty (30) days of its initiation.

1.5. “Capital Account” shall mean that certain account which shall be maintained for and on behalf of each Member in accordance with the terms and conditions of this Agreement.

1.6. “Code” shall mean the United States Internal Revenue Code of 1986, as amended, or any successor provisions of law.

1.7. “Company Minimum Gain” shall have the meaning ascribed to “Partnership Minimum Gain” as set forth in Regulations Section 1.704-2(d).

1.8. “Distribution” shall mean any cash or other payments distributed to any Member (or Assignee) arising from his or her interests in the Company, other than payments for services or repayment to any such Member for a loan.

1.9. “Economic Interest” shall mean the right to receive distributions from the Company in accordance with the terms and conditions specified herein. Notwithstanding the foregoing, “Economic Interest” shall at no time be construed or interpreted to include any other right held or exercised by a Member such as the right to vote, participate in the management of the Company or, except as provided within Section 17106 of the Act, the right to access or receive information concerning the Company’s business or affairs.

1.10. “Family” shall mean parents and children and their lineal descendants.

1.11. “Initial Contribution” shall mean those certain contributions, as identified in Exhibit “A”, made by each of the Members in exchange for their respective initial Membership Interests.

1.12. “Majority” shall mean, as to the Manager, and as to the Members, the Members who collectively own no less than fifty-one percent (51%) of the total outstanding Membership Interests in the Company.

1.13. “Member Nonrecourse Debt” shall have the meaning ascribed to “Partner Nonrecourse Debt” as set forth in Regulations Section 1.704-2(b)(4).

1.14. “Member Nonrecourse Deductions” shall mean items of Company loss, deduction or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.15. “Membership Interest” shall mean a Member’s entire right, title and interest in the Company including the Member’s Economic Interest or right to vote, participate in the management of the Company or receive information concerning the Company’s business or affairs, as identified in Exhibit “A”, as amended from time to time.

1.16. “Net Income” shall mean the aggregate income or gain associated with the business of the Company as determined in accordance with the method of accounting used at the close of each fiscal year to prepare and file the Company’s federal tax returns.

1.17. “Net Loss” shall mean the aggregate losses or deductions associated with the business of the Company as determined in accordance with the method of accounting used at the close of each fiscal year to prepare and file the Company’s federal tax returns.

1.18. “Nonrecourse Liability” shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.19. “Person” shall mean an individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association or any other entity.

1.20. “Property” shall mean the furniture, fixtures, equipment and supplies used at certain assisted living and memory care facilities.

1.21. “Supermajority” shall mean, as to the Members, the Members who collectively own no less than seventy-five percent (75%) of the total outstanding Membership Interests in the Company.

1.22. “Tax Matters Partner” (as defined in Code Section 6231) shall be Jason Reyes.

1.23. “Transfer” or “Transferred” shall mean any sale, assignment, transfer, conveyance pledge, hypothecation, or other disposition voluntarily or involuntarily, by operation of law, with or without consideration or otherwise (including, without limitation, by way of intestacy, will, gift, trust, bankruptcy, receivership, levy execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Partnership Interest.

SECTION 2 FORMATION

2.1. Formation. The Members have formed a California limited liability company pursuant to the Act by filing the Articles with the California Secretary of State and by executing this Agreement. Upon the execution of this Agreement, the Manager shall do or cause to be done all such filing, recording or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in California and any such requirements in any other jurisdiction in which the Company may do business.

2.2. Company Purpose.

2.2.1. Business. The business purpose of this Company shall at all times be to (1) own, acquire, manage, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with the Property used at the memory care living facilities (2) acquire, own, buy, sell, invest in, trade, manage, finance, refinance, exchange, or otherwise dispose of stocks, securities, partnership interests, membership interests, CDs, mutual funds, commodities, and any and all investments whatsoever, that the Manager may from time to time deem to be in the best interests of the Company; and (3) engage in such other activities as are related or incidental to the foregoing purposes.

2.2.2 HUD. Notwithstanding any clause or provision in this Agreement to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan secured by Beverly Hills Carmel Retirement Hotel North (the “HUD Loan”), the following provisions shall prevail:

The following terms as used herein shall have the following meanings:

“HUD Loan Documents” shall mean (i) the Healthcare Regulatory Agreement - Operator, (ii) the Operator Security Agreement executed by Calson Care Oakland, LLC in connection with the HUD Loan and (iii) the Assignment of Rents and Leases executed by Calson Care Oakland, LLC in connection with the HUD Loan.

“Healthcare Facility” shall mean that certain assisted living facility located in Los Angeles, California, and commonly known as Beverly Hills Carmel North.

The business and purpose of Calson Care Oakland, LLC shall consist solely of (a) operating and maintaining the Healthcare Facility, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which Calson Care Oakland, LLC is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing. Calson Care Oakland, LLC shall not engage in any other business or activity.

Calson Care Oakland, LLC shall comply with all applicable Program Obligations, as that term is defined in the HUD Loan Documents, including those related to distributions.

2.2.3. Purposes Allowed by the Act. The Company shall at all times be authorized to engage in any and all business permitted by the Act. Should the Company become qualified to conduct business in a foreign jurisdiction, the Company shall be entitled to transact any and all business permitted therein and, subject to applicable law, no jurisdictional restrictions upon the Property or activities of the Company shall be imposed.

2.2.4. Company Authority. To accomplish the aforementioned purpose of the Company, the Company shall at all times be authorized to transact and otherwise engage in business activities pertaining to:

(a) Real Estate. (i) commercial real estate transactions; (ii) the acquisition, ownership, holding, development or operation of real property, either as operator, managing agent, principal, agent, partner, stockholder, syndicate member, associate, joint venture, participant, or otherwise; (iii) investment and fund-raising activities for the development or operation of real property; (iv) the purchase, construction, acquisition, ownership, development, operation, lease or other disposition of buildings, fixtures, and improvements; and (v) any other act reasonably necessary or incidental to the transfer, pledge, collateralization or hypothecation of real property;

(b) Securities. the purchase, sale, investment or other dealing in stocks, bonds or any other obligation of any domestic or foreign governmental entity, notes, evidences of indebtedness, bills of exchange and commercial paper, as well as any other lawful security or commodity;

(c) Business Entities. The formation of any business entity or trust for the purpose of carrying on a lawful trade or business, as well as the acquisition of any membership interests in a limited liability company, shares in a corporation, partnership interests in a partnership, or ownership interest in a syndication;

(d) **Conveyancing.** The purchase, sale, lease or other lawful dealing in services, real or personal property, regardless of the depreciable nature of any such property;

(e) **Guaranties.** Guaranteeing of the financial transactions of others either with or without a fee;

(f) **Debt.** Borrowing and lending money;

(g) **Encumbrance.** Encumbering the Property;

(h) **Offices.** Operating offices, leasing or acquiring office space, engaging personnel or any other administrative function necessary to fulfill the Company Purpose;

(i) **Insurance.** Purchasing and carrying any insurance which the Manager may deem necessary or appropriate;

(j) **Expenses.** Paying any expenses or costs, and performing any and all acts deemed necessary or appropriate by the Manager to fulfill the Company Purpose; or

(k) **Businesses.** The operation of any lawful business enterprise or undertaking which accomplishes or facilitates the Company Purpose.

2.2.5. **Authority of Manager.** The Manager may take any action permitted either by this Agreement or the Act to accomplish the Company Purpose, including any and all activities customary or reasonably related to the acquisition, ownership, management, sale, investment or encumbrance of the Property. Any action taken by the Manager shall be in a fiduciary capacity for the benefit of all Members.

2.3. **Name.** The name of the Company shall be Calson Care Oakland, LLC. The Company may adopt such trade or business names as the Manager shall consider appropriate.

2.4. **Place of Business.** The Company's principal place of business shall at all times be 2012 Broom Grass Ct, Vacaville, California; provided, however, the Manager may, from time to time, change the principal place of business and shall so notify the Members within thirty (30) days of any such change.

2.5. **Limited Liability.** Unless otherwise expressly specified within this Agreement or required by law, no Member shall be personally responsible or liable for any debt, obligation or liability of the Company arising in contract, tort, or otherwise.

2.6. **Tax Classification.** Except for such times during which there may be only a single Member of the Company, as determined for federal income tax purposes, the Members intend and agree that the Company shall be classified as a partnership for purposes of federal and, to the maximum extent possible, state income taxation. Notwithstanding the foregoing, each Member expressly acknowledges and agrees that this classification shall not at any time create or imply the existence of a general or limited partnership or joint venture between the Members or otherwise create any other obligation or duty other than those either imposed by law or specified herein. Each Member acknowledges the Company's status as a limited liability company duly formed

under the Act and expressly agrees to refrain from any act or representation inconsistent with this particular status.

SECTION 3 TERM

3.1. Term and Commencement. The term of the Company shall commence on the date the Articles were first filed with the California Secretary of State and shall continue until the Company is dissolved as provided in Section 3.2.

3.2. Dissolution. The Company shall dissolve upon the earlier of one or more of the following events (individually “Termination Event” and collectively “Termination Events”):

- (a) the election by the Manager;
- (b) the election by the Supermajority of the Members;
- (c) the sale of all or substantially all of the Company’s assets and subsequent distribution of the proceeds to the Members;
- (d) the occurrence of any event which renders it unlawful or impossible to carry on the Company’s business; or
- (e) a judicial decree issued in accordance with Section 17351 of the California Corporations Code.

3.3. Reconstitution. Following the occurrence of a Termination Event (as defined in Section 3.2 above), the Members may reconstitute the Company business through the creation of a new limited liability company, which shall operate in accordance with the same terms and conditions imposed by the Act and this Agreement. If, following the occurrence of a Termination Event, the Members should choose to reconstitute the Company’s business, the new company’s Manager shall be elected by a Majority of the Members. Expenses incurred in the reconstitution or attempted reconstitution of the Company shall be deemed Company expenses.

3.4. Wind Up. Following the dissolution of the Company, the Company’s affairs shall be wound up by the Manager, or the remaining Manager if the other Manager has resigned or has wrongfully caused the dissolution. Otherwise, the Company’s affairs shall be wound up by the then-existing Members.

SECTION 4 MANAGEMENT

4.1. Manager. The Company shall be managed by the following individuals who shall at all times be the Company’s Manager and who shall at all times possess any and all authority necessary or useful to ensure that the Company is able to successfully accomplish the purpose for which it was formed:

Jason Reyes

4.1.1. Specific Authority. Without limiting the generality of the foregoing, the Manager shall have the right to:

(a) cause this Company to acquire interests in other partnerships, limited liability companies or any other type of entity and to exercise the authority or perform the duties required by any such partnerships, limited liability companies or other entities;

(b) acquire, hold and dispose of property or any interest therein;

(c) borrow money on behalf of the Company, encumber the Property or place title to the Property in the name of a nominee in order to obtain financing;

(d) prepay, refinance, increase, modify or extend, either in whole or in part, any obligation of the Company;

(e) employ consultants, accountants or attorneys on behalf of the Company and at the Company's expense;

(f) pay any and all organizational expenses incurred through the creation or operation of the Company;

(g) assume and fulfill any and all duties imposed on the Manager by the Act; and

(h) voluntarily assign and delegate a Manager's duties and rights in accordance with the Act and the terms and conditions set forth herein.

4.2. Signatories. Notwithstanding the foregoing, the following individuals will at all times each have authority to sign any and all checks, money orders, drafts or other negotiable instruments on the Company's behalf:

Jason Reyes

4.3. Limitation on Manager's Authority. Notwithstanding Section 4.1, the Manager shall at no time have the authority to do any of the following without the written consent of a Supermajority of the Members:

(a) perform any act which would contravene either the Act or this Agreement;

(b) confess a judgment against the Company;

(c) execute or deliver any general assignment for the benefit of the Company's creditors;

(d) file or consent to the filing of a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act;

- (e) make a non-pro rata Distribution to any Member
- (f) purchase property from the Company, or sell property to the Company;
- (g) possess or assign the Property or any rights of the Company for any reason other than to fulfill the Company Purpose;
- (h) admit any individual or entity to the Company as a Member, except as provided in Section 10; and
- (i) conduct any act which would subject any Member to liability.

4.4 Compensation. The Company's Manager shall be entitled to compensation in an amount to be determined by the Supermajority of the Members.

4.54. Members. The Members shall not participate in the general conduct or control of the Company's affairs and shall have no right or authority to act for or to bind the Company. The Members hereby consent to the exercise by the Manager of the powers conferred by this Agreement and to the employment, when and if the same is deemed necessary or advisable, of such brokers, agents, accountants, attorneys, and such other advisors as the Manager may determine to be appropriate for the management of the Company's business.

4.5. Devotion of Time. The Manager shall not be obligated to devote full time to the Company's affairs and may become involved in other businesses or occupations. Notwithstanding the foregoing, the Manager shall devote a reasonable amount of time as necessary to the management of the Company and its business and otherwise performing the duties imposed upon the Manager either by the Act or this Agreement.

4.6. Indemnification of Manager. The Company (but not the Members) or, if applicable, its receiver or trustee, shall indemnify and hold the Manager, as well as the Members, employees, agents or assigns, harmless from and against any and all claims or liabilities arising or incurred as the result of any act conducted by the Manager during the course of fulfilling any obligation imposed either by the Act or this Agreement, except for such claims or liabilities that arise as the result of a Manager's gross negligence, willful misconduct, fraud or criminal act. Indemnification shall include, but not be limited to, attorneys' fees, costs and any other amounts expended by a Manager in the settlement of any such liability or claim.

4.7. Members Liability Limitation. No Member shall be personally liable for any Company losses or liabilities in excess of the Member's Capital Account balance.

4.8. Investment Opportunities. The Manager shall not be obligated to present any particular investment opportunity to the Company and the Manager shall at all times have the right to take for his own account or to recommend to others any investment opportunity.

4.9. Taxation Matters. The Tax Matters Partner shall be solely responsible for representing the Company in any and all dealings with the Internal Revenue Service as well as any state, local or foreign tax authority. The Manager shall at all times, however, keep the Members reasonably informed of any matters pertaining to the Company's potential tax liability as well as the Company's dealings with any federal, state, local or foreign tax agency.

SECTION 5 CAPITAL CONTRIBUTIONS

5.1. Initial Contributions. The Company's initial capital shall consist of the Initial Contributions made by each of the Members. The Members shall contribute as their Initial Contributions all of their right, title and interest in and to the property described in Exhibit "A". The Members agree that the property described in Exhibit "A" has the fair market value (net of liabilities assumed or taken subject to by the Company, to which such property is subject) as listed in the exhibit, and that each Member's Capital Account shall be credited with an initial capital contribution equal to the fair market value as listed in Exhibit "A".

5.2. Additional Contributions. The Manager may determine, from time to time, that Capital Contributions in addition to the Members' Initial Contributions are needed to enable the Company to conduct its business. On making such a determination, the Manager shall give notice to all Members in writing at least 30 days before the date on which the additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Members shall contribute. Each Member shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that the Member's Capital Account balance bears to the total Capital Account balances of all Members. No Member may voluntarily make any additional Capital Contribution.

5.2.1. Failure to Contribute. If a Member fails to make an additional Capital Contribution required under Section 5.2 of this Agreement within 30 days after it is required to be made (a "Defaulting Member"), the Manager shall, within 5 days after that failure, notify each other Member (a "Nondefaulting Member") in writing of the total amount of Defaulting Member Capital Contributions not made (the Additional Capital Shortfall), and shall specify a number of days within which each Nondefaulting Member may (i) make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Member's Capital Account balance bears to the total Capital Accounts of all Nondefaulting Members, or (ii) advance an amount bearing the same ratio to the amount of the Additional Capital Shortfall as a Nondefaulting Member's Capital Account bears to the total Capital Accounts of all Nondefaulting Members.

(a) The Defaulting Member shall indemnify and hold the Company and the other Members harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make the additional Capital Contribution.

(b). If the Manager elect to allow Nondefaulting Members to contribute the Additional Capital Shortfall not so contributed, the Manager may use any reasonable method to provide Members the opportunity to make additional Capital Contribution, until the Additional Capital Shortfall is as fully contributed as possible. Following the Nondefaulting Members' making of those additional Capital Contributions, each Member's Percentage Interest shall be adjusted to reflect the ratio that the Member's Capital Account bears to the total Capital Accounts of all Members.

(c) If the Manager elect to allow Nondefaulting Members to advance the Additional Capital Shortfall not so contributed. A Member advancing an additional Capital Contribution for a Defaulting Member under this Section 5.2.1(a) shall (1) be paid interest by the Defaulting Member on the amount of the advance at an annual rate, from the date of the advance until paid, equal to the floating rate of three percent (3%) over the prime rate charged by Bank of America, N.A., or the highest rate permitted by applicable law, whichever rate is lower, and (2) receive all distributions that the Defaulting Member would otherwise be entitled to receive under the provisions of this Agreement as though the advances by the Nondefaulting Member were Capital Contributions made by the Nondefaulting Member, which distributions shall be applied first to attorney fees, costs, and expenses, if any; then to accrued and unpaid interest; and, finally, in reduction of the principal amount of the advance. The Defaulting Member grants any Nondefaulting Members who make advances to the Company in accordance with this Section 5.2.1(a) a security interest in the Defaulting Member's Membership Interest to secure the Defaulting Member's obligations under this Section 5.2.1(a). The Defaulting Member shall, within 5 days of written notice, execute any documents or instruments reasonably necessary to enable Nondefaulting Members who make advances under this Section to perfect the foregoing security interests. Each Member irrevocably appoints each other Member, and any one of them acting alone, as his, her, or its attorney-in-fact for the limited purpose of executing, on behalf of the Member, if the Member becomes a Defaulting Member, any of the foregoing documents or instruments.

(d) If the Defaulting Member fails to pay all sums due and owing to any Nondefaulting Members who make advances under Section 5.2.1(c), for a period of 180 days after the advance, each Nondefaulting Member who has made advances under Section 5.2.1(c) may foreclose on any security interest granted under this Section 5.2.1 by causing the principal amount of the advance to be transferred from the Defaulting Member's Capital Account and added to the Capital Account of the Member who has made the advances, with a corresponding adjustment in that Nondefaulting Member's and the Defaulting Member's Percentage Interests. Accrued and unpaid interest and other amounts owed to Nondefaulting Members who have made those advances (the Noncapital Costs) shall also be paid out of the Defaulting Member's Capital Account, and if the Capital Account is not sufficient to fully pay Noncapital Costs, the available balance shall be shared pro rata in accordance with the amounts of the Nondefaulting Members' respective advances. The Defaulting Member's Percentage Interest shall be further adjusted (but not below zero) following application to Noncapital Costs. All Members agree that the foregoing constitutes and shall constitute a disposition of collateral in a commercially reasonable manner within the meaning of Commercial Code §9610. Reduction of a Defaulting Member's Capital Account to satisfy that Member's repayment obligations under this Section 5.2.1(c) shall be deemed a return of capital to that Member to the extent of the reduction.

(e) On the occurrence of, and for the duration of, a default by any Member, the Defaulting Member shall not have any right to vote the Defaulting Member's Membership Interest or otherwise participate in the management or control of the business and affairs of the Company, and any and all provisions of this Agreement relating to management and control shall be implemented without including the Membership interest of the Defaulting Member. A Defaulting Member's death, disability, or inability to make a required contribution does not relieve that Defaulting Member of its contribution obligations. On satisfaction of a Defaulting Member's obligations (whether by enforcement of a remedy or otherwise) under Section 5.2.1(c), that Member shall be restored to full membership status to the extent of any remaining Percentage Interest.

5.3. Interest on Contributions. No Member shall be entitled to receive interest on his Initial Contribution.

5.4. Cash Loans. A Member may lend or advance money to the Company only with the Manager' approval. Any loan made by a Member to the Company shall be deposited by the Manager into a separate loans payable account on the Company's behalf with any interest payable thereon to be at a commercially reasonable rate determined by the Manager.

5.5. Capital Account.

5.5.1. General. Except for such times during which there may be only a single Member of the Company, as determined for federal income tax purposes, the Company shall maintain a separate Capital Account for each Member. The Capital Account of each Member shall be credited with the Member's Initial Capital Contribution, and:

(a) increased by (i) any other cash contributed after the date hereof by such Member to the Company; (ii) the fair market value, as agreed upon by the contributing Member and the Manager, or as determined by a disinterested appraiser selected by the Manager, of any property contributed after the date hereof by such Member to the Company (net of liabilities that are secured by such contributed property or that the Company or any other Member is considered to assume or take subject to under Code Section 752); (iii) allocations to such Member of Net Income pursuant to Section 6; and (iv) other additions allocated to such Member in accordance with the Code; and

(b) decreased by (i) the amount of cash distributed to such Member by the Company; (ii) allocations to such Member of Net Loss pursuant to Section 6; (iii) the fair market value, as agreed upon by the contributing Member and the Manager, or as determined by a disinterested appraiser selected by the Manager, of property distributed to such Member by the Company (net of liabilities that are secured by such distributed property or that the Company or such Member is considered to assume or take subject to under Code Section 752); and (iv) other deductions allocated to such Member in accordance with the Code.

5.5.2. Compliance with Treasury Regulations. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Code Section 704(b) and Regulations Section 1.704-1(b)(2)(iv), and shall be interpreted in a manner consistent with such regulations.

5.5.3. Revaluation. At such times as may be required or permitted by Code Section 704 and any Regulations thereunder, the Capital Accounts shall be revalued and adjusted to reflect the then fair market value of the Company's Property. The Capital Accounts shall be maintained in compliance with Regulation Section 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation shall be made consistently with Regulation Section 1.704-1(b)(2)(iv)(f) and, to the extent not inconsistent therewith, the applicable provisions of Section 6 on the allocation of Net Income.

5.5.4. Withdrawal or Return of Capital. No Member shall be entitled to withdraw or to demand the return of any or all of that Member's Capital Contribution, other than as the result of the Company's dissolution.

5.6. Guarantees. Each Member will be required to guarantee the payment of any company indebtedness for borrowed money upon the request of the Manager if such guarantee is required by the Company's lender. Each Member will provide to the Company's lender such financial information as the lender may require and will execute and deliver to the lender his or its personal guarantee of the Company's indebtedness in such form as the Company's lender may require. In addition, among the Members, each of them agrees to be liable for his or its proportionate share of any amount paid or payable to the Company's lender pursuant to such guarantee and each of them will indemnify and hold harmless the other Members for his or her proportionate share. A Member's proportionate share will be equal to such Member's Membership Percentage Interest.

SECTION 6 ALLOCATIONS & DISTRIBUTIONS

6.1. Allocation of Net Income and Net Loss. Net Income and Net Loss shall be allocated to the individual Members on a pro rata basis in accordance with their respective Membership Interests. Notwithstanding anything to the contrary in this Section 6.1, Net Loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain. Any Net Loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of losses under this Section 6.1). Any loss reallocated under this Section 6.1 shall be taken into account in computing subsequent allocations of income and losses pursuant to this Section 6, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this Section 6, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Section 6 if no reallocation of losses had occurred under this Section 6.1.

6.2 Special Allocations. Notwithstanding Section 6.1:

6.2.1. Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any fiscal year of the Company, each Member shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.2.1 shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2.1. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.2.1 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

6.2.2. Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any fiscal year of the Company, each Member who has a share of the Company Minimum

Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, in subsequent fiscal years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 6.2.2 shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2.2. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.2.2 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

6.2.3. Nonrecourse Deductions. Any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any fiscal year of the Company or other period shall be specially allocated to the Members in proportion to their Membership Interests.

6.2.4. Member Nonrecourse Deductions. Those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any fiscal year of the Company or other 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 items are attributable in accordance with Regulations Section 1.704-2(i).

6.2.5. Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.2.5 shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 6 so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Section 6 to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 6.2.5 if such unexpected adjustments, allocations, or distributions had not occurred.

6.3. Section 754 Adjustments. Regulations Section 1.704-1(b)(2)(iv)(m) may require the Company to adjust the Members' Capital Accounts if the Company adjusts the tax bases of its assets pursuant to Code Sections 734(b) or 743(b) following an election pursuant to Code Section 754. Any such adjustment 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). Such gain or loss shall be specially allocated among the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted. Such gain or loss shall also be included in any calculation of the aggregate Net Income or Net Loss allocated to a Member for the purpose of determining the amount of any subsequent allocation that Member is to receive pursuant to this Agreement.

6.4. Member Services; Interest Payments. If a final determination, assessment, or adjudication is made or conceded to on behalf of the Company that any amount paid to a Member

or an Affiliate (as defined in this Section 6.4 below) of a Member for services authorized to be rendered by such Member or Affiliate, or interest authorized to be paid to such Member or Affiliate, under this Agreement is not deductible for income tax purposes during any fiscal year of the Company, the Company shall specially allocate items of income and gain, for that fiscal year or subsequent fiscal years as necessary, to the Member in the amount of the disallowed payment. Such items of income and gain shall not be included in any calculation of the aggregate amount of Net Income and Net Loss allocated to such Member. For purposes of this Section 6.4, an "Affiliate" with respect to any Person shall mean, (i) any Person directly or indirectly, owning, controlling, or holding with the power to vote ten percent (10%) or more of the outstanding voting securities of such other Person; (ii) any Person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held, with the power to vote, by such other Person; (iii) any Person directly or indirectly controlling, controlled by or under common control with such other Person; (iv) any executive officer, director, trustee, Manager or general partner of such other Person; and (v) any legal entity for which such Person acts as an executive officer, director, trustee, Manager, or general partner.

6.5. Curative Allocations. The allocations set forth in this Agreement are intended to comply with certain requirements of Regulations Section 1.704-1(b). Because it is not possible to foresee every possible future event during the term of the Company, the Allocations might not be consistent with the manner in which the Members intend to share Company distributions in all situations. Accordingly, the Manager may allocate income, gain, loss and deductions among the Members in a manner to prevent the allocations from distorting the manner in which Company distributions are intended to be shared among the Members. The Manager shall have the discretion to accomplish this result in any reasonable manner.

6.6. Other Allocation Rules.

6.6.1. All allocations to the Members pursuant to this Section 6 shall be divided among the Members in proportion to their respective Membership Interests, except as otherwise provided in Sections 6.1 through 6.5.

6.6.2. For purposes of determining Net Income, Net Loss, or any other items allocable to any period, Net Income, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager or the Tax Matters Partner using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

6.6.3. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the Regulations, the Members' interests in Net Income shall be in accordance with their respective Membership Interests.

6.6.4. Notwithstanding any other provision in this Section 6, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.6.4 are solely for purposes

of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

6.7. Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest. If any Economic Interest (as defined in this Section 6.7 below) is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any fiscal year of the Company, Net Income or Net Loss for such fiscal year shall be assigned pro rata to each day in the particular period of such fiscal year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member or Assignee based upon his or her respective Economic Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, an Economic Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase, or decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month).

Notwithstanding the foregoing under this Section 6.7, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning Economic Interests as of the date such sale or other disposition occurs.

For purposes of this Section 6.7, the term "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

6.8. Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Section 6 and hereby agree to be bound by the provisions of this Section 6 in reporting their shares of Company income and loss for income tax purposes.

6.9. Distributions of Cash.

6.9.1. Operating Distributions. The Manager, in their sole discretion, by Majority vote of the Manager, may, from time-to-time, make pro rata Distributions of Available Cash based upon each Member's respective Membership Interests; provided, however, that no Distribution permitted herein shall at any time affect or change any Member's pro rata Membership Interests relative to those of the other Members.

6.9.2. Income Tax Distributions. Regardless of the amount of Available Cash, the Company shall, during each fiscal year, distribute cash to each Member in an amount sufficient to

enable the payment of any estimated federal or state income taxes imposed upon any such Member as the result of the Company's Net Profits. The aforementioned payment shall be allocated at a tax rate sufficient to allow any such Member to make estimated tax payments on a quarterly basis without penalty; however, any such Distribution shall reduce the amount to which the recipient Member shall thereafter be entitled on the applicable Distribution Date as provided in Section 6.9.1.

6.10. Restriction on Distribution. Notwithstanding Section 6.9, no Distribution shall be made if, after giving effect to the Distribution:

(a) the Company would not be able to pay its debts as they become due in the usual course of business; or

(b) the Company's total assets would be less than the sum of its total liabilities.

6.11 Return of Distributions. No Member or Assignee shall be obligated to return any Distribution to the Company or pay the amount of any Distribution for the account of the Company or to any creditor of the Company, except for those Distributions that are made in violation of the Act or Sections 6.9, 6.10 or 6.12 of this Agreement, which Distributions the Members and Assignees shall return to the Company. The amount of any distribution returned to the Company by a Member or Assignee or paid by a Member or Assignee for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Assignee.

6.12. Distribution Following Dissolution. Following the dissolution and wind up of the Company and, provided the Company's business is not reconstituted in accordance with the terms and conditions of Section 3.3, the Company's assets shall be liquidated and the proceeds applied in the following order:

(a) to pay the Company's debts, including any expenses incurred through the liquidation as well as any unpaid compensation to the Manager; then

(b) as a deposit to a trust account as a reasonable reserve to be used for the payment of any contingent liabilities or expenses; then

(c) to repay any loans made by the Members to the Company; then

(d) as a Distribution in accordance with the allocation provisions of Sections 6.1 through 6.7.

SECTION 7 COMPENSATION

7.1. Compensation of Manager. The Manager shall be entitled to reasonable compensation, payable on a monthly basis and, in exchange for their services as Manager. Such compensation shall be subject to the review of the Members and approval by a vote of the Supermajority of all the Members.

7.2. Payment Following Removal. Should any Manager be removed from the

Company, any earned but unpaid fees for services performed by the Manager shall be paid by the Company within thirty (30) days of the Manager' removal.

7.3. Independent Ventures. Except as to those business ventures which constitute a violation of Section 11.4, the Manager may engage or otherwise possess an interest in any lawful business venture and neither the Company nor the remaining Members shall, by virtue of this Agreement, have the right to any income, profits or ownership interests derived therefrom.

SECTION 8 COMPANY EXPENSES

8.1. Manager Expenses. The Company shall reimburse the Manager for expenses incurred on the Company's behalf, as well as any organizational expenses, including but not limited to, legal and accounting fees, incurred by the Manager as a result of the Company's formation.

8.2. Company Expenses. The Company shall pay all Company expenses, including but not limited to: (i) borrowing costs; (ii) taxes and assessments on the Property, as well as any other taxes applicable to the Company or its business; (iii) legal, auditing, accounting, consulting and brokerage fees; (iv) expenses and taxes incurred during the course of the distribution, transfer or recordation of documents evidencing an ownership interest in the Company or its business; (v) expenses incurred for the repair, remodeling, lease, refinancing or operation of any portion of the Property consisting of real property; or (vi) expenses to be paid pursuant to any management agreement with the Company.

SECTION 9 BOOKS AND RECORDS

9.1. Records. The Manager shall at all times keep the following Company documents (collectively, "the Books") at the Company's principal place of business:

- (a) a current list of the full name and last known business or residence address of each Member;
- (b) records sufficiently evidencing each Member's Initial Contribution and Capital Account;
- (c) a copy of the Articles of Organization, merger related documents and all Amendments, along with any executed copies of any powers of attorney pursuant to which any such documents have been executed;
- (d) copies of the Company's federal, state and local income tax returns and, if any, reports for the six most recent taxable years;
- (e) copies of this Agreement, as well as any amendments to this Agreement;
- (f) financial statements of the Company for the ten most recent fiscal years; and

(g) the Company's books and records for each current fiscal year, as well as books and records for the previous three fiscal years.

9.2 Member Inspections. Upon the request of a Member, the Manager shall, at the expense of the Company, promptly deliver to the requesting Member a copy of the information required to be maintained under Section 9.1. Each Member shall also have the right, upon reasonable notice and during normal business hours, to inspect and copy any Company records required to be maintained under Section 9.1 and, promptly following their completion, a copy of the Company's federal and state income tax or information returns.

9.3. Reports.

9.3.1. The Manager shall cause quarterly written financial reports to be sent to each Member no later than thirty (30) days after the close of each fiscal quarter which shall contain a quarterly balance sheet and income statement, along with a statement of any applicable changes in the Company's financial position during that particular fiscal quarter. Notwithstanding the foregoing, the Members may, in writing, waive their rights under this Section 9.3.1.

9.3.2. The financial statements referred to in Section 9.3.1 shall be accompanied by any reports prepared by any independent accountant engaged by the Company to prepare the financial statements. If no independent accountant has been engaged for this purpose, the financial statements shall instead be accompanied by a certificate by the Manager stating that the financial statements were prepared without audit and based solely upon the Company's books and records.

9.4. Tax Returns. The Company's tax and fiscal year shall be the calendar year and the Company's accountants shall be instructed to prepare and file all required Company income tax returns on this basis. Within seventy-five (75) days following the end of each tax year, the Manager shall send to each Member the information needed to complete the Member's federal and state income or information tax returns. Provided the total number of Members shall not exceed thirty-five (35), the Manager shall, within that 75-day period, likewise provide each Member with a copy of any such income or information returns.

SECTION 10 ASSIGNMENT

10.1 General Restrictions. No Member shall Transfer, assign, pledge, encumber, sell or otherwise dispose of (hereinafter to "assign" or an "assignment") all or any part of such Member's interest except as provided in this Section 10.

10.2. Assignment by Member. Subject to the right of refusal specified in Section 10.4 with respect to assignments to Persons other than Permitted Transferees (as "Permitted Transferees" is defined in Section 10.14), a Member may assign its interest provided that:

(a) The Member and Assignee shall execute and deliver to the Manager a notice of assignment in a form approved by the Manager; and

(b) The Assignee shall, at the Manager's request, pay a reasonable fee in order to compensate the Company for any costs associated with the assignment.

Notwithstanding the foregoing, an Assignee shall at no time become a Member unless properly admitted by the Company in accordance with the provisions set forth in Section 10.3. Accordingly, prior to admission, an Assignee shall not be entitled to any rights other than the Distributions that the assigning Member would have otherwise received.

10.3 Substituted Member. An Assignee of a Member's interest may become a Member when the following conditions are satisfied:

(a) The Manager, in the Manager's sole and absolute discretion, consent in writing to the admission of the Assignee as a substituted Member, except where the transferor has fully complied with the provisions of Section 10.4, in which case consent under this Section 10.3(a) shall not be required;

(b) The assignor and Assignee shall file a duly executed and acknowledged written assignment with the Company in a form approved by the Manager specifying the interest being assigned and setting forth the assignor's intention that the Assignee succeed to the assignor's interest as a Member;

(c) The assignor and the Assignee shall execute such other instruments as desirable to effectuate assignment;

(d) The new Member shall execute this Operating Agreement or an agreement to be bound by the terms and provisions contained in this Agreement; and

(e) The Assignee shall pay to or obligate itself to pay, as the Manager may require, all reasonable expenses, connected with his or her admission, including but not limited to the cost of preparing and recording any appropriate amendments to Company documents and filings.

10.4. Right of First Refusal. No Member shall be permitted to sell, gift, Transfer, encumber, pledge or assign any portion of such Member's interest to any Person other than a Permitted Transferee without first serving on the Manager and the Members a formal notice of the Member's intent to Transfer the interest. The notice shall evidence the amount and terms of the offer, the name of the proposed transferee and the proposed transferee's willingness to accept the Member's offer. For forty-five (45) days following the receipt of such notice, the Company shall then have the option to redeem all or a portion of the Member's interest at the lower of the price set forth within the notice (according to the terms set forth within the notice) or the price determined under Section 10.8. Should the Company fail to purchase all of the Member's interest, the non-transferring Members shall have the option to purchase all or a portion of the Member's interest at the lower of the price set forth within the notice (according to the terms set forth within the notice) or the price determined under Section 10.8. To the extent more than one Member exercises its option, each Member shall be entitled to purchase a pro rata share of the Member's interest at the price and on the terms set forth within the notice or the price determined under Section 10.8. Should the Company and non-transferring Members fail to purchase all of the Member's interest, the Member shall, for an additional forty-five (45) days, be authorized to sell, gift, Transfer or encumber its interest in accordance with the terms and conditions specified within the aforementioned notice. The Manager may require the Member to provide written evidence to the Manager that such sale, gift, Transfer or encumbrance took place in accordance with the terms

and conditions specified in the notice. Notwithstanding the foregoing, the failure or refusal of the Manager to exercise any right of purchase shall in no way restrict or limit the later exercise of any such right by the Manager upon the occurrence of subsequent events authorizing the purchase of any membership interests.

10.5 Death, Disability or Bankruptcy of a Member. On the death, legal disability or adjudication in Bankruptcy of a Member, the Member's authorized or personal representative, or if the Membership Interest is held in trust, the successor or remaining trustee of such trust, shall have all the rights of a Member for the purpose of settling or managing the estate, and such power as the Member possessed to constitute a successor as an Assignee and to join with such Assignee in making application to substitute such Assignee as a Member. However, such personal representative or trustee shall not have the right to become a substituted Member in the place of the predecessor in interest unless the conditions of Sections 10.2 and 10.3 are first satisfied.

10.6. Transfer to Inter-Vivos Trust by Partner. The Transfer of any Membership Interests to a revocable, inter-vivos trust created by a Member in which all of the beneficiaries are Members or Permitted Transferees, or to the extent the terms of such trust prohibit the Transfer of a Membership Interest to someone other than a Permitted Transferee, and provided that the Membership Interests held by any such trust continue to be controlled by the Member who Transferred the interest to the trust (e.g., in his or her capacity as trustee), shall not be deemed an "assignment" for purposes of this Section 10. Additionally, the transfer of any Membership Interests from a revocable, inter-vivos trust back to the Member who Transferred his or her interests to the trust, shall not be deemed an "assignment" for purposes of this Section 10. A Member who Transfers an interest under this Section 10.6 shall continue to be deemed a Member for purposes of this Agreement even though the Membership Interest is held by the trust.

10.7. Transfer of Member Interest. In the event of a Transfer of a Member's interest other than to a Permitted Transferee or as otherwise permitted under Sections 10.3 and 10.4, the Company will have the option to acquire the interest of the Member or the non-qualifying transferee by giving written notice of the intent to purchase the interest within ninety (90) days from the date that it is finally determined that the Company is required to recognize the Transfer or assignment.

10.8. Purchase Price. Except as otherwise specified in Section 10.4, for sales to persons other than Permitted Transferees, the purchase price of any interest purchased pursuant to this Section 10 shall be determined by an appraisal of the fair market value of the interest, excluding all relevant discounts applied for the purpose of determining the value of an interest for federal gift and estate tax purposes, as of the first day of the month preceding the month in which notice is delivered. The purchase price shall be paid to the Member or non-qualifying transferee in sixty (60) equal monthly installments of principal and interest, with interest accruing at the prime rate charged by the Bank of America. If the Company's remaining term is less than sixty (60) months, the obligation must be paid in the number of monthly installments equal to the number of months remaining in the Company's term. The Company may prepay all or any part of the purchase price obligation at any time without penalty.

(a) The "fair market value" of the shares shall be determined by an independent appraiser selected jointly by the Company and the selling Member. The determination of fair market value by that appraiser shall be binding and conclusive on all parties to this Agreement.

(b) If the selling Member and the Company are unable to agree on the selection of an appraiser within 30 days after the event causing the purchase and sale, each party shall select an independent appraiser within 20 days after expiration of the 30-day period. The two appraisers so selected shall each independently appraise the interest and, as long as the difference in the two appraisals does not exceed two and one-half (2.5) percent of the lower of the two appraisals, the fair market value shall be conclusively deemed to equal the average of the two appraisals. If either party fails to select an independent appraiser within the time required by this paragraph, the fair market value of the interest shall be conclusively deemed to equal the appraisal of the independent appraiser timely selected by the other.

(c) If the difference between the two appraisals referred to above exceeds two and one-half (2.5) percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser who shall also independently appraise the shares and whose appraisal shall be conclusively deemed to be the fair market value of the interest.

(d) The selling Member and the Company shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.

(e) In determining the purchase price, the appraisers appointed under this Agreement shall consider all opinions and relevant evidence submitted to them by the parties, or otherwise obtained by them, and shall set forth their determination in writing together with their opinions and the considerations on which the opinions are based, with a signed counterpart to be delivered to each party, within 60 days after commencing the appraisal.

10.9. Waiver. The failure or refusal of the Company to exercise the rights of purchase under Section 10.4 or 10.7 shall not restrict or limit the later exercise of such right of purchase by the Company upon subsequent events authorizing the purchase of interests under Sections 10.4 or 10.7.

10.10. Assignment Causing Termination. No assignment of a Membership Interest may be made without the approval of the Manager if the interest to be assigned, when added to the total of all other interests assigned within the twelve (12) immediately preceding months would, in the opinion of counsel for the Company, result in the termination of the Company under Code section 708 unless the Member desiring to make such assignment shall at his or her own expense procure a private ruling by the Internal Revenue Service that the proposed assignment will not cause such termination.

10.11. Interest of a New Member. A newly admitted Member's capital contribution and share of the Company profits and losses, as determined by the written consent of the Supermajority of the Members, shall be set forth in an amended Exhibit "A" to the Agreement.

10.12. Compliance with Regulatory Authority. No assignment of any interests in the Company may be made except in compliance with then applicable rules of the California State Department of Corporations or any other appropriate governmental authority.

10.13. Termination of Members' Interest. The Majority of the Manager, may terminate the interest of a Member and expel that Member:

(a) for interfering in the management of the Company affairs or otherwise engaging in conduct which could result in the Company losing its tax status as a partnership;

(b) if the conduct of the Member tends to bring the Company into disrepute or the Member's interest becomes subject to attachment, garnishment, or similar legal proceedings; or,

(c) for failing to meet any commitment to the Manager in accordance with any written undertaking.

In each of the foregoing events, the termination shall not result in a forfeiture of the Member of the value of that Member's interest in the Company at the time of termination. The terminated Member shall continue to hold an Economic Interest in the Company as defined in Section 1.13 and shall retain the right to dissolution proceeds as provided in Section 6.12.

10.14. Permitted Transferee. A Permitted Transferee is:

(a) a Member's descendant, including descendants by adoption if the adoption was a court adoption of a minor under eighteen (18) years of age;

(b) a Member's parent or sibling;

(c) a descendant of a Member's sibling, including those by adoption as defined above;

(d) a revocable or irrevocable trust in which all of the beneficiaries are a Member (including the Member who transferred the interest to the trust) or anyone in (a) through (c) above, or if the terms of such trust prohibit the Transfer of a Membership Interest to someone other than a Permitted Transferee, or if such trust identifies the Membership Interest as the "separate property" of the Member who transferred the interest to the trust (the "Transferring Member") and provides that upon the death of both the Transferring Member and the Transferring Member's spouse all of such interest will be distributed to or held for the benefit of only those persons described in (a) through (c) above. In addition, any such trust under this paragraph (d) must limit the exercise of any powers over the Membership Interest to the Transferring Member, another Member or a person described in (a) through (c) above. In the event a person who is not the Transferring Member, a Member or is not described in (a) through (c) above (such as a Member's spouse) obtains control over the Membership Interest through the trust, the trust shall become an Assignee as to any Membership Interest, unless the provisions of Section 10.3 have been satisfied, and any Membership Interest owned by the trust shall be deemed to have been Transferred to someone other than a Permitted Transferee for purposes of applying Section 10.7 above. A Transferring Member shall continue to be deemed a "Member" for purposes of this Agreement even though the Membership Interest is held by a trust described under this paragraph (d);

(e) any corporation, partnership or limited liability company in which such Member, his/her spouse or their respective descendants (including descendants by adoption as specified above) are the sole shareholders, partners or members of that entity;

(f) any then existing Member.

10.15. Purchase Option of Bankrupt Member. For a period of ninety (90) days following notice that a member files or has filed against him or her any proceeding under the bankruptcy laws of the United States (“Optional Purchase Event”), the Corporation and/or remaining Members, subject to the provisions of Section 10.8, shall be entitled to purchase all or any portion of the bankrupt Member’s interest. Each Member, or his or her representative, agrees to give prompt notice of the Optional Purchase Event to the Company’s Secretary and other Members.

SECTION 11 MEMBER POWERS, APPROVALS, COVENANTS

11.1. General Limitations. At no time shall any Member have the right or authority to: (i) withdraw or reduce any contribution made by the Member other than as the result of the Company’s dissolution; (ii) bring any action against the Company for partition; (iii) cause the termination and dissolution of the Company, except as provided in Section 11.3; or (iv) demand or receive Property other than cash in return for his or her Initial Contribution. No Member shall have priority over any other Member either as to the return of invested capital or as to the allocation of Net Income, Net Loss or Distributions.

11.2. Management and Control. Members shall take no part in the control, conduct or operation of the Company nor shall they have any right or authority to act on behalf of or bind the Company. Notwithstanding the foregoing, if the Manager have been removed and the Company dissolved, the Members may, following the approval of the Majority of the Members, act for and bind the Company during wind-up. At no time, shall any Member have the right to manage or control the Company in any manner that would contravene the requirements imposed by the Act or this Agreement.

11.3. Majority or Supermajority Approval. The Majority or Supermajority of the Members, as specified in each of (a) through (f) below, shall have the right to approve or disapprove:

(a) the election of any successor Manager – by Majority vote;

(b) the election of additional Manager - by Majority vote;

(c) the termination and dissolution of the Company – by Supermajority vote;

(d) to the extent this Company owns (i) voting stock in a corporation controlled by a Manager, (ii) a voting interest in a limited liability company in which a Manager is a Manager or managing member, or (iii) a general partnership interest in which a Manager is a general partner, any action required of a shareholder, member or partner of such entities – by Majority vote; or

(e) any amendment to the terms of this Agreement which would change or affect any Member's: (i) required contribution; (ii) rights or interests in Net Income, Net Losses or Distributions; (iii) rights following the Company's liquidation; or (iv) the requisite number of votes needed to expel any Member from the Company – by Supermajority vote.

11.4 Covenant To Compete. Each Member covenants with the Company and each other Member that on the Transfer of the Member's Membership Interest, whether voluntary, involuntary, by operation of law, or by reason of any provision of this Agreement, the Member shall have the ability to Compete.

(a) Engage in any business in any way similar to or competitive with the business of the Company;

(b) Enter into any agreement or understanding, written or oral, relating to the services of any employee of the Company;

(c) Solicit the business of, enter into any agreement, written or oral, or otherwise deal with any customers of the Company, who were customers at the time of the Transfer; or

(d) Use or disclose in any manner any Confidential Information; provided, however, that to the extent the Confidential information includes trade secrets, this obligation of the Member shall continue for so long as the Confidential information remains a trade secret of the Company.

The provisions of this Section 11.4 shall not apply to the facilities known as Rockville in Fairfield, CA, and Glen Cove, Vallejo, CA.

11.4.1. Definition. "Confidential Information" means all trade secrets, "know-how," client lists, pricing policies, operational methods, programs, and other business information of the Company created, developed, produced, or otherwise arising before the date of the Transfer.

11.4.2. Breach. Each Member stipulates that a breach of the provisions of this Article X shall result in irreparable damage and injury to the Company for which no money damages could adequately compensate it. If the Member breaches the provisions of this Agreement, in addition to all other remedies to which the Company may be entitled, and notwithstanding the provisions of Article XI, Section 11.2, the Company shall be entitled to an injunction to enforce the provisions of this Agreement, to be issued by any court of competent jurisdiction, to enjoin and restrain the Member and each and every Person concerned or acting in concert with the Member from the continuance of that breach. Each Member expressly waives any claim or defense that an adequate remedy at law might exist for any such breach.

11.4.3. Reformation. If any provision in this Article X is deemed to exceed the time or geographic limits or any other limitation imposed by applicable law in any jurisdiction, that provision shall be deemed reformed in that jurisdiction to the maximum extent permitted by applicable law.

SECTION 12 RESIGNATION, REMOVAL, BANKRUPTCY

OR DISSOLUTION OF A MANAGER

12.1. Resignation. A Manager may, with or without approval of the Members, voluntarily resign upon sixty (60) days written notice to the Members. Notice of resignation shall be served by the Manager on the remaining Manager and Members either by certified or registered mail or, alternatively, by personal service at their last known address specified within the Books (as defined in Section 9.1).

12.2. Removal and Appointment. A Manager may likewise be involuntarily removed by a Supermajority vote of all Members, except as otherwise specified in Section 12.3. Notice of removal shall be served on the Manager by the removing Members either by certified or by registered mail return receipt requested or, alternatively, by personal service at the last known address or last address specified within the Books (as defined in Section 9.1). The election of a successor or additional Manager may be made by the Manager (but not an involuntarily removed Manager), or if more than one Manager, by Majority vote of the Manager, subject to the approval of the Members in accordance with the terms of Section 11.3, or if there are no remaining Manager, then by vote of the Members in the percentage specified in Section 11.3.

12.3. Bankruptcy. Upon the filing of a petition in Bankruptcy by Manager, the remaining Members may, in their sole and absolute discretion, remove the Manager by Majority vote. The Members expressly acknowledge and agree that the relationship between the Manager and Members shall at all times be subject to fiduciary standards and, as such, the Company shall at no time be required to maintain a Manager which, without the prior, written consent of the Majority of the remaining Members, has filed a Bankruptcy petition.

SECTION 13 SPECIAL POWER OF ATTORNEY

13.1. Attorney-in-Fact. Each Member irrevocably grants to the Manager special power of attorney and appoints the Manager as attorney-in-fact. In this capacity, the Manager shall at all times have full power and authority to act in the Company's name and, on behalf of the Members, execute, acknowledge and file documents, which shall include but not be limited to:

(a) this Agreement and any amendment(s) to the same which, under the laws of the State of California or the laws of any other jurisdiction, may be required;

(b) any other instrument or document which the Company may be required to file or for which filing may, in the sole discretion of the Manager, be desirable or advantageous either to accomplish the Company's purpose or to fulfill any duty or obligation imposed upon the Company by the Act or this Agreement;

(c) Any instrument or document which, in accordance with the terms and conditions of this Agreement, may be required to ensure the continuity of the Company; the admission of any additional Member; the Company's dissolution or termination; or to reflect any reduction in amount of any Member's Capital Account.

13.2. Special Provisions. Each Member specifically acknowledges and agrees that the special power of attorney granted in Section 13.1 is: (i) a special power of attorney combined with an interest; (ii) irrevocable; and (iii) shall survive the Member's death or incapacity.

13.3. Signatures. Documents needed to be signed by the Manager to exercise the special power of attorney-in-fact granted herein may be signed via any commercially reasonable method of authentication including but not limited to any and all traditional or electronic signatures.

SECTION 14
ALTERNATIVE DISPUTE
RESOLUTION PROCEDURE

14.1 General. The Members expressly acknowledge that they have entered into this Agreement in good faith and in the belief that it is mutually advantageous to their interests. As such, the Members hereby expressly agree to first utilize the alternative dispute resolution procedures specified herein (collectively, the “Procedure”) to resolve any potential dispute or disagreement (“Dispute”) they may have with either the Company or other Members arising out of or pertaining to the conduct of the Company’s affairs. The Members further acknowledge and agree that, in the event of a Dispute, they shall mutually cooperate in good faith with the Company, the remaining Members or, if applicable, the mediator selected in accordance with the provisions specified in this Section 14 to assist in the Dispute’s resolution.

14.2. Mediation.

14.2.1. Initiation.

(a) Any Member seeking to initiate the Procedure (“Initiating Member”) shall give written notice to the other Members, which shall describe and identify the nature of the Dispute, the Initiating Member’s claim for relief and, if applicable, any individual(s) possessing the authority to settle the Dispute on the Initiating Member’s behalf (“Authorized Individual”).

(b) The Members receiving the notice (“Responding Members”) shall then have five (5) business days in which to designate and provide the Initiating Member with written notice of the Responding Members’ Authorized Individual which, in the Responding Member’s sole discretion, may consist of the Responding Member or any third person(s) duly authorized to represent the Responding Member’s interests in the Dispute.

14.2.2. Direct Negotiations. The Authorized Individuals shall promptly investigate and, within thirty (30) days of the Initiating Member’s notice, meet to discuss the Dispute’s potential resolution. The Authorized Individuals shall at all times be free to meet at any mutually agreed upon time or place. If the Authorized Individuals are unable to resolve the Dispute within thirty (30) days of their initial meeting date, the Dispute shall be resolved in accordance with the mediation provisions specified hereunder.

14.2.3. Selection of Mediator.

(a) Following the expiration of the aforementioned thirty (30) day period during which the Authorized Individuals shall be permitted to resolve the Dispute of their own accord, the Initiating Member’s Authorized Individual and one Authorized Individual mutually selected by the Responding Members shall then have five (5) business days to provide the other with a written list (“First List”) of ten (10) potential mediators (“Candidates”) qualified

to mediate such disputes. All Candidates specified within the List shall be attorneys who are unaffiliated with any individual Member.

(b) Within five (5) days of receiving the First List, the Authorized Individuals shall then numerically rank three (3) Candidates in order of preference. Once this is accomplished, each Authorized Individual shall then immediately provide the other with its rankings.

(c) If one or more numerically-ranked Candidates are on both lists, the Candidate with the highest combined numerical ranking shall be designated as the Dispute's mediator.

(d) If, on the other hand, no Candidate has been mutually ranked by the Authorized Individuals, the Authorized Individuals shall, within ten (10) business days, mutually select a State or Federal District Judge who shall supply the Authorized Individuals with a list ("Second List") of ten (10) potential mediators ("Judicial Mediators"). If the Authorized Individuals are unable to mutually agree upon a State or Federal Judge to provide the Second List, the Second List shall be provided by an administrative law judge presiding over the State Court of California, County of Solano.

(e) Within five (5) business days of receiving the Second List, the Authorized Individuals shall select and rank all Judicial Mediators in order of preference and simultaneously exchange their rankings. The Judicial Mediator with the highest combined ranking within the List shall be deemed to have been mutually selected to mediate the Dispute. If the first Judicial Mediator is unable to serve, the Authorized Individuals shall, in the numerical order of their aggregate rankings, proceed down the Second List until an available mediator is secured.

14.2.4. Mediation Time and Place. In consultation with the mutually-selected mediator, the Authorized Individuals shall promptly designate a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time mutually established for the mediation shall, in no event, be later than forty-five (45) days following the selection of the Candidate or Judicial Mediator.

14.2.5. Information Exchange. The Members shall, upon reasonable request by the Authorized Individuals and subject to applicable laws pertaining to such disclosure, mutually cooperate in good faith to provide any Member engaged in the Dispute with any information reasonably necessary to prepare for or facilitate the mediation.

14.2.6. Summary of Views. At least seven (7) days prior to the first scheduled mediation session, each Member involved in the Dispute shall deliver to the mediator and, if applicable, the respective Authorized Individual, a concise written summary of the Member's views concerning the Dispute's subject matter, as well as any other matters or documents reasonably requested by the mediator.

14.2.7. Representation. During the course of mediation, each Member involved in the dispute may be individually represented by an Authorized Individual, counsel and, subject to the mediator's approval, may bring any additional person(s) reasonably necessary to respond to questions, contribute information or otherwise participate in the negotiations.

14.2.8 Conduct of Mediation.

(a) Format. The format of the mediation shall be determined solely by the mediator; provided, however, that any such format shall ensure that: (i) each Member involved in the Dispute or, if applicable, its Authorized Individual, is provided with an opportunity to present the Member's views concerning the Dispute's subject matter; and (ii) the format facilitates the voluntary resolution of the Dispute by the Members. The mediator may, in its sole discretion, request and conduct individual or joint meetings with any Member, and the Members do hereby expressly agree and acknowledge that they shall cooperate in good faith with the conduct of any such meeting(s).

(b) Confidentiality. In the event of a Dispute, the mediation undertaken in accordance with the provisions specified in this Section 14 shall at all times be deemed a *compromise negotiation* for purposes of Federal and California State Rules of Evidence and, consequently, any information or communication disclosed or submitted therein shall be considered both confidential and privileged. To preserve the confidentiality of such information or communication, no stenographic, visual, or audio record of the mediation shall be permitted. Any and all conduct, statements, promises, offers, views, or opinions, whether oral or written (collectively, the "Confidential Information"), made or disclosed during the course of mediation by any Member or its Authorized Individual shall at all times be deemed confidential and, if appropriate, privileged. Confidential Information shall not be discoverable or admissible for any purpose, including impeachment, in any future litigation or other proceeding involving the Members. Notwithstanding the foregoing, evidence otherwise discoverable or admissible shall not be excluded from discovery or admission solely as a result of its previous use within the mediation.

14.2.9. Termination.

(a) General. The mediation shall be terminated at the earlier of either: (i) the execution of a settlement agreement by the Initiating and Responding Member(s); (ii) a declaration by the mediator that the mediation is terminated; or (iii) a declaration by the Initiating or Responding Member(s) that the mediation is terminated.

(b) Nonresolution. Should the mediation be terminated prior to the resolution of the Dispute, the Initiating and Responding Parties shall, for a period of five (5) full days following the mediation's termination date, refrain from the pursuit of any legal action pertaining to the Dispute. During this time, the Initiating and Responding Parties shall continue to negotiate in good faith to arrive at a mutual and voluntary resolution of the Dispute.

14.2.10. Fees. Mediation costs shall be shared equally between the Initiating and Responding Member(s). Notwithstanding the foregoing, the Initiating and Responding Members shall pay any and all attorneys fees or related costs.

14.2.11. Disqualification. Following the termination of the mediation, the Candidate or, if applicable, Judicial Mediator shall be permanently disqualified as a witness, consultant, expert or counsel for any Member with regard to any future Dispute subject to the terms and conditions of this Section.

14.3. Arbitration. Each Member hereby expressly acknowledges and agrees that, following the use of the aforementioned Procedure, unresolved disputes shall be determined by a neutral arbitrator appointed by the presiding judge of the State of California, County of Solano and in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

SECTION 15 INDEMNIFICATION

15.1. Power to Indemnify. The Company shall have the power to indemnify any Person who was or is a party, or who is threatened to be made a party, to any Proceeding by reason of the fact that the Person was or is a Member, Manager, officer, employee, or other agent of the Company, or was or is serving at the request of the Company as a director, officer, employee, or other Agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by that Person in connection with the proceeding, if that Person acted in good faith and in a manner that the Person reasonably believed to be in the best interests of the Company, and, in the case of a criminal proceeding, the Person had no reasonable cause to believe that the Person's conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner that the Person reasonably believed to be in the best interests of the Company, or that the Person had reasonable cause to believe that the Person's conduct was unlawful.

15.2. Expenses. To the extent that an agent of the Company has been successful on the merits in defense of any Proceeding, or in defense of any claim, issue, or matter in any Proceeding, the agent shall be indemnified against expenses actually and reasonably incurred in connection with the Proceeding. In all other cases, indemnification shall be provided by the Company only if authorized in the specific case by a Majority of Members.

"Agent," as used in this Section 15, shall include a trustee or other fiduciary of a plan, trust, or other entity or arrangement described in Corporations Code §207(f).

"Proceeding," as used in this Section 15, means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

Expenses of each Person indemnified under this Agreement actually and reasonably incurred in connection with the defense or settlement of a proceeding may be paid by the Company in advance of the final disposition of the proceeding, as authorized by the Manager who are not seeking indemnification or, if there are none, by a Majority of the Members, on receipt of an undertaking by that Person to repay that amount unless it shall ultimately be determined that the Person is entitled to be indemnified by the Company. "Expenses," as used in this Section 11.1, includes, without limitation, attorney fees and expenses of establishing a right to indemnification, if any, under this Section 15.

SECTION 16 MISCELLANEOUS

16.1. Spousal/Domestic Member Consents. Contemporaneously with the execution of this Agreement, the Members shall, if applicable, each execute those certain Spousal and or Domestic Member Consents attached hereto as Exhibit “C”.

16.2. Headings. The titles and headings of the various paragraphs of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any interpretation upon any of the provisions of this Agreement.

16.3. Time of Essence. All times and dates in this Agreement shall be of the essence.

16.4. Entire Agreement. This Agreement, including any and all schedules attached hereto, contains and represents the entire understanding and agreement between the Members and supersedes any previous written or oral communications between the Members concerning the subject matter specified in this Agreement

16.5. Amendment. This Agreement may be amended only via written agreement between the Members as authorized by an affirmative vote of the Supermajority of all the Members; provided, however, that names of the Members listed on Exhibit “A” may be amended from time to time by the Manager to reflect transfers and assignments made pursuant to Section 10 of this Agreement.

16.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16.7. Attorneys’ Fees. Should any Dispute between the Members result in litigation, unless otherwise specified herein, the prevailing Member(s) shall be entitled to recover any and all reasonable costs associated therewith, including but not limited to reasonable attorneys' fees.

16.8. Severability. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall not be affected.

16.9. Notices. Notices given under this Agreement shall be in writing and shall either be served personally, electronically, or delivered by first class U.S. mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or three days following deposit in U.S. mail, postage prepaid and shall be directed to the address specified for each Member within the Books (as defined in Section 9.1).

16.10. Counterpart. This Agreement may be signed in counterpart or duplicate copy and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

16.11. Covenant to Sign Documents. Each Member shall execute, with acknowledgment or affidavit, if required, all documents and writings reasonably necessary or expedient in the creation of this Company and the achievement of its purpose.

16.12. Exhibits. Any Exhibits referred to in this Agreement as being attached are incorporated in this Agreement in their entirety by reference.


16.13. Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, singular or plural, as the context in which they are

used may require. Any reference to the Code, the Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

**[The Remainder of this Page is Intentionally Left Blank.
Signature Page to Follow]**

IN WITNESS WHEREOF, the Manager and Members have signed this Agreement effective as of the date first set forth above.

MANAGER:



Jason Reyes

MEMBERS:

THE REYES FAMILY TRUST

By: 

Jason Reyes, Trustee

EXHIBIT "A"

(Initial Contribution & Membership Interest)

Member	Initial Contribution	Membership Interest
<u>Members</u> The Reyes Family Trust		100%

MANAGEMENT AGREEMENT

This Management Agreement (this “**Agreement**”) is made and entered into as of May __, 2024 (“**Effective Date**”) by and between LAKE MERRITT SENIOR LIVING LLC, a California limited liability company (“**Owner**”), and Calson Care Oakland, LLC, a California limited liability company (“**Manager**”) with regard to the following facts and circumstances:

RECITALS

WHEREAS, Owner hold legal title to that certain retirement community including residential living, assisted living, and skilled nursing facilities located at 1850 Alice St., Oakland. CA 94612 commonly known as Lake Park Senior Living (the “**Property**”);

WHEREAS, the skilled nursing component to the Facility consists of that portion of the Property generally described as the low-rise building adjacent to southeasterly high-rise tower and identified with the arrow on the diagram attached hereto as Exhibit “A” and incorporated herein by this reference (the “**SNF Premises**”);

WHEREAS, that portion of the Property that consists of the two high-rise towers, but excluding the SNF Premises, shall be referred to herein as the “**Premises**” or the “**Facility**”;

WHEREAS, Owner has entered into a lease with AOAS, LLC, a California limited liability company (the “**SNF Tenant**”) for the SNF Premises and Operator shall have no liability for the SNF Premises except as may be specifically set forth herein;

WHEREAS, Manager, both individually and through affiliated entities, develops, manages, and operates residential living, assisted living and similar facilities;

WHEREAS, Owner wishes to engage Manager to manage the Facility for and on behalf of Owner;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

AGREEMENTS

1. Appointment of Manager.

Subject to the terms of this Agreement, Owner delegates to Manager as its agent and independent contractor, and Manager accepts, those expressly delegated rights, powers and authorities of Owner with respect to the operation and management of the Facility, with full power and authority in the name of and on behalf of Owner, to do and perform all activities, transact business, make, execute, acknowledge and deliver all contracts, licenses, leases and other writings and instruments of every kind which may be required, proper, or convenient to operate and manage the Facility with the same validity as if performed or executed by Owner. As exclusive agent for the management of the Facility, Manager accepts this appointment, subject to the terms of this Agreement. Manager shall have no ownership, possessory, or leasehold interest in any of Owner’s real or personal property constituting (or acquired in connection with) the Facility. For purposes of clarity, Manager shall have no responsibilities with regard to the SNF Premises except as expressly set forth herein.

2. Manager’s Representations, Covenants and Responsibilities.

a. Manager’s Representations and Covenants. Manger hereby represents, warrants and covenants to and in favor of Owner the following:

- (i) Manager is a limited liability company duly organized, validly existing and in good standing under laws of the California, having its principal offices at 4950 Allison Parkway, Suite F, Vacaville, CA 95688. Manager shall, upon Owner's request, obtain and furnish to the Owner satisfactory evidence as to the foregoing at Manager's expense and as a condition precedent to Owner completing any obligation of Owner under this Agreement.
- (ii) This Agreement, when executed by Manager, shall be a valid and legally binding obligation of Manager, enforceable in accordance with its terms.
- (iii) Each individual executing this Agreement on behalf of Manager has full power and authority to do so and that no provision of any of Manager's governing documents prevents Manager from entering into this Agreement and conducting the activities and actions required of Manager under this Agreement.
- (iv) There is no litigation, proceeding or governmental investigations pending or threatened against the Manager which could adversely impact the Owner, the Facility or the Manager.
- (v) Manager has submitted and shall maintain, in the name of the Owner, at all times during the effectiveness of this Agreement all licenses, certificates, permits and other governmental approvals necessary to operate and manage the Property as a fully licensed and authorized independent living or similar facility. Manager shall, upon Owner's request, obtain and furnish to the Owner satisfactory evidence as to the foregoing and as a condition precedent to Owner completing any obligation of Owner under this Agreement.
- (vi) Manager agrees not to enter any new Consulting or Management Agreements on any type of Senior Housing Facility within fifteen (15) miles of the Property.
- (vii) Manager agrees to provide monthly detailed Site Visit reports covering Operations and Sales.
- (viii) Manager agrees to submit to Owner a copy of all regulatory correspondence including but not limited to surveys, complaints, and site visits within five (5) days of receipt.
- (ix) Manager acknowledges receipt of that certain letter from the Attorney General of the State of California dated September 27, 2022 containing "Conditions to Proposed Sale of California-Nevada Methodist Homes and Approval of the Purchase and Sale Agreement by and between California-Nevada Methodist Homes and Pacifica Companies LLC, a California limited liability company" (the "**AG Conditions**").

b. Management Standards. Manager agrees to devote its reasonable best efforts to managing the Facility, to supervise all employees of Manager, to indirectly (through supervision of Facility supervisors) supervise all Facility Employees (defined below), to exercise professional skill and competence while performing the duties set forth in this Agreement, and to act in a manner consistent with prudent business practices customary in the industry. Manager shall at all times comply with the AG Conditions as they relate to the Facility.

3. Owner's Representations, Covenants and Responsibilities.

a. Owner's Covenants. Owner hereby represents, warrants and covenants to and in favor of Manger the following:

- (i) Owner is a limited liability company, duly organized, validly existing and in good standing under laws of California.
- (ii) This Agreement, when executed by Owner, shall be a valid and legally binding obligation of Owner, enforceable in accordance with its terms.
- (iii) Each individual executing this Agreement on behalf of Owner has full power and authority to do so and that no provision of any of Owner's governing documents prevents Owner from entering into this Agreement and conducting the activities and actions required of Owner under this Agreement.
- (iv) There is no litigation, proceeding or governmental investigations pending or threatened against the Owner which could adversely impact the Owner, the Facility or the Manager.

4. Manager's Services.

Manager shall begin providing the following services as of the date that Owner acquires title to the Property:

a. Manager's General Services. Manager shall oversee the day-to-day operation of the Facility. Manager shall hire and supervise, if necessary, all on-site administrative personnel and shall meet regularly with the Administrator (as defined below) and department heads of the Facility. Manager shall coordinate and monitor all surveys and reviews of the Facility. Manager shall implement and maintain marketing, resident services and quality assurance programs for the Facility. Manager shall use its best efforts to ensure the proper supply and scheduling of services to be provided at the Facility, including without limitation, dietary and food, housekeeping, maintenance, repairs and security.

b. Staffing. Manager shall develop and furnish to Owner copies of all departmental budgets for on-site personnel, including staffing and wages. All on-site personnel shall be employees of Owner or a Professional Employer Organization (PEO) designated by Owner (such on-site personnel employees shall hereinafter be referenced to as "Facility Employees"), and the direct expenses of such Facility Employees (including wages, salaries, benefits and payroll taxes) shall be directly paid from the Project Operating Account (as defined herein) to the extent provided in the Approved Budget (as defined herein). Manager shall oversee all employees, including but not limited to all Facility Employees payroll and benefits (including payroll taxes), distribute employee income tax withholding forms at the end of each year, prepare payroll tax returns for said employees, and make payment of such taxes. Other personnel that provide services at the Facility from time to time will not be compensated by owner or independent consultants. Manager will not charge for any regional supervisor or a non facility employee that is not working directly at the facility without prior Owner approval.

- (i) Manager shall, during the term hereof, hire or approve and provide direction to the qualified administrator (the "**Administrator**") and a qualified Assistant Administrator if such a position is appropriate for the administration of the Facility.
- (ii) Owner shall have the right to interview all managerial position candidates

- (ii) Manager shall establish salaries, employee benefits, and personnel policies and standards applicable to Facility Employees as needed and in line with the Approved Budget during the term of this Agreement.

c. Marketing. Manager (or a qualified third party selected and supervised by Manager) shall review, approve and implement with Owner a marketing program consisting of advertising, public relations and related activities designated to maintain and enhance the resident census at the Facility. The expenses for all such items shall be expenses of the Facility and shall be within the Approved Budget provided for such expenses.

d. Financial Records and Reports. Manager shall have the following responsibilities with respect to records and reports:

- (i) Manager shall establish and maintain a system of records and books consistent with industry standards and applicable law and satisfactory to Owner. Copies of all records, books, and accounts shall be maintained at the Manager's central offices or the Facility and will be provided to Owner upon request. The originals of all books, records, and accounts shall be maintained at Manager's central offices or the Facility and shall be subject to examination at said location at all reasonable times by any authorized representative of Owner; Manager shall retain all books and records for the time period required under any applicable law or regulation or, with Owner's written approval, surrender such books and records to Owner prior to the expiration of such period.
- (ii) Upon the request of Owner, Manager shall cause a financial audit to be prepared by Owner's Certified Public Accountant ("CPA"), or another person designated by Owner and reasonably approved by Manager, for such fiscal years ending during the term of this Agreement as Owner shall designate. Such audit shall be prepared in accordance with generally accepted accounting principles. Compensation for the CPA's services shall be paid by the Owner and will not be considered an expense of the Facility. Owner shall insure the preparation of all tax and corporate records which Owner is required to file by any federal, state or local governmental agencies.
- (iii) Manager shall prepare monthly financial reports comparing actual to budgeted financial projections in a format mutually agreed upon by Manager and Owner. Manager shall submit each report to Owner within twenty (20) days after the end of each preceding month, with exception to year end which will be submitted by February 15th;
- (iv) Manager shall prepare an itemized list of all delinquent resident accounts on a monthly basis (e.g., a Rent Roll or Period Summary) and shall submit this report to Owner within thirty (30) days after the end of the preceding month; Manager shall submit a weekly census and marketing report to Owner
- (v) Manager shall furnish Owner with a statement of receipts and disbursements during the previous month, along with a schedule of accounts receivable and payable and reconciled bank statements for the Project Operating Account, within thirty (30) days after the end of the preceding month.
- (vi) Manager shall prepare occupancy reports comparing actual to budgeted projections in a format mutually agreed upon by Manager and Owner on a monthly basis and at any other time upon Owner's request. Manager shall submit each occupancy report to Owner

within fifteen (15) business days after the end of each preceding month, with exception to year end which will be submitted by February 15th. Each such report shall be certified by Manager to Owner as being true, correct and complete.

- (vii) Manager shall prepare and provide to the appropriate authorities on a timely basis, all records, certifications and reports that Owner is required to prepare and submit as required by law or as a condition of any financing. Owner will provide to Manager a detailed list of all required lender reports.

e. Resident Records and Reports. The originals of all resident records and reports (including without limitation of medical records), shall be maintained at the Facility. Manager may maintain copies of said records as necessary.

f. Budgets. Any annual budget for the facility must be approved of by the Owner, such budget the "**Approved Budget**". Each year during the term of this Agreement, Manager shall prepare a detailed annual budget for the Facility, which budget shall be segregated between operating and capital budget amounts. Manager shall submit such annual budget to Owner by November 1 of each year in a format mutually agreed upon by Owner and Manager. Owner shall give its approval or its disapproval of Manager's proposed budget or any portion thereof not later than thirty (30) days after receipt with respect to each calendar year. If approved by Owner pursuant to this Section 4(f), the budget shall be used for the next calendar year, replace any existing "Approved Budget", and shall be referred to as the "**Approved Budget**". If Owner fails to inform Manager of its objections to any proposed budget within thirty (30) days after receipt, the proposed budget and budget format shall be adopted for the following calendar year and shall be deemed to be the "**Approved Budget**". If Owner objects to all or any portion of the proposed budget, Owner shall furnish Manager with the reasons for the objections and Owner and Manager shall attempt to reach agreement with respect to the items to which Owner objects. In the event the parties cannot agree upon the budget prior to the commencement of the next calendar year, the Facility shall be operated under the then existing Approved Budget subject to a percentage increase, for each expense item, equal to the change during the preceding twelve (12) months in the Consumer Price Index for All Urban Consumers (In the CPI-U relative to the Facility). Manager is authorized to spend, as part of the Approved Budget and in connection with the Facility's operation, the following amounts in excess of (or not contemplated in) the Approved Budget: (i) \$5,000 or less on any single item and/or service (or series of related items and/or services); (ii) not more than \$100,000 in the aggregate in any calendar year for all items and/or services procured by Manager under subsection (i); and (iii) any amount reasonably necessary to address a risk of physical harm to Facility residents if it is not reasonable under the circumstances to contact Owner to pre-approve the expenditure. Manager will give Owner prompt written notice of each item or service Manager procures under subsection (i), (ii) or (iii) above. Notwithstanding the foregoing provisions of this Section 4(f), Manager shall deliver to Owner a proposed budget for the 2024 calendar year on or before July 15, 2024, which Owner shall review for its approval or disapproval within 15 days thereafter and if approved (as modified by Owner) shall be the "**Approved Budget**" for the remainder of calendar year 2024.

g. Purchasing. Manager shall arrange the purchase of all budgeted or Owner authorized inventories, provisions, supplies, and operating equipment necessary for maintenance and operation of the Facility.

h. Tax and Other Reporting. Manager shall assist Owner as requested by Owner in the timely preparation, execution and filing by Owner and/or Manager, all reports, tax returns (except federal, state, and local income tax returns of Owner), and other documents required by the jurisdiction of the Facility, to operate the Facility, including, but not limited to, business tax returns, gross receipts tax returns, and licensing forms.

Owner shall be responsible for the costs associated with the preparation of any reports required under this section.

i. Responsibility for Expenses: Owner shall be solely responsible for any local, state and federal taxes, costs and assessments and all other costs and expenses imposed on the Facility of any kind associated with the Facility, and Manager shall have no liability or obligation with respect thereto. Owner agrees that Manager shall not, by entering into and performing under this Agreement, become liable for any of the future obligations, liabilities or debts of the Facility or Owner. Owner understands that Manager is solely working as an agent of Owner and in that role Manager does not assume any liability for Owner's business. Nothing contained herein shall excuse Manager from responsibility for the consequences of its gross negligence or willful misconduct.

j. Sub-Agreements. Manager shall enter into contracts in the name of and at the expense of Owner for the furnishing to the Facility of electricity, gas, water, steam, telephone, cleaning services, vermin extermination services, elevator and boiler maintenance if applicable, heating and air conditioning maintenance, cable and/or master television antennas, and other utilities or services, all as necessary and appropriate, and purchase all materials and supplies in the name of, and for the account and at the expense of Owner within approved budgetary limitations. Subject to any restrictions contained within Section 7 of this Agreement, Manager shall have the right to negotiate and enter into agreements with concessionaires and licensees of the Facility, in the name of and for the benefit of Owner. All such agreements shall be in writing and must conform to the limits of the Approved Budget for such goods or services. Manager shall not enter into or renew any collective bargaining agreement that would be binding upon Owner without the prior written approval of Owner. Manager shall ensure that any subcontractors working on or about the Facility, as well as all contractors doing work at the Facility (i) carry and maintain in full force and effect commercially reasonable insurance, including without limitation Workmen's Compensation coverage, and (ii) obtain and maintain in full force and effect any licenses, permits or approvals that may be required, and (iii) shall name the Owner and Manager as additional insureds.

k. Maintenance and Repair. Within Approved Budget limitations, Manager shall cause the Facility to be maintained and repaired, at Owner's expense, in accordance with all applicable State and local statutes, ordinances and codes, and in a condition at all times acceptable to Owner. Manager shall be obligated to take the foregoing action only to the extent that there are adequate funds available therefore. Maintenance and repair activities shall include but not be limited to, cleaning, painting, decorating, plumbing, electrical, HVAC, appliances, carpentry, grounds care, and such other maintenance and repair work as Manager may deem reasonably necessary, subject to any reasonable limitations imposed by Owner. Within the Approved Budget limitations, Manager shall arrange for the making or installing, at Owner's expense and in the name of Owner, of such alterations, repairs, decorations or replacements of equipment, at the Facility as Manager deems reasonable or necessary, subject to Owner's approval which shall not be unreasonably withheld. Additional provisions with respect to the Facility's maintenance are:

- (i) Manager shall devote special attention to preventative maintenance and, to the extent feasible, use the services of Facility Employees.
- (ii) Manager shall contract with the qualified independent contractors for the maintenance and repair of heating and air-conditioning systems and elevators, and for ordinary and extraordinary repairs of the Facility beyond the capability of Facility Employees.
- (iii) Manager shall systematically and promptly investigate all service requests received from residents, take responsible action on such requests, and keep records of the same.

Residents' emergency requests for service shall be attended to within twenty-four (24) hours of receipt by Manager. Complaints that Manager believes are serious, in the reasonable exercise of its discretion, and complaints about which Owner specifically inquires shall be reported promptly to Owner after Manager's investigation.

(iv) Owner recognizes the necessity of replacement of furnishings and equipment at the Facility and other ordinary capital replacement items (collectively "**Capital Replacements**"). Owner agrees to expend such amounts for Capital Replacements, which have been previously approved by the Owner in the Approved Budget, as shall be required in the normal and ordinary course of operation of the Facility, to operate the Facility in accordance with Manager's reasonable recommendations and to renovate, modernize and improve the Facility as may become necessary. Manager shall make recommendations to Owner regarding the design of Capital Replacements and, if approved, manager shall supervise installation of Capital Replacements in accordance with such approval.

- (v) Manager shall make, or cause to be made, all improvements and repairs that are reasonably necessary to maintain the Facility's licensure at Owner's expense and such expenditures shall be included in the Approved Budget or any modification thereof. Manager shall obtain the prior approval of Owner before committing to any such expense exceeding five thousand dollars (\$5,000.00) that is not included in the Approved Budget, which consent or approval shall not be unreasonably withheld or delayed. Notwithstanding any other provision of this Agreement, Manager shall be entitled without Owner's prior consent to make unbudgeted expenditures regardless of the amount for the purpose of emergency repairs involving danger to persons or the Facility, recurring expenses within the limits of the Approved Budget, or expenditures that are required to avoid suspension of any necessary service at the Facility. Owner will be notified of any such emergency expenditure within forty-eight (48) hours following the expenditure.
- (vi) Manager may institute, with the prior concurrence of Owner, in the name of Owner, at the expense of Owner, any necessary legal actions or proceedings to collect obligations owing to the Facility or to cancel or terminate any contract with the Facility for breach thereof or default thereunder.
- (vii) Facility Employees responsible for maintenance, will at all times be familiar with the character, location, construction, layout, plan and operation of the Facility, including the electrical, heating, plumbing, air conditioning and ventilating systems, elevators and all other mechanical equipment.

l. Compliance with Laws. Manager shall use its best efforts to comply with all applicable federal, state and local laws pertaining to ownership, use or occupancy of the Facility; provided, however, that if Owner is the only entity capable of performing the activities required to achieve compliance or if funds are not available for Manager to take the actions necessary to achieve compliance, Manager shall not be liable under this Agreement for failing to take such action.

m. Insurance.

- (i) Manager shall furnish Owner with certificates of insurance evidencing any required coverage and any renewals thereof that Manager obtains on behalf of Owner. All insurance policies obtained pursuant to this Agreement shall provide for a minimum of thirty (30) days' notice to both Owner and Manager in the event of cancellation, new-renewal or material modification;
- (ii) All insurance policies shall provide that the insurance companies shall have no right of subrogation against either the Owner or Manager, or their respective agents or employees including but not limited to Facility Employees, to the extent permitted by the insurers; and
- (iii) Owner shall maintain as a Facility Expense as included in the Approved Budget, Fire and Casualty coverage for the full replacement cost of the Facility. Manager shall maintain as a Facility Expense as included in the Approved Budget, (A) CGL coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate and five million dollars (\$5,000,000) in the aggregate overall; (B) Professional Liability coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate and five million dollars (\$5,000,000) in the aggregate overall; (C) employee, including Facility Employees, dishonesty coverage (blanket form) of at least one hundred thousand dollars (\$100,000.00); (D) Employee Practices Liability Insurance coverage of at least \$75,000; and (E) workers' compensation insurance at statutory limits covering all employees, including Facility Employees. All such policies shall be with a financial equivalent of a Best's insurance rating of "A VIII" or better. Owner and Owner's partners shall be named as primary insureds on all policies. Owner and Manager shall provide a current certificate of all insurance policies described in this Section to each other. Sections 4(m)(i) and (ii) above shall apply to all policies maintained under this Section 4(m)(iii).

n. Insurance and Indemnification: Owner shall procure and maintain at Owner's expense such additional insurance in kinds and amounts as Owner shall be required to carry pursuant to the provisions of any note, loan agreement or mortgage outstanding affecting the Facility or the real property upon which it is erected, as well as any other insurance that Owner shall require (including without limitation worker's compensation insurance, professional liability insurance, and all other insurance which it deems appropriate). Owner and Manager each shall give prompt notice to the other of any claims made against either or both of them and shall cooperate fully with each other with any insurance carrier to the end that all such claims will be properly investigated, defended and adjusted. All policies of liability insurance shall:

- (i) name the Owner and such other parties as may be required by the provisions of any note, loan agreement or mortgage as the insured thereunder, as their respective interests may appear as additional insureds; and
- (ii) name Manager as an additional insured.

o. Indemnification of Manager. Owner shall indemnify, defend and hold Manager free and harmless from any loss, liability, or cost (including reasonable attorneys' fees, regardless of whether any

litigation is brought, but excluding consequential or punitive damages) not covered by insurance proceeds¹ that Manager may sustain, incur or assume as a result of any claims that may be alleged, made, instituted, or maintained against Manager alleged to have resulted from gross negligence or willful misconduct of Owner, its agents (other than Manager), representatives or employees, in connection with the management or operation of the Property; provided, however, that in the event of any conflict between this Section 4(o) and any existing insurance coverage, this Section 4(o) shall be modified to the extent necessary to provide the maximum available insurance coverage.

p. Indemnification of Owner. Manager shall indemnify, defend and hold Owner free and harmless from any uninsured² loss, liability, or cost (including reasonable attorneys' fees, regardless of whether any litigation is brought, but excluding consequential or punitive damages) that Owner may sustain, incur or assume as a result of any claims that may be alleged, made, instituted, or maintained against Owner, determined to have resulted from any criminal act, gross negligence or willful misconduct of Manager, its agents, representatives or employees, including, but not limited to, the Facility Employees to the extent that it is reasonable for the Manager to have direct control of the Facility Employees in connection with the operation of the Facility; provided, however, that in the event of any conflict between this Section 4(p) and any existing insurance coverage, this Section 4(p) shall be modified to the extent necessary to provide the maximum available insurance coverage.

q. Residency Agreements.

- (i) Manager shall implement the Pacifica residency agreement form for use at the Facility, which shall be in compliance with all applicable governmental requirements and otherwise approved by Owner. Each such approved and executed residency agreement, a "**Residency Agreement**".
- (ii) Manager shall use its reasonable best efforts to secure full compliance from each resident with the terms of his or her Residency Agreement. Voluntary compliance shall be encouraged. In cases of financial hardship, Manager shall counsel residents and refer them to community agencies to avoid involuntary termination of residency. Subject to applicable procedures and law, Manager may lawfully terminate any Residency Agreement and tenancy when, in Manager's judgment, sufficient cause for such termination (including, but not limited to, nonpayment of rent) exists under the terms of the applicable Residency Agreement. For this purpose, Manager is authorized to proceed with actions for eviction, execute notices to vacate, and file judicial pleadings to such actions, following consultation with Owner and Manager's legal counsel (or Owner's

¹ The term "not covered by insurance proceeds" includes claims for which there is no insurance coverage at all under the policies required under Section 4(m), as well as the portion of any claim that is not covered by any insurance deductible or is in excess of the policy limits of insurance coverage under the policies required under Section 4(m).

² The term "uninsured" as used in this Agreement means any claim for which there is no insurance coverage at all under the policies required under Section 4(m) if the failure to obtain insurance coverage is attributable to Manager's failure to name Owner as a named insured. If Owner procures insurance and fails to name Manager in the insurance policy and Manager thus has no insurance coverage, then Owner shall indemnify Manager. Such term ("uninsured") is distinguished from the term "not covered by insurance proceeds" which includes the portion of any claim that is not covered by any insurance deductible or is in excess of the policy limits of insurance coverage under the policies required under Section 4(m). The caveat in this footnote also does not apply to uninsured claims, such as PAGA and wage and hour claims, which are a Facility expense and are not indemnified by Manager unless such claims are attributable to Manager's negligence.

legal counsel if so elected by Owner), if necessary. All legal fees associated with actions for eviction shall be an operating expense of the Facility.

r. Collection of Rents and Other Receipts. Manager shall promptly bill and use its reasonable best efforts to collect all rents, monthly fees, optional fees, charges, and other amounts receivable in connection with the management and operation of the Facility. Manager shall be entitled to enforce the rights of Owner as creditor under any residency agreement, contract or in connection with the rendering of any services.

(i) SNF SSA Collections. Manager shall collect all amounts owed by the tenant for the SNF Premises under the Shared Services Agreement between such tenant and Owner; provided, however, none of such amounts shall be included in collected gross revenues for purposes of calculating the Management Fee under Section 9(a), below.

s. Rentals. Manager shall offer for occupancy and rent the dwelling units, and other rental facilities and concessions located at the Facility. Manager shall do all of the following with respect to renting units:

- (i) Make preparations for initial rent-up;
- (ii) Show the premises to prospective residents;
- (iii) If an application is rejected, record the reasons for rejection in accordance with the Facility's policies;
- (iv) Maintain and regularly update a list of prospective residents;
- (v) Execute all residency agreements with residents as Manager of the Facility as Owner's agent. Manager shall review and approve each residency agreement. All residency agreements shall comply with applicable laws; and
- (vi) Annually and upon Owner's request, furnish Owner with rental schedules, showing monthly fees for dwelling units and other charges for facilities and services as they may be modified from time to time.

t. Activities. Manager shall plan and conduct social and resident services programs at the Facility.

u. Outreach and Discharge Planning. Manager shall maintain a liaison with health facility discharge planners, community groups and public service organizations, and shall inform such organizations, by written notice or personal contact, of the criteria for residency at the Facility. In addition, as an operating expense to the Facility, Manager shall assure that brochures, newsletters, and other promotional materials are prepared and distributed in the local market area to publicize the Facility's availability. Manager shall ensure the facility staff has procedures, training and support so that residents who require skilled nursing care or other care beyond the capacity of the Facility's license are discharged to an appropriate facility. Manager shall take all steps, including cooperating with discharge planners, to assure a smooth transfer to such alternate facility.

v. Resident-Management Relations. Manager shall encourage and work to maintain good-faith communications with residents to help avoid and solve problems and disputes affecting the Facility and its residents. Manager shall assist residents in forming a resident council that convenes at noticed meetings with agendas and minutes.

w. Non-Discrimination. In performing its obligations under this Agreement, Manager shall use its reasonable best efforts to comply with all federal, state and local laws prohibiting illegal discrimination in

housing on the basis of race, color, sex, creed, disability or national origin, including, without limitation, Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat.241); regulations issued pursuant to that Title (24 CFR, Subtitle A, Part 1); regulations issued pursuant to Executive Order 11063; Title VIII of the 1968 Civil Rights Act; the Americans with Disabilities Act of 1990 (42 USC § 12181 et seq.); the Fair Housing Amendments Act of 1988 (42 USC § 3604(f) et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC § 794). From and after the Effective Date, Manager shall ensure that all service contracts with third-party contractors and providers shall include the following language: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land.”

x. Ownership of Documents. All accounting records and other financial data, reports and materials used by Manager in performance of its duties and obligations under this Agreement shall at all times be the property of Owner; provided, however, that Manager shall have access at all reasonable times to all records and instruments required to perform its duties under this Agreement and Manager has the right, at Operator’s expense to make and retain copies of all such records. Manager agrees that Manager shall have access at all reasonable times to inspect and make copies of all data and materials pertaining to the services to be performed for the Facility under this Agreement. In the event that Manager brings to the Facility certain proprietary books, manuals, technical data, computer software, and the like, these items shall be the sole property of Manager, and Owner shall take reasonable steps to maintain the confidentiality of all such property. Both Owner and Manager shall have access to all such proprietary materials at all reasonable times, and shall maintain the confidentiality thereof to the fullest extent possible. If Owner and/or the Facility pays by direct invoice from a vendor for the ownership of any of these items, they shall thereupon become the sole property of Owner.

y. Safety. Manager shall exercise reasonable due diligence in all matters of safety, including but not limited to emergency evacuation of residents, maintaining safe conditions at the Facility, providing safety training to all Facility Employees, and promulgating rules and regulations for use of the central administration and service communities.

z. No Violation. Manager shall not be deemed to be in violation of this Agreement if Manager is prevented from performing any of its obligations hereunder for reasons beyond its reasonable control, including, without limitation, strikes, walkouts or other employee disturbances, acts of God, terrorism, or the effect or promulgation of any statute, rule, regulation or order by any federal, state or local governmental or judicial authority or official, or failure of Owner to provide sufficient funds, nor shall it be deemed to be in violation hereof or otherwise liable for any error of judgment or act or omission which is made in good faith but without negligence. In providing its services hereunder, Manager shall use commercially reasonable efforts to comply with all laws and regulations applicable to the Facility.

aa. Owner’s Responsibilities. Subject to the terms of this Agreement, Owner agrees to take or cause to be taken any and all actions necessary to be taken by it as the entity with complete dominion and control over the assets and operations of the Facility in order to maintain all required licenses, permits for the operation of the Facility and the Facility’s eligibility to participate in all public or private third-party medical payment programs, including providing sufficient funds to bring the Facility in compliance with all applicable fire safety codes and other laws, regulations and orders, and to correct all structural, maintenance, procedural and staffing deficiencies as shown on the surveys and reports of governmental agencies having jurisdiction over the Facility.

5. Confidentiality.

a. "Confidential Information" Defined. "Confidential Information" shall mean any and all information that is or has been disclosed in writing or orally by either party to the other party, which is either confidential or proprietary in nature. "Confidential Information" shall not include any of the following:

- (i) Information that is or will become generally available to the public through no fault of the receiving party.
- (ii) Information that was known to the receiving party before that party received it under this Agreement and was not acquired, directly or indirectly, from the disclosing party.
- (iii) Information that is disclosed in good faith to the receiving party by a third party lawfully in possession of such information and who is not under an obligation of nondisclosure with respect to such information. All Confidential Information shall remain the sole property of the party that owned such information prior to the execution of this Agreement unless a sale or other transfer of the Confidential Information occurs during the term of this Agreement.

b. Nondisclosure. During the term of this Agreement and for five (5) years thereafter, neither party shall, without the prior written consent of the other party, disclose to any third party (unless such disclosures are required by law) or use for its own purposes (except as contemplated by this Agreement) any Confidential Information concerning the other party's business, operations, or products that is obtained in the course of performing this Agreement.

c. Treatment of Confidential Information. The parties acknowledge that they may have already received or will receive in the future Confidential Information concerning the other party. The parties agree that they shall do all of the following upon receipt of such Confidential Information:

- (i) maintain Confidential Information in confidence and refrain from disclosing it to any third party; and
- (ii) refrain from providing Confidential Information to its employees or its affiliates' employees, except to the extent necessary for the receiving party or its affiliates' employees to perform the obligations and services described in this Agreement.

6. Collection and Disbursement of Revenue.

a. Project Operating Account. Owner shall establish operating accounts for the Facility at a banking institution of its choosing, provided it is located in the area where the Facility is located, to deposit all income from the Facility's operations therein, and to pay all Facility Expenses therefrom (collectively, the "**Project Operating Account**"). The Project Operating Account shall be under the exclusive control of Owner. Owner shall provide sufficient working capital to fund the operation of the Facility and to service debt in connection therewith in accordance with Section 3(a)(vii). Manager shall use commercially reasonable efforts to ensure that all revenues are directly deposited into the Project Operating Account. Manager shall prohibit payors from making payments to Owner in the form of cash.

b. Disbursements. Manager will provide expense summaries on a weekly basis (or such other timeframe as is agreed to by Owner), along with invoice backup documentation. Such expense summaries will show comparison on a line item basis to the Approved Budget. Owner will transfer funds from the Project

Operating Account into an account for which both Owner and Manager are signatories, and Manager will pay expenses from such account (the "**Disbursement Account**"). From the funds transferred by Owner from the Project Operating Account to the Disbursement Account, Manager will make the following disbursements promptly when payable:

- (i) Compensation and fringe benefits (including severance pay) payable to and for Facility Employees, who work at the Facility and for the taxes and assessments payable to local, state, and federal governments in connection with the employment of such personnel; and
- (ii) All other sums otherwise due and payable by Owner as Facility Expenses authorized under the Approved Budget or otherwise approved of by Owner under the terms of this Agreement, including compensation payable to Manager for the services described herein.

c. Non-Facility Obligation. The Disbursement Account shall not be used to pay any obligations that are not incurred by Manager or Owner for or on behalf of the Facility.

d. Insufficient Funds. Owner will maintain in the Disbursement Account sufficient funds to pay all Facility Expenses in accordance with the Approved Budget. Owner shall deposit into the Disbursement Account funds necessary for all expenses approved by Owner in excess of budgeted expenses. In the event that the balance in the joint account is at any time insufficient to pay disbursements that are due and payable under Section 6(b), Manager will inform Owner of that fact. Owner shall remit to Manager sufficient funds to cover the deficit within five (5) business days.

7. Owner's Reserved Rights.

Notwithstanding anything herein to the contrary, Owner expressly reserves the right to approve all of the following under this Agreement:

- a. Marketing plans and programs (on an annual basis) and any non-affiliate entity of Manager retained by Manager to create such plans and programs, which approval by Owner shall not be withheld unreasonably.
- b. All agreements affecting the Facility with a term of greater than one year, which approval by Owner may be withheld in its sole and absolute discretion.
- c. All agreements affecting the Facility (regardless of length of term and notwithstanding subsection "b" above) that cannot be terminated without (i) cause by Owner upon thirty (30) days notice or less and (ii) payment of any termination fees or penalties, which approval by Owner shall not be withheld unreasonably;
- d. All contracts with entities affiliated with Manager or any of its principals, which approval by Owner may be withheld in its sole and absolute discretion;
- e. Annual budgets, which approval by Owner shall not be withheld unreasonably;
- f. Subject to Section 4(k)(v), unbudgeted capital costs and improvements involving costs exceeding five thousand dollars (\$5,000.00), which approval by Owner shall not be withheld unreasonably;
- g. Insurance coverage for the Facility, which approval by Owner shall not be withheld unreasonably;
- h. Settlement of any litigation or substantial claim affecting the Facility (regardless of whether Owner is a named party), which approval by Owner shall not be withheld unreasonably;

i. Any material structural and/or physical changes to the Facility, which approval by Owner may be withheld in its sole and absolute discretion;

j. All leases to non-residents, which approval by Owner shall not be withheld unreasonably; and

k. All loans, advances, hypothecations, and draws of five thousand dollars (\$5,000.00) or more related to the Facility, which approval by Owner may be withheld in its sole and absolute discretion.

8. **MIS**: Manager shall provide computer support services to Owner including but not limited to:

- Oversight of acquisition and maintenance of equipment
- Computer related technical support
- Network management of all data
- Software license management
- Data retention and recovery systems
- Virus and security protection systems
- Email and internet access

Cash Management

- Use existing bank accounts
- Access online banking
- Establish electronic funds transfer

Financial Systems

- Create Great Plains Database (Financial)
- Create Senior Master Database (Rent roll)
- Create Fixed Asset Database
- Create Accounts Receivable Filing Systems (Billing)
- Create Accounts Payable Filing Systems
- Create Other Accounting Filing Systems

Budgeting

- Competitive Wage Studies
- Competitive Rate and Market Studies
- Create initial budgets
- Create budget variations and analysis
- Finalize budget
- Load budgets into Great Plains Database

Insurance

Human Resources

-

Licensing

- Review and update of facility Disaster Plan

Transfer of Liabilities

- Coordinate transfer and assumption of leases and maintenance agreements
- Set-up new credit relationships with all vendors

Contract Negotiations

- Review and participation in development of sales contract.

All software licensed to the Manager and provided to the Owner for shared use shall remain the property of the Manager unless agreed to otherwise in writing by both parties. All hardware and software solely used at the Facility is property of the Owner. The Owner shall be responsible for a pro rata payment based on total number of units licensed of all costs associated with Manager's provision of the above services to include but not limited to equipment, hardware, software, software licensing, voice and data services, equipment and software maintenance and technical support.

9. Manager's Compensation and Expenses.

a. Management Fee. The service fees to be paid by Owner to Manager will be paid on a monthly basis calculated as cumulative total of 3.0% percent of collected gross revenues derived from the Owner's operations including rental from concessions at the facility and all other sources relating to the operation of the facility on a cash basis, and in accordance with generally accepted accounting principles. A fee of the previous month's Management Fee shall be payable by the 5th of each month. Any excess or shortage over the fee for a particular month shall be reconciled and paid within 5 days of completion of the financial statements for that month.

(i). SSA Collection Fee. Manager shall not be entitled to any fee for amounts collected from the tenant for the SNF Premises under the Shared Services Agreement between such tenant and Owner.

b. Incentive Fee. Manager shall be entitled to a quarterly management incentive fee for each calendar quarter during the Term of this Agreement equal to, (a) until the Facility is stabilized, 10% of the positive difference, if any, in net operating income for each calendar quarter compared to the net operating income of the immediately preceding calendar quarter, and (b) once the Facility is stabilized, 3.5% of the positive difference, if any, in net operating income for each calendar quarter compared to the net operating income of the immediately preceding calendar quarter.

b. Employee Expenses. In addition to the above management fee, either (i) Manager shall be reimbursed for the direct employee and Facility Employee expenses or (ii) the direct employee expenses for employees, including but not limited to Facility Employees, shall be paid from the Project Operating Account; provided that in all cases, such reimbursements shall not exceed those allocated in the Approved Budget and that any Facility Employee that devotes time to other facilities of Manager or the general overhead management of Manger shall have the portion of such time not devoted to the Facility paid exclusively by Manager from sources other than Owner, the Facility or the Project Operating Account. In addition, the following expenses shall not be the obligation of Owner or the Facility nor paid from the Project Operating Account and shall be the sole obligation of the Manager:

(i) General accounting and reporting services, as such services are considered to be within the reasonable scope of Manager's responsibility to Owner;

- (ii) Cost of forms, stationery, ledgers and other supplies and equipment used in Manager's principal office or regional office;
- (iii) Cost or pro-rata cost of telephone and general office expenses incurred at the Facility by Manager for the operation and management of properties other than the Facility;
- (iv) Cost or pro-rata cost of electronic data processing, for data processing provided by computer service companies, except as outlined in paragraph 8;
- (v) Cost of all bonuses, incentive compensation, profit sharing, or any pay advances by Manager to Manager's employees, except to employees located at the Facility and then only to the extent approved under the then Approved Budget;
- (vi) Third party claims resulting from criminal acts or from gross negligence or fraud on the part of those Facility Employees to the extent that it is reasonable for the Manager to have direct control of the Facility Employees, the Manager or Manager's affiliates or employees, or any other claims, actions, suits, proceedings, losses, costs and expenses for which Manager is obligated to indemnify Owner under Section 4(p).
- (vii) Cost of comprehensive crime insurance purchased by Manager for its own account.
- (viii) Costs for meals, travel and hotel accommodations for Manager's principal office or regional office personnel who travel to and from the Facility.

c. Payment Policy. Owner will pay Manager from the Project Operating Account the management fee described in Section 8(a) on the fifth (5th) day of the calendar month as defined in section 8(b)

d. Owner's Failure to Pay. As described in Section 9(c), Owner's nonpayment of any management fees or employee expenses due under this Section 9 shall constitute cause for termination of this Agreement by Manager.

10. Term and Termination.

a. Term. The initial term of this Agreement shall begin on the Effective Date and shall end on the date that is two (2) years after the Effective Date, unless sooner terminated as set forth below (the "**Initial Term**").

b. Termination by Owner. Owner may terminate this Agreement at any time with or without cause on thirty (30) days written notice to Manager. Owner may terminate this Agreement immediately for "cause" if any of the following occurs:

- (i) If Manager or any of its directors, officers, employees, contractors, subcontractors or agents shall be guilty of any gross negligence, willful misconduct, fraud, malfeasance or breach of fiduciary duty, with respect to the Facility or the Project Operating Account;
- (ii) Subject to the notice and cure period described in Section 9(d), Manager's material breach of any of the provisions of this Agreement.

- (ii) Manager or any of its principal operating officers is convicted of any felony or any other crime that materially affects the operation or reputation of the Facility.
- (iii) The filing of a voluntary or involuntary petition to declare Manager bankrupt or insolvent if such petition is not discharged within ninety (90) days after its filing.
- (iv) Owner substantiated Manager has committed fraud, material misrepresentation, embezzlement or gross negligence in the performance of any of its obligations under this Agreement.
- (v) If any material license held by Manager and necessary for the performance of its duties or services hereunder shall be terminated or suspended, and Manager does not arrange for the reinstatement of such license within five (5) days after its termination or suspension.
- (vi) If Manager's company existence shall be dissolved or terminated by merger, consolidation or otherwise without the consent of Owner.
- (viii) Upon the sale of the Facility by Owner or any successor-in-interest to Owner.
- (ix) In the event Manager fails to meet net operating income under the Approved Budget for any period of three (3) or more consecutive months.

c. Termination by Manager for Cause. Manager may terminate this Agreement for "cause" if any of the following occur:

- (i) Owner fails, within five (5) business days following receipt of notice of a Project Operating Account deficit from Manager, to provide adequate cash funds for reasonable, Approved Budget expenses incurred in managing and operating the Facility.
- (ii) Subject to the notice and cure period under Section 9(d), Owner materially breaches any of the provisions of this Agreement.
- (iii) The filing of a voluntary or involuntary petition to declare Owner bankrupt or insolvent if such petition is not discharged within ninety (90) days after its filing.

d. Notice and Cure Period. In the event that Owner or Manager determines that the other party has materially breached this Agreement, the non-breaching party shall allow the other party a period of sixty (60) days to cure the breach after receipt of notice thereof from the non-breaching party. If the default cannot be cured within sixty (60) days, no material breach shall occur so long as the breaching party begins curing the breach within sixty (60) days of receiving notice from the non-breaching party and diligently continues to cure the breach thereafter. Notwithstanding the foregoing, there shall be no notice or cure period for criminal acts or any other willful misconduct that is the basis of a breach under this Agreement.

e. Manager's Obligations after Termination.

- (i) Manager shall submit all of the following to Owner within ten (10) days following this Agreement's termination: (A) all books, records, contracts, leases, receipts for deposits, unpaid bills then in the possession of Manager, the then current rent roll, and all other

papers or documents (including, without limitation, all computer tapes, disks and software) which pertain to the Facility; (B) all financial statements; (C) any plans and specifications pertaining to the Project then in the possession of Manager; (D) all bank and petty cash assets under the responsibility of Manager for the operation of the Facility; (E) any trust and investment accounts under responsibility of Manager for the operation of the Facility; (F) all of Owner's intellectual community, including, without limitation, trademarks, service marks, copyrights, patents, resident lists and trade secrets; and (G) a complete reconciliation of all records pertaining to the operation of the Facility.

- (ii) Manager shall submit all of the following to Owner within one (1) day of the termination of this Agreement: all keys and keycards to any locks at the Facility then in the possession of Manager.
- (iii) In addition, upon notice of termination of this Agreement, Manager shall assist Owner in coordinating with any successor manager of the Facility to ensure a smooth transition from Manager to such successor manager.

f. Owner's Obligations after Termination. In the event of any termination of this Agreement, Manager shall be entitled to the payment of any management fees and reimbursable expenses due to Manager through the effective date of any such termination and all Facility Employees expenses shall be paid through to such date on the terms provided herein. Notwithstanding the foregoing, in the event Owner terminates this Agreement under Section 9(b)(i), Manager shall forfeit and Owner shall have no obligation to pay any accrued but unpaid management fees.

g. Management Fee Post Sale by Owner. Upon the sale of the Facility by Owner or a successor-in-interest to Owner, the existing management compensation structure set forth herein shall continue to inure to the benefit of Manager in compensation for management services conducted up until the consummation of escrow.

h. If the Facility is meeting or exceeding budget and Owner terminates this agreement without cause within the Initial Term, the Owner shall pay Manager a termination fee equal to the three (3) months management fee based on the three (3) months immediately preceding the termination notice. This termination fee must be paid prior to receiving a final accounting from Manager. Termination of this Agreement due to monetary default shall be considered termination by Owner.

11. General Provisions.

a. Relationship of Parties: Owner and Manager shall not by virtue of this Agreement be deemed partners or joint ventures in the operation of the Facility. It is expressly understood that Manager is retained by Owner to manage the Facility on behalf of Owner and the Manager is the sub-agent of Owner only for the purpose of carrying out its obligations under this Agreement. Nothing in this Agreement shall be deemed to restrict in any way the freedom of Manager to conduct any other business or activity whatsoever including but not limited to the management and or ownership of congregate care communities, nursing homes, independent living communities or retirement homes without accountability to Owner or to any other party hereto.

b. Independent Contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture, or employer-employee relationship between the Owner and the Manager. Manager and Owner are at all times independent contractors under this Agreement. Manager shall not be jointly liable with Owner for Owner's debts or obligations with respect to the Facility or any financing arrangements entered into by Owner with respect to the Facility.

c. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement.

- d. Headings. The article and paragraph headings contained herein are for convenience of reference only and are not intended to define the scope or intent of any term of this Agreement.
- e. Applicable Law. This Agreement shall be construed under California law.
- f. Severability: If any of the provisions of the Agreement are determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provision of this Agreement.
- g. No Waiver. The failure of either party to insist upon strict performance of any term of this Agreement or to exercise any option, right or remedy herein shall not be deemed a waiver of such term, provision, option, right, or remedy. No waiver by either party of any term hereof shall be valid unless contained in a writing signed by the waiving party.
- h. Reasonableness. Except as expressly provided herein, all consents, approvals, determinations, requirements, and other acts required by either party hereunder shall be reasonable under the circumstances, and no such consents, approvals, determinations, requirements or other acts required by either party shall be unreasonably withheld, delayed, or denied.
- i. Mutual Cooperation. The parties shall execute and deliver all appropriate instruments and take all actions necessary to make this Agreement fully and legally effective, binding and enforceable, as between the parties and as against third parties.
- j. Time of Essence. Time is of the essence in each and all of the agreements, covenants, and conditions hereof.
- k. No Third Party Beneficiaries. This Agreement is entered into for the benefit of Manager and Owner. No other parties are intended to be third-party beneficiaries of this Agreement.
- l. Rights of Non-Parties: Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Subject to the preceding sentence, no term or provision of this Agreement is intended (i) to relieve or discharge the obligation or liability of any non-party to any party to the Agreement; or (ii) to give any non-party any right of subrogation or action over and against any party to this Agreement.
- m. Notices. All notices or other communications required or permitted hereunder shall be in writing and addressed as set forth below and either personally delivered, sent by overnight mail (Federal Express or the like), or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by telecopy. Notice hereunder shall be deemed to have been properly given or served for all purposes and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice if delivered during ordinary business hours; (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility; (iii) if mailed, on the third business day following the date of posting by the United States post office; or (iv) if given by telecopy, when the sender receives a confirmation of receipt generated by the sending telecopy machine, if sent during ordinary business hours of the sender. Any notice, request, demand, direction, or other communication sent by telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

If to Owner:

Lake Merritt Senior Living LLC
Attn: Deepak Israni
1775 Hancock Street, Suite 200
San Diego, CA 92110
Phone: 619-296-9000
Fax: 619-296-9090
(e-mail):
disrani@pacificacompanies.com

If to Manager:

Calson Care Oakland, LLC
Attn: Jason Reyes
4950 Allison Parkway, Suite F
Vacaville, CA 95688
Telephone: 707-592-1157
E-mail: Jason@calsonmanagement.com

and

Thomas P. Sayer, Jr., Esq.
9984 Scripps Ranch Blvd., #284
San Diego, CA 92131
(858) 335-9590 (voice)
(619) 296-9090 (fax)
tsayer1@gmail.com (e-mail)

Any of the parties may designate a change of address by Notice to the other parties. Whenever in this Agreement the giving of Notice is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

n. Assignment. Neither party shall assign, transfer or delegate any of its rights or duties hereunder without the prior written approval of the other party.

o. Survival. Sections 4(o), 4(p) and 5 shall survive the termination of this Agreement.

p. Attorneys' Fees. If any party to this Agreement shall bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation.

q. Entire Agreement and Amendment: This Agreement and the documents incorporated by reference herein constitute the entire Agreement regarding management services between Owner and Manager and supersede all prior proposals, negotiations, representations and other communications between Owner and Manager, whether oral or written. This Agreement may not be amended except by a written agreement fully executed by Manager and Owner.

r. Subordination of Management Agreement: Manager acknowledges this Agreement shall be subject and subordinate to the lien of holder of the first deed of trust secured by the Property. Manager shall execute an *Assignment and Subordination Agreement* on commercially reasonable terms as required by Owner's lender. Manager shall provide such commercially reasonable estoppel certificates as may be requested by Owner from

time to time. This Agreement and the payments thereunder to Manager shall also be subject and subordinate to the Lease and the payments of rent to the Landlord under the Lease.

s. Destruction by Casualty: In the event that fire or other casualty destroys the Owner’s facility wholly or partially, Owner will notify Manager of the decision to repair or restore within sixty (60) days of the date the casualty occurs. Despite the occurrence of said casualty, this Agreement shall continue in full force and effect with Manager receiving the normal compensation provided for herein. If Owner elects to repair or restore the premises to their former condition the normal compensation will amount to payment monthly of a fee equivalent to the monthly fee for the month preceding the month the casualty occurs. In the event Owner elects not to repair or restore the premises to an acceptable and operable condition as prior to the date of the casualty, this Agreement shall be terminated within thirty (30) days after proper notice is given to Manager.

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

MANAGER:

CALSON CARE OAKLAND, LLC
a California limited liability company

By: DocuSigned by:
Jason Reyes
12D59D488E9F4F2...

Jason Reyes, Managing Member

OWNER:

LAKE MERRITT SENIOR LIVING LLC,
a California limited liability company

By: DocuSigned by:
Deepak Israni
6482A174B7394C4...

Deepak Israni, Authorized