

Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
☐ CHECK IF POINT OF CONTACT FOR APPLICATION		☒ CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	Cherry Tree Apartments LLC	Representative Name	Joseph Friedmann
Address	333 West Hampden Avenue, Suite 600	Address	1600 Race Street
City, State, Zip	Englewood, CO 80110	City, State, Zip	Denver, CO 80206
Telephone	303-789-3030	Telephone	301-775-8655
Email	HugoW@TheSitusGroup.com	Email	joeywilli@gmail.com
*If More Than One Property Owner: All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.		**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.	
Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date. If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney's Office.			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):		1969, 1975, & 1995 S. Decatur St & "1957 S. Decatur St. Rear"	
Assessor's Parcel Numbers:		0529104035000; 0529104028000	
Area in Acres or Square Feet:		70,209 sq ft	
Current Zone District(s):		R-2-A	
PROPOSAL			
Proposed Zone District:		S-MU-3	

REVIEW CRITERIA

General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7	☒ Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan. Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need. ☒ Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts. ☒ Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.
Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8	Justifying Circumstances - One of the following circumstances exists: ☐ The existing zoning of the land was the result of an error. ☐ The existing zoning of the land was based on a mistake of fact. ☐ The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage. ☒ Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include: a. Changed or changing conditions in a particular area, or in the city generally; or, b. A City adopted plan; or c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning. ☐ It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code. Please provide an attachment describing the justifying circumstance. ☒ The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District. Please provide an attachment describing how the above criterion is met.

REQUIRED ATTACHMENTS

Please ensure the following required attachments are submitted with this application:

- ☒ Legal Description (required to be attached in Microsoft Word document format)
- ☒ Proof of Ownership Document(s)
- ☒ Review Criteria, as identified above

ADDITIONAL ATTACHMENTS

Please identify any additional attachments provided with this application:

- ☒ Written Authorization to Represent Property Owner(s)
- ☐ Individual Authorization to Sign on Behalf of a Corporate Entity

Please list any additional attachments:

- 1969 1975 1995 S Decatur St and 1957 S Decatur St Rear Rezoning Application Attachment.pdf
- Special Warranty Deed, dated Aug 15, 2018 from Three By Four Horses, Inc to Cherry Tree Apartments LLC
- Operating Agreement for Cherry Tree Apartments LLC showing ownership by IH Holdings Ten LLC
- Operating Agreement for IH Holdings Ten LLC showing managers with signing authority

REZONING GUIDE

Rezoning Application Page 3 of 3

PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION/PETITION

We, the undersigned represent that we are the owners of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (YES/NO)
EXAMPLE John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	YES
Cherry Tree Apartments LLC	1969, 1975, 1995 S. Decatur, Denver CO, 80219 303-789-3030 HugoW@TheSitusGroup.com	100%	<i>Hugo W. Meyer</i>	1-28-19	B	YES

Last updated: May 24, 2018

 Return completed form to rezoning@denvergov.org

201 W. Colfax Ave., Dept. 205

Denver, CO 80202

 720-865-2974 • rezoning@denvergov.org

1969, 1975, & 1995 S. Decatur St & "1957 S. Decatur St. Rear"

Legal Description

EVANS PARK ESTATES B1 L11 TO 14 EXC E 115FT OF L12

and

W/2 L 15 BLK 1 EVANS PARK ESTATES

January 24, 2019

Denver Community Development and Planning

201 W Colfax Ave Department 205

Denver, CO 80202

Written Authorization for Rezoning of property located at 1969, 1975, and 1995 S. Decatur St.
and also "1957 rear" S. Decatur St.

Joseph Friedmann has the authority to represent the property owner in the rezoning application
process for the above referenced property.

A handwritten signature in black ink, appearing to read "Hugo Weinberger".

Hugo Weinberger - Manager

Representative of Cherry Tree Apartments LLC

333 W HAMPDEN AVE 600

ENGLEWOOD , CO 80110-2336

Items needed:

- Deed showing ownership
- Cherry Tree Apartments Articles of Org
- LLC Operating Agreement

APPLICATION FOR ZONE MAP AMENDMENT

Assessor's Parcel Numbers

05291-04-035-000; 05291-04-028-000

1969, 1975, & 1995 S. Decatur St & "1957 S. Decatur St. Rear" Legal Description

PARCEL A:

LOTS 11, 13 AND 14, AND THE WEST 175 FEET OF LOT 12, BLOCK 1, EVANS PARK ESTATES, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL B:

THE WEST 1/2 OF LOT 15, BLOCK 1, EVANS PARK ESTATES, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

also known by street and number as: **1969, 1975, 1995 S DECATUR ST, DENVER, CO 80219**

Total sq ft: 70,209

Review Criteria

1.0 Background:

Our goal for rezoning is not to win the right to construct a new development, but rather to facilitate bringing the current structures on the property into compliance. The current planned building group on the property was approved and recorded in 1986. The buildings have not been majorly renovated and there have been additions since their original build. The building department records and the assessor's records indicate more units than the zoning permit in place, which only lists 47 units. There appear to have been more physical units built as part of the original layout, than were recognized under the zoning permit. We wish to bring this planned building group into compliance.

Aside from remediation and updates, our plans do not include any major changes to the buildings' layouts. However, after rezoning, we plan to apply for a new zoning permit that will recognize the current number of existing units in the existing planned building group. During our research on this property, we have been repeatedly inconvenienced by its being regulated under the old zoning code. As we plan on holding this property for some time, and as we recognize that Denver is currently reexamining its plans overall, we feel it the right time to modernize the old zoning and apply for the new zoning.

2.0 Review Criteria DZC Sec. 12.4.10.7

2.1 Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan. We have outlined several indicators of consistency below:

2.1.1 Consistent with draft Comprehensive Plan 2040, updated March 13, 2019

- Equitable, Affordable, and Inclusive Goal 1.A (p. 28): “Increase development of housing units close to transit and mixed-use developments.” This updated zoning district will allow the existing planned building group to be more fully utilized. As mentioned in the Background section, above, there are more units built out, than can be legally occupied under the existing older zone district. This update of the zoning would allow this same collection of structures to provide more housing units that currently allowed.
- Equitable, Affordable, and Inclusive Goal 2.A (p. 28): “Create a greater mix of housing options in every neighborhood for all individuals and families.” Pursuant to Section 3.2.2.2(I) of the Denver Zoning Code 2010, “S-MU- is a multi unit district and allows suburban house, duplex, row house, and apartment building forms up to 3, 5, 8, 12, 20 stories in height.” S-MU-3 supports a variety of housing options for the surrounding neighborhood.
- Strong and Authentic Neighborhoods 1.B (p. 34): “Ensure neighborhoods offer a mix of housing types and services for a diverse population.” The new proposed zone district will support alternative housing types to S-RH-2.5 and S-SU-F1, while remaining a residential use zone district, it will support the continued current use of the property, which provides a slightly more dense housing option, without altering the current building plan.
- Strong and Authentic Neighborhoods 1.D (p. 34): “Encourage quality infill development that is consistent with the surrounding neighborhood and offers opportunities for increased amenities.” The proposed district would allow for the existing apartment buildings to remain as is the applicant’s intent. If redeveloped in the future, the zone district would allow for houses, duplexes, row houses, and small-scale apartment buildings that are consistent with the surrounding suburban neighborhood context and adjacent to amenities in the nearby community corridor.
- Environmentally Resilient 8.A (p. 54): “Promote infill development where infrastructure and services are already in place.” Along the lines of the immediately preceding example, this proposed zone district will allow this property to be fully utilized in its current configuration, making full use of the infrastructure and services already in place on site.

2.1.2 Consistent with draft Blueprint Denver, updated March 13, 2019

- Growth Strategy (p. 66): “Certain future places are anticipated to take on more jobs and housing than others, but all areas of Denver are expected to evolve. A rezoning in an area planned for less growth may still be appropriate, as smaller-scale growth and reinvestment should be occurring in these areas as well.”
 - o According to the Growth Strategy Map on page 51 of the Blueprint Denver, March 13, 2019 draft, the subject property is in an “All other areas of the city” region, and borders along its west side and south side properties that are part of “Community centers and corridors”. The proposed zone district is residential, but would accommodate a higher density than single family residential or row houses, which would not be inconsistent with being adjacent to area identified as community centers and corridors.

- Street Types: Page 67 of Blueprint Denver, March 13, 2019 draft states that “The street types map should be used to identify the street types that serve the site to be rezoned” and that “the street types descriptions convey key characteristics of different streets and can inform the types of zone districts that would best align with the desired land use and built form characteristics of the street.” The immediately adjacent streets to the subject property are not given any specific Street Type designation subject to the Street Types map on page 157 of Blueprint Denver, March 13, 2019 draft. However, the subject property is on the same block as Federal Blvd, designated “Mixed Use Arterial”, and Jewell Ave, designated “Residential Arterial”
- Future Places (p. 143): According to the map of Future Places on page 143 of Blueprint Denver, March 13, 2019 draft, the subject property is in an area designated as “Low-Medium” Residential. Pursuant to the description for Land Use and Built Form on page 148 of aforementioned draft of Blueprint Denver, Low-Medium Residential area is described as follows:

Predominantly low-scale multi-unit residential mixed with one- and two-unit residential uses. Some higher intensity residential uses may be mixed throughout. Neighborhood-serving retail may be found in key locations. Buildings include rowhouses and smaller multi-unit buildings. Some contexts may also have a significant mix of houses and duplexes.

- As mentioned above, pursuant to Section 3.2.2.2(l) of the Denver Zoning Code 2010, S-MU-3 is a multi unit district and allows suburban house, duplex, row house, and apartment building forms up to 3 stories in height. We believe that this zoning district is consistent with the current draft of Blueprint Denver’s designation for the subject property regarding Future Places.

2.2 Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.

We have selected S-MU-3 zoning because we believe that it best describes the current use of the property. The existing planned building group consists of three multiunit residential buildings, two of which are two stories tall, and one of which is three stories tall. We feel that in addition to being a good match for the existing structures, that were approved and build in the 1980’s, this S-MU-3 zoning is consistent with the future goals for neighborhood context and intensity, as discussed above, as indicated in the draft Blueprint Denver and draft Comprehensive Plan 2040

2.3 Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.

The proposed map amendment furthers the general welfare of the City by protecting the current existing use, which is an existing planned building group. In addition, the updating of old guidelines with modern guidelines that are in line with the current best practices for zoning would better promote the public health, safety, and general welfare.

3.0 DZC Sec. 12.4.10.8

3.1 Justifying Circumstances: The City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.

The subject property is currently zoned R-2-A (old zoning district). The retention of Former Chapter 59 Zoning is a justifying circumstance per Denver Zoning Code Section 12.4.10.8.4.c. As described above, we feel that S-MU-3 is the zone district from the current zoning code that is a best fit for the current existing use and character of the property. We wish to modernize the zoning district to the current best match for the current use of the property.

3.2 The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.

The proposed zone district, S-MU-3, is a suburban character zone, and the intent, as defined in Section 3.2.2.2(l), of the Denver Zoning Code 2010, describes it as “a multi unit district” with a variety of building forms, including those existing on the subject property.

As discussed above, the Suburban Neighborhood Context description in Blueprint Denver, March 13, 2019 draft (p. 136) is:

Range of uses from single-unit and multi-unit residential to commercial corridors and centers. Block patterns are generally irregular with curvilinear streets. Alleys are not commonly found. Buildings are typically set back from the street and range in scale.

Walkable and bikeable with access to transit but still mostly reliant on cars. Parks of various sizes, natural areas, open spaces, schools, civic and social spaces. A range of recreational amenities. Trees are found on private property but also on the street.

The Suburban Places Map, found on page 193 of Blueprint Denver, March 13, 2019 draft, (which for the portion containing the subject property is identical to the Future Places Map, discussed above) identifies the subject property as a “Residential Low-Medium” area, bordering “Community Corridor” to the west, “Community Centers” to the south, and “Low Residential” to the east, all of which is within a Suburban context. Chapter 5 of the same draft of Blueprint Denver, on page 200, describes the Land Use and Built Form for Suburban Residential Low-Medium Areas as follows:

There is a mix of low-scale, multi-unit residential as well as some more limited single- and two-unit residential uses. Limited mixed-use along some arterial and collector streets and some intersections. Vacant institutional uses at intersections or select sites along some residential arterial and collector streets may be appropriate locations to introduce additional residential intensity. A variety of lower scale residential forms including row houses and small multi-unit buildings are found. Buildings are generally 3 stories or less in height.

Again, we believe that this is consistent with S-MU-3 zoning, which includes a variety of residential uses, including modest apartment buildings with a 3-story height limit. A designation that is in lock-step with Blueprint's Suburban Residential Low-Medium Area description.



State Documentary Fee
Date: 8/15/18
\$630.00

Special Warranty Deed
(Pursuant to 38-30-115 C.R.S.)

THIS DEED, made on this 15th day of August, 2018 by **THREE BY FOUR HORSES, INC., A COLORADO CORPORATION** Grantor(s), of the County of **Douglas** and State of **Colorado** for the consideration of **(\$6,300,000.00) ***Six Million Three Hundred Thousand and 00/100***** dollars in hand paid, hereby sells and conveys to **CHERRY TREE APARTMENTS LLC, A COLORADO LIMITED LIABILITY COMPANY** Grantee(s), whose street address is **333 W. HAMPDEN AVENUE SUITE 600, Englewood, CO 80110**, County of **Arapahoe**, and State of **Colorado**, the following real property in the **City** and County of **Denver**, and State of **Colorado**, to wit:

PARCEL A:

LOTS 11, 13 AND 14, AND THE WEST 175 FEET OF LOT 12, BLOCK 1, EVANS PARK ESTATES AS SHOWN ON THE RECORDED PLAT FOR EVANS PARK ESTATES, RECORDED MARCH 19, 1962, IN BOOK 5 AT PAGE 53X, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL B:

THE WEST 1/2 OF LOT 15, BLOCK 1, EVANS PARK ESTATES, AS SHOWN ON THE RECORDED PLAT FOR EVANS PARK ESTATES, RECORDED MARCH 19, 1962, IN BOOK 5 AT PAGE 53X, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

also known by street and number as: **1969, 1975, 1995 S DECATUR ST, DENVER, CO 80219**

with all its appurtenances and warrants the title against all persons claiming under the Grantor(s), subject to *general taxes for the year 2018 and those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Grantee(s) in accordance with Record Title Matter (Section 8.2) of the Contract to Buy and Sell Real Estate relating to the above described real property; distribution utility easements, (including cable TV); those specifically described rights of third parties not shown by the public records of which Grantee(s) has actual knowledge and which were accepted by Grantee(s) in accordance with Off-Record Title Matters (Section 8.3) and Current Survey Review (Section 9) of the Contract to Buy and Sell Real Estate relating to the above described real property; inclusion of the Property within any special tax district; any special assessment if the improvements were not installed as of the date of Buyer's signature on the Contract to Buy and Sell Real Estate, whether assessed prior to or after Closing; and other N/A*

(SEE ATTACHED "SIGNATURE PAGE")

When recorded return to: **CHERRY TREE APARTMENTS LLC, A COLORADO LIMITED LIABILITY COMPANY**
333 W. HAMPDEN AVENUE SUITE 600, Englewood, CO 80110



(2017/2018 Contract) Special Warranty Deed (Photo/Joint/Entity)

SIGNATURE PAGE

THREE BY FOUR HORSES, INC., A COLORADO CORPORATION

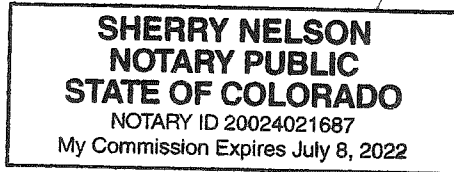
By: [Signature]
ANDREW CARPINELLI, PRESIDENT PRO TEM

State of Colorado)
County of Denver)ss.
)

The foregoing instrument was acknowledged before me on this 14th day of August, 2018 by ANDREW CARPINELLI AS PRESIDENT PRO TEM OF THREE BY FOUR HORSES, INC., A COLORADO CORPORATION

Witness my hand and official seal

My Commission expires: 7/8/22 [Signature]
Notary Public



OPERATING AGREEMENT
OF
CHERRY TREE APARTMENTS, LLC

A Colorado Limited Liability Company

THE LLC MEMBERSHIP INTERESTS REPRESENTED BY, AND ESTABLISHED PURSUANT TO, THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR SIMILAR LAWS OR ACTS OF ANY STATE, INCLUDING BUT NOT LIMITED TO THE STATE OF COLORADO, IN RELIANCE ON EXEMPTIONS UNDER SUCH LAWS AND ACTS. THE SALE OR OTHER DISPOSITION OF THE MEMBERSHIP INTERESTS IS RESTRICTED AS PROVIDED IN THIS OPERATING AGREEMENT, AND IN ANY EVENT IS PROHIBITED UNLESS THE LLC RECEIVES AN OPINION OF COUNSEL OR OTHER EVIDENCE, IN EITHER CASE SATISFACTORY TO THE LLC, THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE STATE SECURITIES LAWS AND ACTS. BY ACQUIRING THE MEMBERSHIP INTEREST REPRESENTED BY, AND ESTABLISHED PURSUANT TO, THIS OPERATING AGREEMENT, EACH MEMBER REPRESENTS, WARRANTS AND COVENANTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF ANY OR ALL OF ITS MEMBERSHIP INTERESTS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH SUCH LAWS AND ACTS AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

Table of Contents

ARTICLE I - DEFINITIONS.....	1
ARTICLE II -ORGANIZATION AND TERM	1
ARTICLE III - PURPOSE AND POWERS OF THE COMPANY.....	7
ARTICLE IV - MEMBERS, CAPITAL CONTRIBUTIONS AND UNITS	9
ARTICLE V - RIGHTS AND POWERS OF MEMBERS.....	10
ARTICLE VI - MANAGER(S).....	12
ARTICLE VII - MEETINGS AND VOTES OF MEMBERS	15
ARTICLE VIII - MEMBER ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS	17
ARTICLE IX - FISCAL YEAR, BOOKS AND RECORDS	24
ARTICLE X - TAX MATTERS	24
ARTICLE XI - MEMBERS' LIABILITY	25
ARTICLE XII - INDEMNIFICATION	27
ARTICLE XIII - ADDITIONAL MEMBERS AND UNITS.....	27
ARTICLE XIV - TRANSFERS	28
ARTICLE XV - DISSOLUTION AND WIND-UP	31
ARTICLE XVI - AMENDMENTS	32
ARTICLE XVII - NOTICES.....	32
ARTICLE XVIII - GOVERNING LAW AND INTERPRETATION.....	33
ARTICLE XIX - NO THIRD PARTY BENEFICIARIES	33
ARTICLE XX - ENTIRE AGREEMENT.....	33
ARTICLE XXI - COUNTERPART EXECUTION.....	34

**OPERATING AGREEMENT
FOR
CHERRY TREE APARTMENTS, LLC
A COLORADO LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT is dated, and to be effective, as of July 17, 2018 is by and among the undersigned ("Members") of CHERRY TREE APARTMENTS, LLC.

WHEREAS, the Members formed, as a Colorado limited liability company, by filing its Articles of Organization pursuant to the Colorado Limited Liability Company Act on July 17, 2018 (the "Company"); and

WHEREAS, the Members desire to adopt this Operating Agreement; and

WHEREAS, each Member represents that it has sufficient right and authority, without breaching any provision of law or contract to execute this Operating Agreement and is not acting on behalf of any undisclosed or partially disclosed principal in executing this Operating Agreement.

WHEREAS, the Company intends on borrowing a loan (the "Loan") from Ladder Capital Finance LLC, a Delaware limited liability company, Ladder Capital Finance I LLC, a Delaware limited liability company, or one of their affiliates (as applicable, together with its successors and/or assigns, hereinafter "Lender") pursuant to the terms and conditions of that certain Loan Agreement by and between the Company and Lender (the "Loan Agreement"), this Operating Agreement is being executed by the Members at the request of Lender and constitutes a material requirement of the Loan without which Lender would be unwilling to make the Loan.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, and each of them, hereby agree as follows:

ARTICLE I - DEFINITIONS

Unless the context clearly requires otherwise, references to "Articles" and "Sections" herein contained shall be references to Articles and Sections of this Operating Agreement, references to Exhibits herein contained shall be references to Exhibits attached hereto, each of which are hereby expressly incorporated herein, and the initially capitalized words and phrases herein contained shall have the meanings ascribed to such initially capitalized words and phrases herein and in the attached Exhibit A, unless the context clearly requires to the contrary or unless otherwise expressly provided herein. The definitions set forth in Exhibit A are incorporated into this Operating Agreement as if fully set forth herein.

ARTICLE II - ORGANIZATION AND TERM

Section 2.01. *Formation.* The Members formed CHERRY TREE APARTMENTS, LLC (the "Company") under and pursuant to the provisions of the Colorado Act by filing, on July 17, 2018, (the "Filing Date"), the Articles of Organization of the Company. The rights and liabilities

of the Members shall be as provided under the Colorado Act, the Articles of Organization and this Operating Agreement. The fact that the Articles of Organization are on file in the office of the Secretary of State, State of Colorado, shall constitute notice that the Company is a limited liability company.

In order to maintain the Company as a limited liability company under the laws of the State of Colorado, the Company shall from time to time take appropriate action, including the preparation and filing of such amendments to the Articles of Organization and such assumed name certificates, documents, instruments and publications as may be required by law, including, without limitation, action to reflect:

- (a) a change in the Company name;
- (b) a correction of false or erroneous statements in the Articles of Organization or the desire of the Members to make a change in any statement therein in order that it shall accurately represent the agreement among the Members; or
- (c) a change in the time for dissolution of the Company as stated in the Articles of Organization and in this Operating Agreement.

Section 2.02. *Name.* The Company's name shall be:

CHERRY TREE APARTMENTS, LLC also known as CHERRY TREE APARTMENTS limited liability company.

The Company shall cause appropriate trade name and like statements to be filed and published under the name set forth in this Section 2.02, or such other name, or names, as the Company may have or use in any state or jurisdiction from time to time.

Section 2.03. *Special Purpose Entity Covenants.* Initially capitalized terms used but not defined in this *Section 2* shall have the meaning set forth in the Loan Agreement. Notwithstanding anything to the contrary contained in the Original Agreement or any other organizational document of the Company, for so long as any obligations under the Loan remain outstanding, the following provisions shall control:

(i) The Company does not own and will not own any asset or property other than (A) the Property (as defined in the Loan Agreement) and (B) incidental personal property necessary for the ownership, management or operation of the Property.

(ii) The Company does not engage, and will not engage, in any business other than the ownership, management and operation of the Property and the Company will conduct and operate its business as presently conducted and operated.

(iii) The Company is not a party to and will not enter into or be a party to any contract or agreement with any Affiliate of the Company, any constituent party of the Company or any Affiliate of any constituent party, except in the ordinary course of business and on terms and conditions that are disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) The Company will not incur any Indebtedness other than (A) the Debt and (B) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding one percent (1%) of the original principal amount of the Loan at any one

time; provided that any Indebtedness incurred pursuant to subclause (B) shall be (x) not more than sixty (60) days past due and (y) incurred in the ordinary course of business. No Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Property.

(v) The Company will not make any loans or advances to any Person, (including any Affiliate or constituent party), and has not acquired and shall not acquire obligations or securities of its Affiliates.

(vi) The Company will remain solvent and the Company has paid and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) The Company will do all things necessary to observe organizational formalities and preserve its existence, and the Company will not (i) terminate or fail to comply with the provisions of its organizational documents, or (ii) unless (A) Lender has consented and (B) following a Securitization of the Loan, the Rating Agencies have issued a Rating Agency Confirmation in connection therewith, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents.

(viii) The Company will maintain all of its accounts, books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. The Company's assets will not be listed as assets on the financial statement of any other Person; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliates if (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company and such Affiliates and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on the Company's own separate balance sheet. The Company will file its own tax returns (to the extent the Company is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person. The Company shall maintain its books, records, resolutions and agreements as official records.

(ix) The Company will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of the Company or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other, and shall maintain and utilize separate stationery, invoices and checks bearing its own name.

(x) The Company will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(xi) Neither the Company nor any constituent party will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of the Company.

(xii) The Company will not commingle the funds and other assets of the Company with those of any Affiliate or constituent party or any other Person, and will hold all of its assets in its own name.

(xiii) The Company will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or

constituent party or any other Person.

(xiv) The Company will not assume or guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(xv) The Company will maintain an arm's-length relationship with its Affiliates.

(xvi) The Company will not permit any Affiliate or constituent party independent access to its bank accounts.

(xvii) The Company shall pay the salaries of its own employees (if any) from its own funds and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xviii) The Company shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred.

(xix) The Company, without the unanimous consent of all of its members, partners, directors or managers, will not (i) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of the Company's properties, (iii) make any assignment for the benefit of the Company's creditors, or (iv) take any action that might cause the Company to become insolvent.

(xx) The Company will allocate fairly and reasonably any shared expenses, including shared office space.

(xxi) The Company will not pledge its assets for the benefit of any other Person.

(xxii) The Company will consider the interests of the Company's creditors in connection with all limited liability company actions.

(xxiii) Except as provided in the Loan Documents, the Company will not have any of its obligations guaranteed by any Affiliate.

(xxiv) Intentionally reserved.

(xxv) As long as any portion of the Obligations remains outstanding, the Company will not:

- (A) dissolve, merge, liquidate or consolidate;
- (B) except in connection with a sale or other transfer permitted under the Loan Documents, sell all or substantially all of its assets;
- (C) amend its organizational documents with respect to the matters set forth in this Article 2, without the consent of Lender; or
- (D) without the affirmative vote of each of its members or partners, take any Material Action with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest.

Section 2.04. *Distributions.* Notwithstanding anything to the contrary contained in the Original Agreement or any other organizational document of the Company, for so long as any obligations under the Loan remain outstanding, no distributions shall be made other than from net cash flow following repayment of all amounts due under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement).

Section 2.05. *Transfers.* Notwithstanding anything to the contrary contained in the Original Agreement or any other organizational document of the Company, for so long as any obligations under the Loan remain outstanding, no transfers or assignments of any interests in the Company may be made other than in accordance with the terms and conditions set forth in the Loan Agreement.

Section 2.06. *Indemnification Subordinate.* Notwithstanding anything to the contrary contained in the Original Agreement or any other organizational document of the Company, for so long as any obligations under the Loan remain outstanding, any obligation to indemnify any member, manager, officer, director, employee, shareholder, partner or any other party shall be fully subordinate to all obligations of the Company under the Loan and will not constitute a claim against the Company if cash flow in excess of the amount required to pay the Loan is insufficient to pay such obligation.

Section 2.07. *Third Party Beneficiary.* Lender is an intended third-party beneficiary of the “special purpose” provisions contained in this Amendment and any similar provisions contained in the articles of organization or certificate of formation of the Company.

Section 2.08. *Managing Member.* From and after the date hereof, the undersigned Managing Member shall be the sole manager and/or managing member of the Company

Section 2.09. *Term.* The term of the Company shall commence on the Filing Date (as defined in Section 2.01 hereinabove) and shall continue in full force and effect until the earliest to occur of the following:

- (a) the day before the thirtieth anniversary of the Filing Date;
- (b) dissolution of the Company by the unanimous written agreement of the Members; or
- (c) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued membership of a Member in the Company as provided in Article XIV, unless the remaining Members unanimously agree to continue the business of the Company within 90 days after the termination of the Company.

Section 2.10. *Registered Agent and Office.* The Company's registered agent and office in Colorado shall be Hugo J. Weinberger having an address at 333 W. Hampden Ave. #600, Englewood Colorado 80110. At any time, and from time to time, the Company may designate another registered agent and /or office.

Section 2.11. *Principal Place of Business.* The principal place of business of the Company shall be at 333 W. Hampden Ave. #600, Englewood Colorado 80110. At any time, the Company may change the location of its principal place of business and may establish additional offices. The following items shall at all times be maintained at the Company's principal office:

- (a) a current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;
- (b) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (d) copies of any currently effective written Operating Agreement(s), including any and all amendments or other modifications thereto, copies of any writings regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution;
- (e) minutes of every annual and special meeting and any meeting ordered pursuant to Section 7.04;
- (f) unless contained in this Operating Agreement, a statement prepared and certified as accurate by a Manager of the Company which describes;
 - (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute in the future;
 - (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;
 - (iii) if agreed upon, the time at which or the events on the happening of which a Member may terminate his membership in the Company and the amount of, or the method of determining, the distribution to which he may be entitled respecting his membership interests and the terms and conditions of the termination and distribution;
 - (iv) any right of a Member to receive distributions which include a return of all or any part of a Member's contribution;
- (g) any written consents obtained from Members regarding action taken by Members without a meeting.
- (h) copies of the agreement, substantially in the form of Exhibit D hereto, of each Member who is not a resident of Colorado to file a Colorado income tax return and to make timely payment of all taxes imposed on him by the State of Colorado with respect to the income of the Company and to be subject to personal jurisdiction in Colorado for purposes of the collection of such income taxes, together with related interest and penalties imposed on the Member by the State of Colorado with respect to the Company's income.

Such records shall be, and hereby are made, subject to inspection and copying at the reasonable request and at the expense of any Member during ordinary business hours.

Section 2.12. *Effective Date.* The effective date of this Operating Agreement shall be July 17, 2018.

Section 2.13. *Other Instruments.* Each Member hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Company deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Operating Agreement, to comply with the Colorado Act or with the Code.

ARTICLE III - PURPOSE AND POWERS OF THE COMPANY

Section 3.01. *Purpose.* Single Asset Entity Requirements. Until the Indebtedness in connection with the Company borrowing a loan (the "**Loan**") from Ladder Capital Finance LLC, a Delaware limited liability company, Ladder Capital Finance I LLC, a Delaware limited liability company, or one of their affiliates (as applicable, together with its successors and/or assigns, hereinafter "**Lender**") pursuant to the terms and conditions of that certain Loan Agreement by and between the Company and Lender (the "**Loan Agreement**"), this Amendment is being executed by the Members at the request of Lender and constitutes a material requirement of the Loan without which Lender would be unwilling to make the Loan.

- (a) Will not engage in any business or activity, other than the ownership, operation and maintenance of the property and activities incidental thereto.
- (b) Will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the property and such personally as may be necessary for the operation of the property and will conduct and operate its business as presently conducted and operated.
- (c) Will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities.
- (d) Will not merge or consolidate with any other natural person or form of entity.
- (e) Will not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than transfers permitted under the loan documents (the "Loan Documents") executed in connection with the Indebtedness; issue additional partnership, membership or other equity interests, as applicable, or seek to accomplish any of the foregoing.
- (f) Will not maintain its assets in a way difficult to segregate and identify.

Section 3.02 *Powers of the Company.* In furtherance of the purposes of the Company as set forth in Section 3.01, the Company shall have the power and authority to take in its name all actions necessary, useful or appropriate in the Members' discretion to accomplish its purposes, including, but not limited to, the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted by the Colorado Act in any state, territory, district or possession of the United States, or in any foreign country which may be necessary or convenient to effect any or all of the purposes for which it is organized;

(b) to make contracts and guarantees and to incur liabilities, borrow money at such rates of interest as the Company shall determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;

(c) to purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real, personal and intangible property, or interests therein, wherever situated;

(d) to sell, convey, assign, encumber, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

(e) to purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited partnerships, other limited liability companies, or individuals or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of any of them;

(f) to lend money for its proper purposes, to invest and reinvest its funds, to take and hold real, personal and intangible property as security for the payment of funds so loaned or invested;

(g) to sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

(h) to elect Manager(s) and appoint agents of the Company, and define their duties and fix their compensation;

(i) to make and alter operating agreements, not inconsistent with the Articles of Organization or with the laws of the State of Colorado, for the administration and regulation of its affairs;

(j) to indemnify a Member or Manager or former Member or Manager, and to make any other indemnification that is authorized by the Articles of Organization and/or by this Operating Agreement and is not in contravention of the Colorado Act;

(k) to cease its activities and surrender its certificate of organization;

(l) to have and exercise all powers necessary or convenient to effect any of all of the purposes for which the Company is organized;

(m) to become a member of a general partnership, limited partnership, joint venture or similar association or any other limited liability company; and

(n) to lend money to and otherwise assist the Members and employees of the Company as permitted by this Operating Agreement.

ARTICLE IV - MEMBERS, CAPITAL CONTRIBUTIONS AND UNITS

Section 4.01. *Members; Obligation to Update.* All Members of the Company, past and present, and their last known business, residence or mailing address shall be listed on the attached Exhibit B. The Manager(s) shall be required to update Exhibit B from time to time as necessary to accurately reflect any changes in the information set forth therein.

Section 4.02. *Capital Contributions.* The Capital Contribution of each Member is set forth on the attached Exhibit B. Capital Contributions to the Company shall consist of cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services. No Member shall be liable under a judgment, decree or order of a court, or in any other manner for a debt, obligation of liability of the Company. Additionally, no Member shall be required to lend any funds to the Company or to pay any contributions, assessments or payments to the Company except the Capital Contribution provided for in this Article IV, provided that a Member shall be required to repay its Capital Contribution to the Company as provided in Article XI.

Section 4.03. *Units.* A Member's interest in the Company shall be represented by the "Unit" or "Units" held by such Member. Each Member's respective Units in the Company are set forth on the attached Exhibit B. By its execution of this Operating Agreement, each Member hereby votes and agrees that its votes, consents and actions pursuant to the Articles of Organization, this Operating Agreement and the Colorado Act shall be counted and determined as provided in this Operating Agreement. The Members hereby agree that each Unit shall entitle the Member possessing such Unit:

(a) to one vote per Unit owned, on matters on which the Members are authorized to vote under the Articles of Organization, this Operating Agreement and/or the Colorado Act, provided, however, that with respect to matters on which the Colorado Act requires unanimous consent, vote or agreement of the Members, each Member shall be entitled to only one vote, irrespective of how many Units such Member shall own; and

(b) subject to the provisions of Article VIII hereof, to an equal proportionate share of the Company's income, gains, losses, deductions, credits and distributions.

Each Member hereby agrees that its interest in the Company and in its Units shall for all purposes be deemed a personal interest and shall not be deemed realty or any interest in the Company's real, or personal property or assets of any kind.

Section 4.04. *Restriction on Registration of Units.* To the extent required so that the Company is not deemed to be a "publicly traded partnership" under the Code, Units shall only be registered in the name of the beneficial owner, and the Company shall not be bound to recognize any equitable or other claim to or interest in such Units on the part of any other person (such as a broker, dealer, bank, trust company or clearing corporation) which is acting as a nominee, agent or in some other representative capacity, whether or not the Company shall have knowledge thereof, except for:

(a) Units held by a guardian, custodian or conservator for the benefit of a minor or incompetent;

(b) Units held by a trust for the benefit of the trustee or a trustee's spouse, parent, parent-in-law, issue, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, grandchild or grandchild-in-law; and

- (c) Units held by a fiduciary for other like beneficiaries.

The Company's Units shall only be traded in accordance with the Department of the Treasury's rules and regulations then in effect which set forth the parameters within which a partnership may act and not be deemed to be a "publicly traded partnership" under the Code. In no event shall the Company's Units be listed on an established securities exchange.

Section 4.05. *Withdrawals and Interest.* No Member shall have the right to:

- (a) withdraw its Capital Contribution;
- (b) receive any return or interest on any portion of its Capital Contribution except as otherwise provided herein; or
- (c) withdraw from the Company except by transfer of its Units to another party in accordance with Article XIV, by resignation in accordance with Article V, or upon the dissolution of the Company.

Section 4.06. *Return.* No Member shall be entitled to the return of all or any part of its Capital Contribution unless and until there remains Company Property after:

- (a) all liabilities of the Company (except liabilities to Members on account of their Capital Contributions) have been paid;
- (b) all amounts due to Members in respect of their share of profits and other gains have been paid; and
- (c) the Company has been dissolved without reformation in accordance with Article XV and a statement of intent to dissolve has been filed with the Colorado Secretary of State.

ARTICLE V - RIGHTS AND POWERS OF MEMBERS

Section 5.01. *Powers of Members.* The powers of the Members shall include but not be limited to:

- (a) the right and power to elect and remove a Manager or Managers as provided in Articles VI and VII;
- (b) as provided in Section 7.10, the power to amend the Articles of Organization and this Operating Agreement, provided that such amendment is permitted by the Colorado Act;
- (c) as provided in Articles XIII and XIV, the power to approve or disapprove the issuance of Additional Units for sale to then existing Members or new subscribers and the admission of a transferee of some or all of a Member's Units as a Substitute Member;
- (d) as provided in Section 7.10, the power to approve the sale or other disposition of eighty percent (80%) or more of the Company's Property as part of a single transaction or plan or otherwise do any act that is not in the ordinary course of the business of the Company; and

(e) as provided in Section 7.10, the power to dissolve the Company by the approval of all of the Members.

Section 5.02. *Transactions Between a Member or Manager and the Company.* Except as prohibited by non-waivable applicable law, any Member or Manager may, but shall not be obligated to, lend money to the Company, act as surety or guarantor for the Company and transact other business with the Company and shall have the same rights and obligations when transacting business with the Company as a person or entity who is not a Member or a Manager.

Section 5.03. *Nonrestriction of Business Pursuits of Members and Manager(s).* Neither this Operating Agreement, nor the relationships created hereby, shall preclude or limit in any respect the right of any Member or Manager to engage in or invest in any business activity of any nature or description, including those which may be the same as or similar to the Company's business and in direct competition therewith. Any such activity may be engaged in independently or with other Members or Manager(s). No Member shall have the right, by virtue of the Articles or Organization, this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities, or to the income or proceeds derived therefrom. The pursuit of such ventures, even if competitive with the business of the Company, shall not be deemed wrongful or improper and any Member or Manager shall have the right to participate in or to recommend to others any business or investment opportunity.

Section 5.04. *Reimbursements.* The company shall reimburse the Members and Manager(s) for all expenses incurred and paid by any of them in the organization of the Company and as authorized by the Company in the conduct of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment and secretarial and other personnel as may reasonably be attributable to the Company. Such expenses shall not include any expenses incurred in connection with a Member's or Manager's exercise of its rights as a Member or a Manager apart from the authorized conduct of the Company's business. The Manager(s)'s sole determination of which expenses are properly allocable to, and shall be reimbursed as a result of, the Company's activities or business and the amount of such expenses shall be conclusive. Such reimbursements shall be treated as expenses of the Company and shall not be deemed to constitute distributions to any Member of profit, loss or capital of the Company.

Section 5.05. *Partition.* While term of the Company exists or is continued, each Member agrees that it shall not, and hereby waives, on behalf of itself, its successors and its assigns, any right to, have any Company Property partitioned, or file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company Property partitioned.

Section 5.06. *Resignations; Retirement.* A Member shall not resign from the Company unless:

(a) such Member (the "Resigning Member") has contributed the full amount of money or other consideration which constitutes his Capital Contribution as set forth on Exhibit B hereto;

(b) the Company's Manager(s) shall have received not less than ninety (90) days prior written notice of such Resigning Member's intent to resign (a "Notice of Resignation", the date of the Manager(s) receipt of such Notice of Resignation, the "Resignation Notice Date" and the effective date of such resignation, the "Resignation Date"), which notice shall contain an irrevocable offer, subject only to acceptance by the other Members at any time from the Resignation Notice Date until the close of business on the Resignation Date, to sell said Resigning Member's Units (the "Resigning Member's Units") to the other Members at the Resigning member's specified price and specified terms (the "Offered Terms"), which other Members shall

have rights to accept such Offered Terms as more particularly set forth in Section 5.07 hereinbelow ; and

(c) following the Resigning Member's resignation, there is a least one (1) remaining Member of the Company.

The Company shall be entitled to recover damages for breach of this Section 5.06 if any Member violates this Section 5.06 and may offset the Company's damages against any amount owed to a Resigning Member for Distributions.

Section 5.07. *Rights of Remaining Members to Purchase Resigning Members Units.* Upon the Manager(s) receipt of any Notice of Resignation, the Manager(s) shall promptly notify all other Members of the Notice of Resignation and the Offered Terms. Each Member, other than the Resigning Member, shall have the following rights (the "Offered terms Rights") to accept the Offered Terms and all such acceptances shall be irrevocable:

(a) For a period of thirty days from and including the Resignation Notice date, each Member, other than the Resigning Member, shall have a first right of refusal to irrevocably accept the Offered Terms, for the first thirty (30) days after the Resignation Notice Date, on a percentage of the Resigning Member's Units which is equal to such Member's percentage share of the Units then held by Members other than the Resigning Member.

(b) At the expiration of such thirty (30) day period, if any Member shall not have irrevocably accepted the Offered Terms as to such Member's pro rata share of the Resigning Member's Units (such Member, a "Non-Purchasing Member" and such Units as to which the Offered Terms have not been irrevocably accepted, "Unclaimed Units"), then, and in that event, each Member who has irrevocably accepted the Offered Terms as to such Member's pro rata share of the Resigning Member's Units (a "Purchasing Member") shall have first right of refusal, for the next thirty (30) days, on a percentage of the Unclaimed Units which is equal to such Member's percentage share of the Units then held by Purchasing Members.

(c) At the expiration of such second thirty (30) day period, if any Member shall then be a Non-Purchasing Member as to the Unclaimed Units (the Resigning Member's Units as to which the Offered Terms have not then been irrevocably accepted, the "Remaining Unclaimed Units"), then, and in that event, each Member who is Purchasing Member as to such Unclaimed Units shall have first right of refusal exercisable until the Resignation Date, on a percentage of the Remaining Unclaimed Units which is equal to such Member's percentage share of the Units then held by Members who are Purchasing Members as to such Remaining Unclaimed Units.

ARTICLE VI - MANAGER(S)

Section 6.01. *Manager(s).*

(a) The management of the Company's business shall be vested in one or more Managers elected by the Members. The Members hereby elect the person or persons identified on the attached Exhibit C to be the Manager(s) of the day-to-day business of the Company. Each Manager shall have the authority to sign agreements and other instruments on behalf of the Company without the joinder of any other Manager.

(b) The Manager(s) shall be elected, by the affirmative vote of the majority of Units represented at the meeting and entitled to vote on the subject matter. A Manager shall hold office until removed in accordance with the provisions of this Operating Agreement and until his successor has been elected and qualified.

(c) The Manager(s) may engage in other business activities as permitted by Section 5.03 and shall be obliged to devote only so much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives. A Manager shall perform his duties as a Manager in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs a Manager's duties shall not have any liability by reason of being or having been a Manager of the Company.

(d) The number of Managers shall not be fewer than one (1) nor more than nine (9) and such Manager(s) need not be Members of the Company or residents of Colorado, but shall be, if a natural person, 18 years of age or older. The Manager(s) may, by the affirmative vote of a majority of Manager(s) then in office, increase or decrease the number of Managers by resolution.

(e) Subject to the terms of this Section 6.01, the Manager(s) shall act by the affirmative vote of a majority of the Manager(s).

(f) In performing his duties, a Manager shall be entitled to rely on information, opinions, reports or statements of the following persons or groups unless he has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(i) one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented;

(ii) any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or

(iii) a committee upon which he does not serve, duly designated in accordance with a provision of the Articles of Organization or this Operating Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit reliance.

(g) Every Manager is an agent of the Company for the purpose of its business, and the act of every Manager, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, shall bind the Company, unless such act is in contravention of the Articles of Organization, this Operating Agreement or the Colorado Act or unless the Manager so acting otherwise lacks the authority to act for the Company and the person with whom he is dealing has knowledge of such lack of authority.

Section 6.02 *Powers of the Manager(s).* The Manager(s) shall have the right and authority to take all actions which the Manager(s) deem necessary, useful or appropriate for the day-to-day management and conduct of the Company's business.

The Manager(s) may exercise all powers of the Company and do all such lawful acts and things as are not by statute, the Colorado Act, the Articles of Organization or this Operating Agreement, directed or required to be exercised or done by the Members. The Manager(s) may approve the sale or other disposition of the Company's Property as part of a single transaction or plan. All instruments, contracts, agreements and documents providing for the acquisition,

mortgage or disposition of property of the Company shall be valid and binding on the Company if executed by one or more Managers. All instruments, contracts, agreements and documents of whatsoever type executed on behalf of the Company shall be executed in the name of the Company by one or more Managers.

Section 6.03. *Reimbursements, Salaries and Compensation.* The company may reimburse the Managers for expenses incurred, and pay a stated salary for performance of duties as Manager and/or a fixed sum for attendance at each meeting of the Managers, all of the foregoing, to be in addition to any compensation earned by the Manager pursuant to the next following sentence. The Company may retain, hire or contract with, as an employee or as an independent contractor and/or commissioned sales person, and pay to any Manager, Member or other person, a salary, commissions or other remuneration as compensation for their services rendered to the Company. Such reimbursements, salaries, commissions and other remuneration shall be treated as expenses of the Company and shall not be deemed to constitute distributions to the recipient of any profit, loss or capital of the Company.

Section 6.04. *Removal of Manager(s).*

(a) Subject to the provisions of the Colorado Act and subject to the satisfaction of the conditions specified in this Section and Section 7.10 and obtaining the required vote of the Members pursuant to this Operating Agreement, the Members may remove all or any lesser number of Managers with or without cause.

(b) Any removal of a Manager shall become effective on such date as may be specified by the Members voting in favor thereof and in a notice delivered to any remaining Manager(s) or the Manager(s) elected to replace the removed Manager(s) (except that it shall not be effective on a date earlier than the date such notice is delivered to the remaining or newly-elected Manager(s)). Should a Manager be removed who is also a Member, such Member shall continue to participate in the Company as a Member and receive his share of the Company's income, gains losses, deductions and credits pursuant to this Operating Agreement.

Section 6.05. *Resignation of Manager.* A Manager may resign from his position as a Manager at any time by notice to the Members. Such resignation shall become effective as set forth in such notice.

Section 6.06. *Vacancies.* Any vacancies occurring in the group of Managers may be filled by written agreement of a majority of the remaining Managers. A Manager chosen to fill a vacancy shall serve the unexpired term of such Manager's predecessor in office. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by written agreement of a majority of the Managers then in office or by election at an annual meeting or at a special meeting of Members called for such purpose. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until his successor has been elected and qualified.

Section 6.06. *Creation of Positions as Officers.* The Managers may create, and appoint Managers to, positions of President, Vice President, Treasurer, Secretary, and such other offices and titles as the Managers deem necessary and appropriate to the conduct of the Company's business, provided however, that any document which may bind the Company or affect the Company's business or its structure, status or characterization as a limited liability company, shall be executed by the Managers solely in their capacity as Managers without reference to any other title or office, except only that the Tax Matters Member may execute documents which relate to taxation of the company as "Tax Matters Member".

ARTICLE VII - MEETINGS AND VOTES OF MEMBERS

Section 7.01. *Meetings.* Meetings of the Members shall be held at the principal office of the Company or at such other place either within or without the State of Colorado as specified from time to time by the Manager(s); provided, however, that any number or all Members may participate by video conference, telephone conference or such other electronic means as the Managers shall determine to be appropriate, and participation in any such meeting shall be deemed "attendance" at said meeting for all purposes hereof and any business conducted at any such meeting shall have the same force and effect as if conducted at a meeting at which all participating members were physically present. If the Manager(s) shall specify another location for any meeting, or a meeting by video conference, telephone conference or such other electronic means as the Managers shall determine to be appropriate, then such change in location, or manner, of the meeting shall be recorded in the notice calling such meeting.

Section 7.02. *Annual Meetings.* In the absence of a resolution of the Manager(s) providing otherwise, the annual meeting of Members of the Company for the election of Manager(s), and for the transaction of such other business as may properly come before the meeting, shall be held upon proper notice during the first week of the month of October, in each fiscal year. If the election of Manager(s) shall not be held on the day designated herein for any annual meeting of the Members, the Manager(s) shall cause the election to be held at a special meeting of the Members as soon thereafter as may be convenient. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Company.

Section 7.03. *Special Meetings.* Special meetings of the Members shall be scheduled and presided over by one of the Managers who is also a Member, chosen to preside at the meeting by vote of the Members present. Special meetings may be called by any Manager or Managers or upon the request of Members entitled to vote at the meeting and possessing not less than ten percent (10%) of all Units; provided that requests to approve the admission of Substitute Members may be postponed until the annual meeting of the Members.

Section 7.04. *Court Ordered Meeting.*

(a) Any court of competent jurisdiction in the State of Colorado may summarily order a meeting to be held:

(i) On application of any Member of the Company if an annual meeting was not held within six months after the end of the Company's fiscal year or 15 months after its last annual meeting, whichever is earlier; or

(ii) On application of a Member who participated in a proper call for a special meeting if (A) notice of the special meeting was not given within 30 days after the date the demand was delivered to the Manager(s) of the Company; or (B) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, specify a record date for determining Members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for the meeting or direct that the Units represented at the meeting constitute a quorum for the meeting, and enter other orders necessary to permit the meeting to be held.

Section 7.05. *Notice.*

(a) Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered unless otherwise prescribed by the Colorado Act not less than 10 days nor more

than 50 days before the date of the meeting, either personally or by mail, by or at the direction of any Manager or person calling the meeting to each Member of record entitled to vote at such meeting.

(b) Notice to Members of record, if mailed, shall be deemed delivered as to any Member when deposited in the United States mail, addressed to the Member with postage prepaid, but, if three successive letters mailed to the last-known address of any Member are returned as undeliverable, no further notices to such Member shall be necessary until another address for such Member is made known to the Company.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each Member entitled to vote at the meeting.

Section 7.06. *Waiver of Notice.*

(a) When any notice is required to be given to any Member of the Company under the provisions of the Colorado Act or under the provisions of the Articles of Organization or this Operating Agreement, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated herein, shall be equivalent to the giving of such notice.

(b) By attending a meeting, a Member:

(i) Waives objection to lack of notice or defective notice of such meeting unless the Member, at the beginning of the meeting objects to the holding of the meeting or the transacting of business at the meeting;

(ii) Waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

Section 7.07. *Proxies.* At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Manager(s) of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise expressly provided in such proxy.

Section 7.08. *Fifty-one Percent Votes.* An affirmative vote by or on behalf of the Members possessing at least fifty-one percent (51%) of the Units of the Company shall be required to approve or disapprove any matter on which the Members are entitled to decide, except as otherwise expressly provided in this Operating Agreement or in the Colorado Act.

Section 7.09. *Majority of the Members.* An affirmative vote by or on behalf of seventy percent (70%) of the Members of the Company shall be required to remove a Manager pursuant to Section 6.04;

Section 7.10. *Percentage Votes.* An affirmative vote by or on behalf of the Members possessing seventy percent (70%) of the Units of the Company shall be required to approve or disapprove the following matters:

- (a) amend the Articles of Organization and/or this Operating Agreement;
- (b) approve Substitute Members;
- (c) approve the issuance of Additional Units;
- (d) amend the Articles of Organization;
- (e) dissolve the Company by written consent; or
- (f) amend this Section 7.10.

Section 7.11. Costs and Expenses, Matters Considered and Voting Procedures.

(a) The costs of calling and holding the annual meeting of the Members and special meetings called by the Manager(s), shall be paid by the Company. The costs of calling and holding meetings called by the Members shall be paid by the Members calling the meeting. Each Member shall be responsible for its own costs associated with attending and participating in a meeting; provided, however, that, if the Managers determine, in their sole discretion, that it is appropriate for the Company to reimburse the Managers or the Members, or both of the foregoing, for costs and expenses incurred in connection with attending and participating in any meeting, then such costs and expenses shall be reimbursed.

(b) Matters not described in a meeting notice may be discussed at a meeting if the Members or their authorized representatives possessing at least fifty-one percent (51%) of all Units are present at the meeting and may be voted upon if the Members or their authorized representatives possessing at least the required percentage of the Units to approve such matter are present at the meeting.

Section 7.12. Action by Members Without a Meeting. Unless the Articles of Organization, the Colorado Act, or this Operating Agreement provide otherwise, action required or permitted by the Colorado Act to be taken at a Members' meeting may be taken without a meeting if the action is evidenced by one or more counterparts of a written consent describing the action taken, signed by the percentage of the Members entitled to vote which would be required to approve such action. Action taken under this Section 7.12 is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. Written consent of all of the Members entitled to vote on any matter shall have the same force and effect as a unanimous vote of such Members.

ARTICLE VIII - MEMBER ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS

Section 8.01. Maintenance of Member Accounts.

(a) A Member Account shall be established in the Company's books for each Member and transferee in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Each Member Account shall be:

- (i) increased by:
 - (A) such Member's cash contributions;

(B) the fair market value of the services (to the extent reflected in Exhibit B) and property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to); and

(c) the amounts allocated to such Member for its share of the income and gain of the Company;

and

(ii) decreased by:

(A) the amounts allocated to such Member for such Member's share of the Company's losses and deductions;

(B) the amount of money distributed to such Member by the Company; and

(c) the fair market value of the property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to).

(b) For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Members' Member Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes provided that:

(i) in accordance with the requirements of Code Section 704(c), any deductions attributable to a contributed property shall be determined as if the adjusted basis of such property on the date it was acquired by the Company was equal to the fair market value of such property, and upon an adjustment pursuant to Section 8.01(v) to the Carrying Value of any Company Property, any further deductions attributable to such property shall be determined as if the adjusted basis of such property was equal to the Carrying Value of such property immediately following such adjustment;

(ii) any income, gain or loss attributable to the taxable disposition of any property shall be determined by the Company as if the adjusted basis of such property as of such date of disposition was equal in amount to the Company's Carrying Value of such property as of such date;

(iii) all fees and other expenses incurred by the Company to promote the sale of (or to sell) a Unit that can neither be deducted nor amortized under Code Section 709 shall, for purposes of Member Account maintenance, be treated as an item of deduction and shall be allocated among the Members pursuant to Section 8.02; and

(iv) the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Code Section 754 which may be made by the Company and, as to those items described in Code Section 705(a)(1)(B) and Code Section 705(a)(2)(B), without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalizable for federal income tax purposes.

(c) If any Member or transferee would otherwise have a negative balance in its Member Account, the amount of any such negative balance shall be reduced (but not in excess of such negative balance) by the amount of such Member's or transferee's share of Company Minimum Gain (determined in accordance with Treasury Regulation Section 1.704-1(b)(4)(iv)(f) after taking into account all increases and decreases to such Company Minimum Gain during the taxable year). Such reduction shall be taken into account in determining the permissible allocations under Article VIII.

(d) Generally, a Substitute Member or transferee of a Unit shall succeed to the Member Account relating to the Unit transferred. However, if the transfer causes a termination of the Company under Code Section 708(b)(1)(B), the Company Properties shall be deemed to have been distributed to the Members (including the Substitute Member transferee of a Unit) and deemed recontributed by such Members and transferees in reconstitution of the Company. In such event, the Carrying Values of the Company Properties shall be adjusted immediately prior to such deemed distribution pursuant to Section 8.01(e) (and such Carrying Values shall constitute the agreed values of such properties upon this deemed contribution of the recontributed property). The Member Accounts of such reconstituted Company shall be maintained in accordance with the provisions of this Section 8.01.

(e) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(e), immediately prior to the actual or deemed distribution of any Company Property, the Member Accounts of all Members and transferees and the Carrying Values of all Company Properties to be distributed shall be adjusted (consistent with the provisions hereof) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each such Company Property (as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such property, immediately prior to such distribution, and had been allocated to the Members and transferees, at such time, pursuant to Article VIII hereof). In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of Company Properties as of any date of determination shall be determined by the Company using such reasonable methods of valuation as it may adopt.

(f) The foregoing provisions and other provisions of this Operating Agreement relating to maintenance of Member Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulation. In the event the Manager(s) shall determine that it is prudent to modify the manner in which the Member Accounts or any debits or credits thereto, are computed in order to comply with such regulations, the Manager(s), acting in accordance with Section 16.03 and without the approval of the Members, may amend this Operating Agreement to reflect such modification, provided that it is not likely to have a material effect on the amount distributed to the Members pursuant to Article XV upon dissolution of the Company.

Section 8.02. *Allocations and Distributions.* Subject to this Article VIII, the Company's income, gains losses, deductions and credits shall be allocated and distributed to the Members in proportion to the Units held by each Member. No Member shall be entitled to receive Property other than cash hereunder unless the Company elects to distribute any Company Property in-kind. Any in-kind distributions of Company Property shall be valued by an established, reputable, independent and qualified appraiser.

Section 8.03. *Minimum Gain Chargeback Allocations.* Notwithstanding any other provision of this Operating Agreement to the contrary, except as provided in Section 8.04 below, if the amount of any Company Minimum Gain at the end of any taxable year is less than the amount of such Company Minimum Gain at the beginning of such taxable year, there shall be allocated to any Member having a negative Member Account balance at the end of such taxable year

(determined after taking into account any adjustments, allocations and distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) gross income and gain (in respect of the current taxable year and any future taxable year) in an amount sufficient to eliminate such negative Member Account balance in compliance with Treasury Regulation Section 1.704-1(b)(4)(iv)(e). Such allocation of gross income and gain shall be made prior to any other allocation of income, gain, loss or deduction. Any such allocation of gross income or gain pursuant to this Section 8.03 shall be made to each Member Account having a negative balance in the proportion such negative balance bears to negative balances of all the Members. Any allocations of gross income or gain pursuant to this Section 8.03 shall be taken into account, to the extent feasible, in computing subsequent allocations of income, gain, loss or deduction of the Company so that the net amount of all items allocated to each Member pursuant to this Article VIII, 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 Article VIII if the allocations made pursuant to the first sentence of this Section 8.03 had not occurred. The effect of this Section 8.03 is intended to constitute a "minimum gain chargeback" within the meaning of Treasury Regulation Section 1.704-1(b)(4)(iv)(e).

Section 8.04. *Qualified Income Offset Allocations.* While a deficit balance in a Member Account shall reduce such Member's right to a return of capital of the Company, a deficit balance shall not constitute an obligation of that Member to the Company to repay the amount of such deficit balance. In the event a Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), that shall reduce such Member's Member Account below zero or increase the negative balance in such Member's Member Account, except as may be provided in Section 8.03 above, gross income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate any negative balance in its Member Account created by such adjustments, allocations or distributions as quickly as possible in accordance with Treasury Regulation Section 1.704-1(b)(2)(ii)(d). Any such allocation of gross income or gain pursuant to this Section 8.04 shall be made to each Member Account having a negative balance in the proportion such negative balance bears total negative balances of all the Members. Any allocations of items of gross income or gain pursuant to this Section 8.04 shall: (i) not duplicate any allocations of gross income or gain made pursuant to Section 8.03, (ii) be taken into account, to the extent feasible, in computing subsequent allocations of the Company, so that the net amount of all items allocated to each Member pursuant to this Article VIII shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article VIII if such adjustments, allocations or distributions had not occurred. The effect of this Section 8.04 is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

Section 8.05. *Special Allocation Adjustments.* Except as provided in Section 8.03, in the event any Member has a deficit Member Account at the end of any Company fiscal year in excess of the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulation Section 1.704-1(b)(4)(iv)(f), each such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible.

Section 8.06. *Code Section 754 Election Adjustments.* To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or 743(b) is required to be taken into account in determining Member Accounts, the amount of such adjustment to the Member Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Member Accounts are required to be adjusted pursuant to such Treasury Regulation Section.

Section 8.07. *Curative Allocations.* The allocations set forth in Sections 8.03, 8.04, 8.05 and 8.06 (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulation Section 1.704-1(b). The Regulatory Allocations shall not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Manager(s) are hereby authorized to divide other allocations of profits, losses and other items among the Members so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions shall be divided among the Members pursuant to Article XV. In general, the Members anticipate that this shall be accomplished by specially allocating items of income, gain, loss and deduction among the Members so that the net amount of the Regulatory Allocations and such special allocations to such Member equals zero. However, the Manager(s) shall have discretion to accomplish this result in any reasonable manner.

Section 8.08. *Code Section 704(c) Allocations.* In accordance with Code Section 704(c) 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 at time of contribution. Any elections or other decisions relating to such allocations shall be made by the Manager(s) in any manner that reasonably reflects the purpose and intent of this Operating Agreement. Allocations pursuant to this Section 8.08 are solely for purposes of federal income taxes and shall not affect, or in any way be taken into account in computing any Member's Member Account, or share of items of the Company's income, gains, losses, deductions and credits, or distributions pursuant to any provision of this Operating Agreement.

Section 8.09. *Allocations and Distributions, Generally.*

(a) Distributions shall be considered by the Manager(s) each quarter, in accordance with this Article VIII and shall be made at the times and in the manner set forth in writing from time to time in a resolution of the Manager(s). Subject to the provisions of Section 8.10, any allocations of income, gains, losses, deductions and credits, along with associated distributions, shall be allocated and distributed to the Members in accordance with their respective Units.

(b) With respect to any period during which a Member is first entitled to a share of Company income, gain, loss, deduction or credit, the Company shall, with respect to such items of income, gain, loss, deduction or credit, allocate and distribute such items among the Members who are entitled to such items in accordance with their respective Units.

(c) If any Unit or Economic Benefit therein is transferred during any month, every item of Company income, gain, loss, deduction, credit and distribution attributable to such Unit for the fiscal year shall be divided and allocated between the transferor and transferee based upon such transferor's and transferee's respective proportionate interests. For purposes of making this allocation, all transfers consummated during the first 15 days of a month shall be treated as made as of the first day of the month of transfer, and all transfers consummated after the 15th day of a month shall be treated as made as of the first day of the following month; and, subject to the provisions of Section 8.10, distributions shall be made in accordance with said allocations.

Section 8.10. *Priority and Distribution of Net Cash Flows.*

(a) Notwithstanding anything to the contrary contained elsewhere herein, hereinafter defined "Net Cash Flow" of the Company shall be allocated and distributed to the Members in accordance with their respective Membership Units as set forth on Exhibit B, as follows:

- (i) First to Members in proportion to their Membership Interests in an amount equal to their Capital Contribution as set forth on Exhibit B;
- (ii) Second to Members in proportion to their Membership Interests as set forth on Exhibit B.

(b) The "Net Cash Flow" of the Company shall mean, for purposes of this Operating Agreement, all revenues and proceeds generated by the Company from Company properties or Company activities (excluding, however, capital contributions to the Company) less all cash expenditures for the debts and expenses of the Company, payments on any indebtedness of the Company, capital expenditures and reasonable reserves otherwise required for Company business. Except as elsewhere herein expressly provided to the contrary, the Company shall retain, as "reasonable reserves otherwise required for Company business" such amounts of cash as are determined by the Managers, from time to time and in the Managers' sole discretion, to be reasonably appropriate to carry on the Company's activities and satisfy its obligations and expenses as contemplated hereby and by any contracts or other obligations by which the Company is bound.

Expenses of the Company shall include, without limitation, contingency reserves, insurance and bonding charges, and the expenses of the Company's business, including, without limitation, any employee salaries, benefits, incentive and other compensation (of any character), management fees, costs of inventory, fees to governmental entities, real and personal property taxes, assessments, legal and accounting expenses, maintenance expenses, interest and principal expense, commissions, loan fees and loan closing costs, advertisement, promotional and any other expenses appropriately incurred or paid by the Company to effect the purpose hereof which are reasonable in amount and are properly chargeable against the income derived from the Company's business in accordance with generally accepted accounting principles applied on a consistent basis.

(c) Unless the related loan documents clearly provide to the contrary, the full amount of any loan made by a Member to the Company shall be deemed a current operating expense, and the Company shall not have any Net Cash Flow for payment or distribution to Members until such loan, together with any interest thereon and amounts otherwise due in connection therewith, shall have been repaid in full.

(d) Net Cash Flow shall be allocated and distributed at such time or times as the Managers shall determine in their sole discretion.

Section 8.11. *Distribution in Kind.* A Member shall have no right to demand and receive any distribution from the Company in any form other than cash. However, a Member may be compelled to accept a distribution of an asset in kind from the Company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the Company.

Section 8.12. *Limitations on Distribution.* A Member shall not receive a distribution from the Company (a) to the extent that, after giving effect to the distribution, all liabilities of the Company, other than liability to Members on account of their Capital Contributions, would exceed the fair value of the Company's assets, or (b) otherwise in violation of C.R.S. § 7-80-606.

Section 8.13. *Distribution Upon Resignation.* Except as otherwise required by one or more provisions of the Colorado Act which may not be waived, or otherwise provided in this Operating Agreement or in any Buy/Sell Agreement (or other agreement with substantially similar subject matter and/or purposes), if:

(a) a Resigning Member shall have satisfied the requirements of, and otherwise complied with the provisions of, Section 5.06, and

(b) if, as of the Resignation Date, there remain Resigning Member's Units as to which the Offered terms have not been irrevocably accepted pursuant to Section 5.07 hereinabove (such Resigning Member's Units, as to which the Offered Terms have not been accepted, the "Declined Units"),

then, and in that event, such Resigning Member shall be entitled to a final distribution (the "Final Distribution") equal to the average "Fair Book Value" of the Declined Units in the Company during the period from and including the Resignation Notice Date to and including the Resignation Date (the "Resignation Period"), due and payable to the Resigning Member on or before the sixtieth day (60th) from and including the Resignation Date; provided, however, that if the Company shall deliver the Company's promissory note (a "Final Distribution Promissory Note"), in an original principal amount equal to such Final Distribution, bearing simple interest at eight percent (8%) per annum, payable in equal monthly installments over a period of sixty (60) months after the date thereof, on or before such sixtieth (60th) day, then, and in that event, delivery of such Final Distribution Promissory Note shall constitute full satisfaction of the Company's obligations in respect of such Final Distribution. In no event shall any Resigning Member have any right to, or in, any of the property of the Company or to any distribution in kind.

The Fair Book Value of the Declined Units shall be equal to (a) the average fair market value of the Company's real estate holdings over the Resignation Period, as determined by a real estate appraiser, qualified and certified as a "Certified General Appraiser" by the State of Colorado (a "Qualified Appraiser"), and designated and retained by the Company, at its cost and expense ("Company's Appraiser"), for the purpose of determining the fair market value of the Company's real estate holdings ("Real Estate Value"), plus (b) the average value of any other Company Property, as reflected on the Company's monthly financial statements for months ending during the Resignation Period ("Other Company Property"), less (c) the average amount of the Company's debts and other obligations as reflected on the Company's monthly financial statements for months ending during the Resignation Period ("Debt"), and (c) multiplied by a fraction the numerator of which is the Number of Units owned by the Resigning Member and the denominator of which is the total number of Units outstanding, to wit:

$$[(RV + OCP - D) \times (DU \div TU)] \div FBV$$
, where RV equals Real Estate Value, OCP equals Other Company Property, D equals Debt, DU equals the number of the Declined Units and TU equals the number of total Units outstanding and FBV equals the Fair Book Value of the Declined Units.

If the Resigning Member disagrees with the Real Estate Value, then the Resigning Member shall have the right to designate and retain another Qualified Appraiser, at such Resigning Member's own cost and expense ("Resigning Member's Appraiser"). If the Real Estate Value as determined by Resigning Member's Appraiser does not differ from the Real Estate Value as determined by Company's Appraiser by more than five percent (5%) of the Real Estate Value as determined by Company's Appraiser, then the Fair Book Value of the Declined Units shall be calculated using the numerical average of Real Estate Values as determined by Company's Appraiser and by Resigning Member's Appraiser. If such difference between the Real Estate Values is greater than five percent (5%), then such two Qualified Appraisers shall, within ten (10) days, designate and retain a third Qualified Appraiser. Within twenty (20) days following the designation of the third Appraiser, such third Qualified Business Appraiser shall determine the Real Estate Value. The Real Estate Value shall be deemed to be the numerical average of the three appraisals and the Fair Book Value of the Declined Units shall be calculated using the numerical average of Real Estate Values as determined by the three appraisals; provided, however, that if

any two of the three appraisals are within five percent (5%) of each other and the third appraisal deviates from the numerical average of the other two appraisals by more than five percent (5%) (a "Deviating Appraisal"), then such Deviating Appraisal shall be disregarded and the Fair Book Value of the Declined Units shall be calculated using the numerical average of the Real Estate Values as determined by the remaining two appraisals. If the Deviating Appraisal is the Real Estate Value as determined by either Company's Appraiser or Resigning Member's Appraiser, then such party shall pay the entire cost of the third Qualified Appraiser, in all other events, the Company and the Resigning Member shall each pay fifty percent (50%) of such cost.

The Company may purchase and maintain "key man", or similar life and/or disability insurance to provide funds to pay the Final Distribution or to purchase the Units of a deceased or disabled Manager or Member or to fund any "Buy/Sell" agreement entered into with respect to any one or more Member's Units. Any such insurance may be procured from any insurance company designated by the Manager(s) of the Company, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere.

ARTICLE IX - FISCAL YEAR, BOOKS AND RECORDS

Section 9.01. *Books of Account and Records.* At all times during the term of the Company, the Company shall keep or cause to be kept at the Company's principal office, the items set forth in Section 2.05.

Section 9.02. *Inspection.* All documents required to be maintained at the Company's principal office under Section 2.05, as well as true and full information regarding the state of the Company's business, financial condition and other information regarding the affairs of the Company as is just and reasonable, shall be made available upon reasonable demand for any purpose reasonably related to the Member's interest as a Member, during ordinary business hours for inspection and copying at the reasonable request and expense of any Member. In addition, any Member of the Company shall have the right to have a formal accounting of Company affairs whenever circumstances render it just and reasonable.

Section 9.03. *Fiscal Year.* The fiscal year of the Company shall end on December 31 in each calendar year except that first year of the Company shall be that period (even if less than twelve months) beginning on the date of filing the Articles of Organization and ending on the next following December 31 and the final year of the Company shall be that period beginning on the first day of such year and ending on the date specified as the effective date in the Statement of Dissolution filed with the Colorado Secretary of State.

Section 9.04. *Accounting.* The Company's accountants employed at any time shall be the final authority with regard to any accounting questions that may arise during the course of the business of the Company. The Company's accountants shall be selected by the Manager(s) in their sole discretion. The fees of the accountants shall be a normal Company business expense.

ARTICLE X - TAX MATTERS

Section 10.01. *Tax Matters Manager.* The Manager(s) shall designate a Tax Matters Manager for purposes of federal and state income tax matters. The Tax Matters Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. The initial Tax Matters Manager is Hugo J. Weinberger, 333 W. Hampden Ave., Suite 600, Englewood, Colorado 80110.

Section 10.02. *Basis Adjustment of Transfers of Units.* In the event of a transfer of all or

part of a Member's Units, the Company, in the sole discretion of the Manager(s), may elect pursuant to Code Section 754 to adjust the basis of the Company Property upon the request of the transferee; provided that the basis adjustment to which the transferee would be entitled would increase the basis of the transferee's Units by at least Two Thousand Dollars (\$2,000) per Unit and the transferee shall deposit funds with the Company in advance sufficient to indemnify the Company for the costs of making the adjustment based upon the Manager(s)'s estimate thereof and shall agree in writing to reimburse the Company for any overage in such costs. If any Member transfers all or part of its Units, any basis adjustment from such transfer, whether made under Code Section 754 or otherwise, shall be allocated solely to the transferee.

Section 10.03. *Deductions and Elections.* Wherever reasonably possible, the Company shall treat as expense items all amounts incurred for services, rent, taxes, leases, interest and other fees and charges incurred in connection with the ownership and/or use of, or otherwise relating to, Company Property which may, in accordance with applicable law, regulations and/or decisions, be treated as expenses. Any such items that are required to be capitalized shall be amortized over the shortest period of time allowable. The Company shall, to the extent permitted by applicable law and regulations, elect to claim those tax positions as the Tax Matters Manager, in its discretion, determines to be most favorable to the Members. No Member shall take any action or refuse to take any action which would cause the Company to forfeit the benefits or any tax election previously made or agreed to be made. Each Member shall promptly supply the Company with any information necessary to give effect to such tax elections.

ARTICLE XI - MEMBERS' LIABILITY

Section 11.01. *Members.*

(a) No Member shall be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities or obligations of the Company. A Member shall have no liability to any other Member and/or the Company when acting pursuant to its authority granted under the Articles of Organization and/or this Operating Agreement except to the extent such Member's acts or omissions constituted willful misconduct or gross negligence on the part of such Member. Additionally, a Member shall be liable to the Company for:

(i) Any difference between its Capital Contribution actually paid in and the amount promised by any Member as stated in this Operating Agreement or any written agreement signed by the Member; and

(ii) Any unpaid Capital Contribution which it agreed in this Operating Agreement or in any written agreement signed by the Member, to make by performance in the future at the time and on the conditions stated in this Operating Agreement or in any such written agreement, except that if a Member is unable to perform because of death, disability or other reason, such Member may, at the option of the Company, contribute cash equal to that portion of the Member's Capital Contribution which has not been made or performed; or

(iii) The obligation of any Member to make a Capital Contribution or return money or other property paid or distributed in violation of the Colorado Act may be compromised only by consent in writing of all the Members, provided, however, that, notwithstanding any such compromise, and to the extent required by and non-waiveable under the Colorado Act, a creditor of the Company who has extended credit or otherwise acted in reliance on the original obligation may enforce the original obligation.

(b) If a Member has received the return of any part of his Capital Contribution, or any other distribution, in violation of this Operating Agreement or the Colorado Act, he shall be liable to the Company for a period of three (3) years thereafter for the amount of the Capital Contribution wrongfully returned or other distribution wrongfully made.

Any liability of a Member to the Company under this Article XI is subject to compromise by consent in writing of all the Members, provided, however, that, notwithstanding any such compromise, to the required by and non-waiveable under the Colorado Act, a creditor of the Company who has extended credit or otherwise acted in reliance on the original obligation may enforce the original obligation. A Member who is subject to an obligation to repay any Capital Contribution to the Company as required by the Articles of Organization or this Operating Agreement shall make such repayment on demand by the Company. No Member shall be liable to the Company, its creditors or any other Member with respect to any amounts paid to such Member as profit sharing, loan repayment, interest, salary, wage, rental, royalty, fee or payment for value given which is not paid to such Member as a return of such Member's Capital Contribution or a distribution in violation of this Operating Agreement or the Colorado Act.

Section 11.02. *Manager(s)*. The Manager(s) do not in any way guarantee the return of any Member's Capital Contribution or a profit for the Members from the Company's business. The Manager(s) shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture regardless of whether such other business or venture competes with the Company or whether the Manager(s) are active in the management or business of such other business or venture. Neither the Company nor any of the Members shall have any right by virtue of the Articles of Organization, this Operating Agreement, any applicable law or otherwise, in or to the other business ventures of the Manager(s) or to the income, gains, losses, deductions and credits derived therefrom by the Manager(s). Any and all such right or rights are hereby expressly waived by the Members, and each of them.

Section 11.03. *Company's Indemnification of Members, Managers, Employees or Agents*. The Company shall indemnify its Members, Manager(s), employees and agents as set forth in Article XII.

Section 11.04. *Force Majeure*. Notwithstanding anything in this Operating Agreement to the contrary, a Member or a Manager, shall not be liable (except for such Member's or Manager's obligations to contribute or return its Capital Contributions under the Colorado Act and this Operating Agreement) for any loss or damage to Company Property or operations caused by its failure to carry out any of the provisions of the Articles of Organization and/or this Operating Agreement as a result of foreseeable or unforeseeable acts of God or incidents resulting from outside forces, whether or not beyond the control of such Member or Manager, such as strikes, labor troubles, unavailability of materials, riots, fires, weather, floods, acts of a public enemy, insurrections, breakdown or failure of machinery, acts, omissions or delays of governmental authorities and governmental laws, rules, regulations or orders.

Section 11.05. *Remedies*. The remedies of the Members hereunder are cumulative and shall not exclude any other remedies to which a Member shall be lawfully entitled. The Members acknowledge that all legal remedies for any breach of this Operating Agreement may be inadequate, and therefore they consent to any appropriate equitable remedy; provided, that any failure of a Member to abide by the terms of this Operating Agreement, including without limitation any vote or consent that should bind a Member, or any other failure to adhere to the terms of this Operating Agreement (a "Breaching Member") which cost the Company legal and other fees and court costs to enforce same shall render the Breaching Member liable to the Company for any such legal and other fees and costs, whether or not suit is brought on such matter.

Section 11.06. *Waiver.* The failure of any Member to insist upon strict performance of a covenant or condition hereunder shall not be a waiver of its right to demand strict compliance therewith in the future.

ARTICLE XII - INDEMNIFICATION

Section 12.01. *Indemnification of Members and Managers.* The Company shall, and hereby does, indemnify every Member and Manager in respect of payments made and personal liabilities reasonably incurred by such Member or Manager in the ordinary and proper conduct of the Company's business or reasonably necessary for the preservation of the Company's business, property or income tax status or treatment.

Section 12.02. *Indemnification of Employees and Agents.* The Company shall indemnify and advance expenses pursuant to Section 12.01 to an employee or agent of the Company who is not a Manager to a greater extent provided for in this Operating Agreement, the Articles of Organization, or by contract, in any manner consistent with the Colorado Act.

Section 12.03. *Indemnification of Heirs, Executors and Administrators.* The indemnification provided for pursuant to this Article shall continue as to a person who has ceased to be a Manager, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 12.04. *Insurance for Indemnification.* The Company may purchase and maintain insurance on behalf of a person who is or was a Manager, Member, employee, fiduciary, or agent of the Company or who, while a Manager, officer, employee, fiduciary, or agent of the Company, is or was serving at the request of the Company as a Manager, Member, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic limited liability company or of any corporation, partnership, joint venture, trust other enterprise, or employee benefit plan against any liability asserted against or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of this Article or the Colorado Act. Any such insurance may be procured from any insurance company designated by the Manager(s) of the Company, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere.

ARTICLE XIII - ADDITIONAL MEMBERS AND UNITS

Section 13.01. *Additional Units.* By approval of or on behalf of the Members possessing one hundred percent (100%) of the Units, the Company may issue Additional Units by sale or other issuance to existing Members or other persons or entities (individually and collectively, "Additional Members"). Any such sale or other issuance of Company Units shall be made in accordance with the Articles of Organization and this Operating Agreement. As a condition to such issuance, Additional Members acquiring such Units shall execute the Articles of Organization, this Operating Agreement and all other documents and instruments as the Company shall require and shall become Members with respect to such Units upon the date the last of such agreements, documents and instruments shall be executed. The legal fees and costs associated with the preparation and filing of an amendment to the Articles of Organization to effectuate such admission, if necessary, and all other agreements, instruments and documents necessary to continue the Company's right to do business in the jurisdictions in which it is then doing business, shall be borne by the Company.

Section 13.02. *Allocations*. Additional Units shall not be entitled to any retroactive allocation of the Company's income, gains, losses, deductions, credits or other matters of any kind; provided that Additional Units shall be entitled to their respective share of the Company's income, gains, losses, deductions, credits and other matters of any kind arising under contracts entered into before the effective date of the issuance of any Additional Units to the extent that such income, gains, losses, deductions, credits and other matters of any kind arise after such effective date. The Company's books may be closed at the time Additional Units are issued (as though the Company's tax year had ended) or the Company may credit to the Additional Units pro rata allocations of the Company's income, gains, losses, deductions, credits, distributions and other matters of any kind in accordance with Section 8.09.

ARTICLE XIV - TRANSFERS

Section 14.01. *Transfer Restrictions*. Each Member hereby agrees that its Units and any Economic Benefit therein are not transferable except as provided in this Article XIV. "Economic Benefit" or "benefit" of a Unit shall mean a Unit's share of the Company's profits or other compensation by way of income and return of contributions but shall not include the Company's losses, deductions and credits. In addition, the Manager(s) are authorized and have the right, but not the obligation, to take such actions as are necessary or advisable so that transfers of Units (or any Economic Benefit therein) in a secondary trading market (or the substantial equivalent thereof) are not recognized including, but not limited to, such actions as are authorized in Section 16.03 hereof.

Provided that the transferee and transferor have satisfied all of the requirements of this Article XIV, transfers of Units and/or Economic Benefits therein during any year shall become effective as of the date of any required approval by the other Members. Subject to satisfaction of the requirements set forth in this Article XIV, any such transfer requiring approval of the Members pursuant to this Article XIV shall be considered by the Members at the Members' next annual or special meeting. Except where the transferee of a Member's Units is already a Member, in which case no approval of a Substitute Member is required, unless and until the transferee of a Member's Units is accepted as a Substitute Member pursuant to this Article XIV, the transferor Member shall remain a Member in the Company and shall retain all rights and obligations incident to such status, except to the extent that the transferor shall have agreed to transfer the Economic Benefits of its Units (as permitted by this Article XIV with respect to transfers of Economic Benefits without the consent of the other Members).

Notwithstanding anything to the contrary contained elsewhere herein, any attempted or purported transfer of any Unit or Economic Benefit therein (including, but not limited to, an adjustment of the right to receive profits or the return of contributions) in violation of the following restrictions shall be void ab initio and of no effect:

(a) No transfer shall be made within the meaning of the Code or the regulations thereunder, if the Units or Economic Benefits sought to be transferred, when added to all other Units and Economic Benefits transferred within the period of twelve (12) consecutive months prior thereto, equals fifty percent (50%) or more of the total interest in Company profits and capital, or otherwise would result in the termination of the Company, or any change in its tax status, under the Code;

(b) No transfer shall be made except in compliance with or pursuant to an exemption from the registration provisions of the Securities Act of 1933, as amended and rules and regulations promulgated thereunder, and in compliance with or pursuant to an exemption from applicable state securities laws and rules and regulations promulgated thereunder;

(c) No transfer shall be made which would cause the Company to become an "investment company" under the Investment Company Act of 1940, as amended;

(d) No transfer shall be made which would cause the Company to be deemed to be a "publicly traded partnership" under the Code or would otherwise cause the Company to be treated as an association or corporation for tax purposes under the Code;

(e) No direct transfer shall be made to a minor or incompetent in any respect unless made for their benefit to their guardian, trustee or other legal representative; and

(f) No transfer of a partial interest in any Unit or an Economic Benefit in a partial Unit shall be made.

Section 14.02. *Company Review.* Prior to the vote of the Members for their approval of the admission of a transferee of Units as a Substitute Member, the transferor may submit a written or oral report of the proposed transfer to the Company for review. Subject to obtaining an opinion of counsel that the restrictions provided in this Article XIV will not be violated by the transfer, the Company shall notify the transferor within sixty (60) days after receipt whether or not the proposed transfer violates any of the restrictions contained in this Article XIV and whether or not the transfer consequently may be effected upon the requisite vote of the Members. Any opinion of the counsel shall be provided at the option of the Company by the transferring parties at their sole expense, shall be satisfactory in form and substance to the Company and shall be from counsel satisfactory to the Company.

Section 14.03. *Transfers of Economic Benefits Without Members' Approval.* Subject to Sections 14.01 and 14.02, Economic Benefits in Units may be transferred without the consent of the Members in the following events:

(a) the transfer as a result of the death of a Member;

(b) the transfer in connection with the entry of a divorce decree for or against a Member;

(c) the transfer as a gift and for no consideration; or

(d) the transfer to related parties after which the ownership of the Economic Benefits will be effectively unchanged, i.e., intra family transfers or transfers within an affiliated group.

Section 14.04. *Transfers With Members' Approval.*

(a) Following satisfaction of the requirements of Sections 14.01 and 14.02, a proposed transfer of Units requiring the Members' approval shall be submitted to the Members for their approval after:

(i) the transferee has executed this Operating Agreement and any other documents and instruments as the Company shall require; and

(ii) the transferring parties have paid and have agreed in writing to pay, as the Company shall require, all reasonable expenses connected with such request and admission, including, but not limited to, any required opinion of counsel, the legal fees and costs associated with the preparation and filing of all other documents necessary to continue the Company's right to do business in the jurisdictions in which it is then doing business. The Company shall not be obligated

to justify such expenses and for its convenience in lieu of itemizing such expenses, may designate a reasonable amount to cover such expenses.

(b) Upon satisfaction of Sections 14.01, 14.02, and for Units, 14.04(a), the request for transfer of Units shall be submitted to the Members at the Company's next annual or special meeting. The Members shall vote whether or not to approve a proposed transfer of Units and whether or not a proposed transferee of Units should be admitted as a Substitute Member for the transferor Member to the extent of the Units proposed to be transferred. If a proposed transferee of Units is not approved to be a Substitute Member, then subject to the provisions of the proposed transfer, such transferee may nevertheless receive the "Economic Benefits" of such Units as "Economic Benefits" is defined in Section 14.01.

(c) If a proposed transfer of Units and admission of the transferee as a Substitute Member, is approved by all of the Members, the transferee shall be admitted as a Member and shall be vested with all the rights and powers, and be subject to all the restrictions and liabilities of the transferor to the extent of the Units transferred. Admission of a transferee as a Substitute Member shall not relieve the transferor from any obligation or liability that existed on or before the effective date of such admission; provided that the transferor shall be relieved from obligations and liabilities arising thereafter and arising under existing agreements to the extent that such obligations are to be performed after the effective date of admission or that such liabilities arise thereafter.

(d) If a proposed transfer of Units and admission of the transferee as a Substitute Member, is refused by or on behalf of any Member, the proposed transferee of the Member's Units shall not be admitted as a Member and shall not have the right to participate in the management of the business and affairs of the Company, provided that such transferring parties may again apply to have the transferee admitted as a Substitute Member.

Section 14.05. *Death of Member; Other Termination of Membership.*

(a) In the event of the death of a Member who is an individual or if a court of competent jurisdiction adjudges a Member to be incompetent to manage his person or his property, followed by a decision by or on behalf of all of the remaining Members to continue the Company rather than allowing it to dissolve, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the powers of an assignee or transferee of the Member. If a Member is a corporation, trust or other entity and is dissolved or terminated, followed by a decision by or on behalf of all of the remaining Members to continue the Company rather than allowing it to dissolve, the legal representative or successor of the Member may exercise all of the power of an assignee or transferee of the Member.

(b) In the event of bankruptcy or dissolution of a Member, followed by a decision by or on behalf of all the remaining Members to continue the Company rather than allowing it to dissolve, any successor to the Units of the affected Member as a result thereof shall be deemed to be the transferee of the entire interest of the affected Member and may be admitted at the next annual meeting as a Substitute Member upon satisfaction of the requirements of this Article XIV.

(c) Neither the provisions of Article II, nor the provisions of this Section 14.05, shall cause or require the dissolution of the Company should any of the events described in such Article or Section occur to a person or entity who is not a Member but only possesses Economic Benefits associated with any Units.

Section 14.06. *Successors and Assigns*. This Operating Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

ARTICLE XV - DISSOLUTION AND WIND-UP

Section 15.01. *Wind-up and Reformation*.

(a) Upon the occurrence of any one or more of the events specified in Section 2.03, the Company shall be dissolved unless there is at least one (1) Member remaining and, within ninety (90) days following the occurrence of the dissolving event, the remaining Member or Members unanimously vote to continue the business of the Company.

(b) If the continuance of the Company is unanimously approved by or on behalf of the Members, the new Company shall be deemed formed without any further or additional documentation to effect such action and all Members and others owning Economic Benefits of Units shall automatically become participants in the new Company without any change in their respective rights and obligations. Unless otherwise agreed to by the Members owning fifty-one percent (51%) or more of the Units, the Articles of Organization and this Operating Agreement shall automatically constitute the Articles of Organization and Operating Agreement of such new Company. All of the assets and liabilities of the dissolved Company shall be deemed to have been automatically assigned, assumed, conveyed and transferred to the new Company. No bond, collateral, assumption or release of any Member's or the Company's liabilities shall be required. Unless otherwise unanimously agreed by the Members, continuance of the Company shall be subject to the provisions of Section 15.06.

(c) If continuance of the Company is not unanimously approved by the Member or Members within said ninety (90) days the Company shall promptly commence to wind up its affairs and execute a Statement of Dissolution. Such Statement of Dissolution shall be executed by any one or more of the Managers. Upon the filing with the Colorado Secretary of State of a Statement of Dissolution, the Company shall cease to carry on its business, except insofar as shall be necessary for the winding-up of its business, but its separate existence shall continue as, and until such time as is, provided in the Colorado Act or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

Section 15.02. *Authority to Wind-Up*. In the event that winding-up is required hereunder, the winding-up activities shall be managed by the Manager(s) or a committee thereof appointed for this express purpose, to the exclusion of the Members, and in accordance with the provisions of the Colorado Act.

Section 15.03. *Settlement and Distribution*. In settling accounts after dissolution, the assets of the Company shall be distributed as follows:

(a) to creditors including Members who are creditors to the extent otherwise permitted by law, in satisfaction of liabilities of the Company other than liabilities for distributions to Members under C.R.S. § 7-80-601 or 7-80-603;

(b) except as provided in this Operating Agreement, to Members and former Members of the Company in satisfaction of distributions contemplated under this Operating Agreement and C.R.S. § 7-80-601 and 7-80-603; and

(c) except as expressly provided to the contrary elsewhere in this Operating Agreement, to Members of the Company as set forth in Section 8.10.

Section 15.04. *Termination.* Upon completion of the distribution of the Company's Property as provided in this Article XV, the Company shall be terminated, and the Manager(s) in charge of winding-up the Company's business shall be authorized to take all such other actions as shall be necessary to terminate the Company.

Section 15.05 *Claims of the Members.* The Members shall look solely to the Company's Property for the return of their Capital Contributions, and if the assets of the Company remaining after payment or discharge of the debts or liabilities of the Company are insufficient to return such Capital Contribution, the Members shall have no recourse against the Company or any other Member or Manager.

Section 15.06. *Waiver of Right to Court Decree of Dissolution.* The parties agree that irreparable damage would be done to the good will and business affairs of the Company if any Member should bring an action in court to dissolve the Company. Care has been taken in this Operating Agreement to provide fair just payment in liquidation of the Units of all Members. Accordingly, each party hereby waives and renounces its right to a court decree of dissolution or to seek the appointment by the Court of a receiver and/or liquidator for the Company, under the Colorado Act or any other statute, common law or regulatory rule, except as may be sought by the Company itself.

ARTICLE XVI - AMENDMENTS

Section 16.01. *Proposal of Amendments.* Amendments to the Articles of Organization and this Operating Agreement may be proposed in writing by any Member or Members owning at least ten percent (10%) of the Units or by any Manager or Managers. If and to the extent required by the Manager(s), any such proposed amendment shall be accompanied by an opinion of counsel as to the legality and effect on the Members. Copies of any amendments made pursuant to this Article XVI shall be sent to the Members.

Section 16.02. *Amendments by Members.* A proposed amendment shall be voted upon at either an annual meeting or a special meeting of the Members duly called for the purpose of voting on the amendment. Upon the Members' approval of any amendment, in accordance with the provisions of Article VII, all Members, whether or not they consented to such amendment, shall be deemed to have consented to and shall be bound by the terms and provisions thereof as if they had so consented.

Section 16.03. *Amendments by Manager(s).* Notwithstanding any provision of this Operating Agreement, amendments to this Operating Agreement which, in the opinion of counsel to the Company, are necessary to maintain the status of the Company as a tax partnership under federal or state law or for other tax purposes may be made by the Manager(s) without the necessity of a vote of the Members.

ARTICLE XVII - NOTICES

Any notice, payment, demand or communication required or permitted to be given

hereunder shall be deemed to have been given when delivered personally to the party to be notified or when deposited in the United States mail, postage and charges prepaid, addressed as follows:

- (a) if to the Company, addressed to the Company's principal office;
- (b) if to a Manager, addressed to such Manager's address for purposes of notice which is contained in the Company's books and records; and
- (c) if to a Member, addressed to such Member's address for purposes of notice which is contained in the Company's register of its Members. Any Member may change its address or representative to be notified by written notice to the Company.

ARTICLE XVIII - GOVERNING LAW AND INTERPRETATION

Section 18.01. *Governing Law.* This Operating Agreement shall be deemed to be made under and shall be construed in accordance with the laws of the State of Colorado.

Section 18.02. *Severability.* If any provision of this Operating Agreement of the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement shall not be affected and the application of such affected provision shall be enforced to the greatest extent permitted by law.

Section 18.03. *Headings.* All section or subsection titles or captions contained in this Operating Agreement are for convenience of reference only and shall not be deemed part of the content or substance of this Operating Agreement.

Section 18.04. *Plurals and Pronouns.* All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

Section 18.05. *Time.* In computing any period of time pursuant to this Operating Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

ARTICLE XIX - NO THIRD-PARTY BENEFICIARIES

Except as may be expressly provided for herein, no person or entity not a party hereto shall have any rights or obligations hereunder.

ARTICLE XX - ENTIRE AGREEMENT

The Articles of Organization and this Operating Agreement contain the entire understanding between and among the Members and supersede any prior understandings and agreements between and among them respecting the subjects of the Articles of Organization and this Operating Agreement. The attached Exhibits A, B, C and D are incorporated herein by this reference. If any of the matters addressed or contemplated by this Operating Agreement were performed or commenced by the Members prior to their execution of this Operating Agreement, this Operating Agreement shall be deemed to govern such prior actions as if it were executed by

the Members prior to such actions being undertaken.

ARTICLE XXI - COUNTERPART EXECUTION

This Operating Agreement may be executed in counterparts, all of which taken together shall constitute but one and the same instrument. Each Member shall become bound by this Operating Agreement immediately upon such Member's execution hereof and independently of the execution hereof by any other Member.

IN WITNESS WHEREOF, this Operating Agreement is executed and delivered by the undersigned Members , as of the day and year first above written.

SIGNATURES ON THE NEXT PAGE

Sig Blocks Cherry Tree Apartments LLC - Operating Agreement

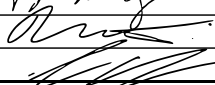
MEMBER NAME	Manager	SIGNATURE	Printed Name of Signor
IH Holdings Ten LLC - Manager - Hugo Weinberger	X		Hugo Weinberger
IH Holdings Ten LLC - Manager - Noam Ashter	X		Noam Ashter
IH Holdings Ten LLC - Manager - Ilan Reissner	X		Ilan Reissner

EXHIBIT A

To that certain Operating Agreement for CHERRY TREE APARTMENTS, LLC.

DEFINITIONS

"*Additional Member*" is defined in Section 13.01 and means any person or entity who acquires Additional Units of the Company.

"*Additional Units*" means Units of the Company issued by the Company subsequent to the filing date of the Articles of Organization.

"*Affiliate*" means any individual, partnership, joint venture, trust corporation or other form of enterprise which directly or indirectly controls, is controlled by, or is under common control with a Member. For purposes of the preceding sentence, "control" means possession, directly or indirectly, of the power to direct or cause direction of management and policies through ownership of voting securities, contract, voting trust or otherwise.

"*Articles of Organization*" means the Articles of Organization of CHERRY TREE APARTMENTS, LLC, as filed with the Secretary of State of Colorado pursuant to the Colorado Limited Liability Company Act on July 17, 2018, as the same may be amended, supplemented or otherwise modified, in accordance with said Articles of Organization and with this Operating Agreement, from time to time, as the context requires.

"*Benefit*" is defined in Section 14.01.

"*Capital Contribution*" means the gross amount of investment by a Member or all Members, as the case may be, which may consist of cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

"*Carrying Value*" means the adjusted basis of an asset for federal income tax purposes, as of the time of determination. The Carrying Value of any asset shall be adjusted from time to time to the extent required by Sections 8.01(d) and 8.01(e), and to reflect changes, additions or other adjustments to the Carrying Value for dispositions, acquisitions or improvements of the Company's assets.

"*Code*" means the Internal Revenue Code of 1986, as amended, as the same or any law enacted in replacement thereof, may be in force from time to time, and applicable Treasury Regulations thereunder.

"*Colorado Act*" means the Colorado Limited Liability Company Act C.R.S. §§ 7-80-101 et seq., as amended, as the same or any law enacted in replacement thereof, may be in force from time to time.

"*Company*" means CHERRY TREE APARTMENTS, LLC also referred to as CHERRY TREE APARTMENTS, limited liability company.

"*Company Minimum Gain*" means for partnership tax purposes as set forth in Treasury Regulation Section 1.704-1(b)(4)(iv)(c), the amount of gain, if any, that would be realized by the Company if it were to sell or dispose of (in a taxable transaction) property subject to a nonrecourse liability of the Company for a price equal to that necessary to fully satisfy such liability.

"*Company Property*" or "*Company's Property*" means all real, personal and mixed

properties, cash, assets, interests and rights of any type owned by the Company. All assets acquired with Company funds or in exchange for Company Property shall be Company Property.

"Economic Benefit" is defined in Section 14.01.

"Manager" or *"Managers"* means one or more persons (individually and together) selected by the Members who, if they are natural persons, are 18 years of age or older, and who need not be Members or residents of the state of Colorado, to whom are delegated all or part of the management duties of the Company's business as provided in article VI.

"Member" means each of the parties who has executed this Operating Agreement and each of the parties who may hereafter become Additional or Substitute Members as provided in the Articles or Organization and in this Operating Agreement. The term "Member" shall include a Manager to the extent he has purchased Units in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Benefit, then such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Economic Benefit.

"Membership Interest" means an interest in the Company as represented by the "Unit" or "Units" held by such Member as set forth on Exhibit B.

"Member Account" means the account maintained for each Member pursuant to Section 8.01.

"Operating Agreement" means this Operating Agreement for CHERRY TREE APARTMENTS, LLC, as originally executed and as subsequently amended, supplemented, restated or otherwise modified, from time to time, in accordance with its terms, as the context requires.

"Publicly traded partnership" means a partnership or company as defined by Code Section 7704.

"Preferred Return" means a Member's ten percent (10.0%) rate of return per annum on their Capital Contribution as set forth on Exhibit B.

"Regulatory Allocations" are defined in Section 8.07.

"Substitute Member" means any transferee of a Member's Units who is admitted as a Member in the Company pursuant to Article XIV.

"Unit" means an interest in the Company representing an interest in the Company as described in Section 4.03.

"Unrealized Gain" attributable to a Company asset means, as of any date of determination, the excess, if any of the fair market value of such asset (as determined under Section 8.01(e) as of such date of determination) over the Carrying Value of such asset as of such date of determination (prior to any adjustment to be made pursuant to Section 8.01(e) as of such date).

"Unrealized Loss" attributable to a Company asset means as of any date of determination, the excess, if any, of the Carrying Value of such asset as of such date of determination (prior to any adjustment to be made pursuant to Section 8.01(v) as of such date)

over the fair market value of such asset (as determined under Section 8.01(v) as of such date of determination.

EXHIBIT B

Attached to that certain Operating Agreement for CHERRY TREE APARTMENTS, LLC.
Members, Capital Contributions, Percentage Interests and Units as of July 17, 2018.

IH Holdings Ten, LLC	1.00	100%
----------------------	------	------

EXHIBIT C

Attached to that certain Operating Agreement for CHERRY TREE APARTMENTS, LLC.

MANAGER(S)
As of EFFECTIVE DATE:

NAME(S) OF INITIAL MANAGER(S) As of July 15, 2018.

Ilan Reissner

Hugo Weinberger

Noam Ashter