# OPERATING AGREEMENT
# OF
# HARRISON STREET BROOK VALLEY LIMITED MANAGEMENT COMPANY, LLC

## ARTICLE I

## RULES OF CONSTRUCTION AND DEFINED TERMS

1.1 **Rules of Construction.**

A. **Defined Terms.** The words and phrases in quotation marks in Section 1.2 have the meanings therein indicated. Whenever the words and phrases defined in Section 1.2 or elsewhere in this Agreement are intended to have their defined meanings, the first letter of the word or the first letters of all substantive words in the phrase shall be capitalized. Otherwise, any word or phrase that appears in this Agreement shall have the meaning denoted by its context.

B. **Case and Gender.** When the context permits, a word or phrase used in the singular includes the plural, and when used in any gender, it also includes all genders.

C. **Captions.** Captions of sections are inserted as a matter of convenience only, and do not define, limit, or extend the scope or intent of this Agreement or any provision hereof.

D. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

E. **Separability of Provisions.** Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions hereof are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

1.2 **Defined Terms.**

**"Accountant"** means an accountant whom the Managers of the Company shall periodically designate.

**"Agreement"** means this Operating Agreement and any amendments made hereto. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby," and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

**"Articles"** means the Articles of Organization of the Company filed with the Secretary of State of Nebraska and any amendments thereto.

**"Bankruptcy"** or **"Bankrupt"** means with respect to any Member, such Member's making an assignment for the benefit of creditors, becoming a party to any liquidation or dissolution action or proceeding with respect to such Member or any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors with respect to such Member, or the appointment of a receiver, liquidator, custodian or trustee for such Member, or a substantial part of such Member's assets and, if any of the same occur involuntarily, the same is not dismissed, stayed or discharged within 180 days; or the entry of an order for relief against such Member under Title 11 of the United States Code. A Member shall be deemed bankrupt if the Bankruptcy of such Member shall have occurred and be continuing.

**"Board of Managers"** means the Board comprised of no less than One (1), and no more than Three (3), Managers which shall have sole power and authority to conduct the affairs of the Company unless otherwise stated herein.

**"Capital Account"** means with respect to each Member, the account established for each Member pursuant to Section 5.1 which will initially equal the Capital Contribution of such Member and throughout the existence of the Company will be (i) increased by the amount of Taxable Income allocated to such Member, and (ii) reduced by the amount of Tax Losses allocated to such Member, and the amount of distributable cash ("Distributable Cash" as defined below) distributed to such Member.

**"Capital Contribution"** means the total amount of cash, property or services contributed to the Company by any Member, or all the Members (or the predecessor holders of the Interest of any Member or Members).

**"Code"** means the Internal Revenue Code of 1986, as may be amended from time to time (or any corresponding provision or provisions of any succeeding law).

**"Company"** means HARRISON STREET BROOK VALLEY LIMITED MANAGEMENT COMPANY, LLC, a Nebraska limited liability company.

**"Consent"** means either (i) the consent, approval or ratification given by vote at a meeting called and held in accordance with the provisions of Article X, or (ii) the prior written consent or approval, as the case may be, of a person ("Person" as defined below) to do the act or thing for which the consent, approval or ratification is solicited, or (iii) the act of granting such consent, approval or ratification, as the context may require.

**"Distributable Cash"** means the excess of cash revenue from operation of the Company over the sum of cash disbursements without deduction for depreciation and amortization of intangibles, such as organization costs, but after a reasonable allowance for cash reserves for repairs, replacements, contingencies, anticipated obligations (including debt service), and working capital as determined by the Board of Managers.

**"Interest"** means the entire Percentage Interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement. Reference to a majority, or specified percentage, of interests of the Members means the Members whose combined Percentage Interests represent over 50%, or such specified percentage, respectively, of the Interests of all Members.

**"LLCA"** means the Nebraska Limited Liability Company Act, as may be amended from time to time.

**"Majority In Interest"** means Consent of a majority of the Percentage Interests in the Company determined as of the date when such Consent is tabulated.

**"Manager"** means any person who is a member of the Board of Managers, or any person appointed, as herein provided, as a successor thereto.

**"Member"** means any Person who has an Interest in the Company; except a Non-Member Transferee.

**"Membership Interest"** means the Interest of a Member in the Company.

**"Non-Member Transferee"** means any Person that received a transfer, sale, or assignment of a Member's Interest in the Company from a Member, without such Consent of the Members as required under Article VIII, hereof.

**"Notification"** means a writing, containing the information required by this Agreement to be communicated to any Person, sent by registered, certified or regular mail to such Person at the last known address of such Person; provided, however, that any communication containing such information sent to such Person and actually received by such Person shall constitute Notification for all purposes of this Agreement.

**"Percentage Interest"** means a Member's undivided ownership interest of the Company represented by a percentage as evidenced by this Agreement, and any amendments to this Agreement.

**"Person"** means any individual, association, partnership, corporation, trust or other entity.

**"Proportionate Share"** means that portion of the Membership Interest offered for sale which bears the same ratio as the Membership Interests of the Company owned by each of the Members to the collective Membership Interests of all of the Members of the Company.

**"Remaining Members"** means each of the Members except the Selling Member.

**"Selling Member"** means a Member that intends to sell, assign or otherwise transfer its Membership Interest.

**"State"** means the State of Nebraska.

**"Substituted Member"** means any Person admitted to the Company as a Member pursuant to the provisions of this Agreement.

**"Taxable Income"** or **"Tax Losses,"** respectively, means the ordinary income or losses of the Company for each fiscal year or portion thereof as determined for Federal income tax purposes, as well as, where the context requires, related Federal tax items such as capital gain or loss, tax preferences, credits and depreciation recapture, it being understood that losses for Federal income tax purposes include all amounts treated as a return of capital for Federal income tax purposes by reason of tax basis adjustments.

**"Tax Matters Partner"** means such person as shall be designated from time to time as the Tax Matters Partner (as such term is defined by the Code) of the Company by the Managers. The Tax Matters Partner shall be Robert Schropp.

## ARTICLE II

## FORMATION OF THE COMPANY

2.1 **Formation.** The Members hereby form a limited liability company pursuant to the Limited Liability Company Act of the State of Nebraska. The Members shall from time to time execute or cause to be executed all such certificates or other documents or cause to be done all such filings, recordings, publishings, or other acts as may be necessary or appropriate to comply with the requirements for the formation and operation of a limited liability company under the Nebraska LLCA or other laws of this State and for the purpose of establishing and protecting the limited liability of the Members under the laws of any other jurisdictions in which the Company may conduct business.

2.2 **Other Jurisdictions.** Prior to conducting any business in any jurisdiction, the Members shall cause the Company either to comply with all the requirements for the qualification of the Company to conduct business as a limited liability company in such jurisdiction, or to conduct business in such jurisdiction through other limited liability companies or entities, through the Members as the Company's agent, or by such other means as the Members, upon the advice of counsel, deems appropriate to preserve the Members' limited liability; provided, however, that the Company shall not conduct its business through any person other than the Members if, in the opinion of counsel to the

Company, the Company would be classified for Federal income tax purposes as an association taxable as a corporation and not as a partnership.

2.3 **Board of Managers**. The Members of the Company hereby vest the management of the Company with the Board of Managers who shall have sole power and authority to conduct the affairs of the Company except to the extent management powers are expressly reserved to the Members by this Operating Agreement, the Articles or the LLCA.

2.4 The fiscal year of the Company shall be from January 1 to December 31.

## ARTICLE III

## CAPITAL CONTRIBUTIONS

3.1 **Form of Capital Contributions.**

A. To the extent that a Member's Capital Contribution consists of property (other than cash), services rendered, or obligations to contribute property or services, the particular Member concerned shall assign an agreed value therefor, provided that there is a reasonable basis in fact that such value represents the fair market value.

B. To the extent that a Member's Capital Contribution consists of a promissory note or other obligation for future cash payments, the promissory note or obligation must provide for full recourse against the Member in the event of default and must be secured by the Interests so acquired.

3.2 **Initial Capital Contribution.** The initial Capital Contributions of the Members shall be as set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

3.3 **Percentage Interests.** Upon execution of this Agreement, each Member's initial Capital Contribution reflects an undivided Interest in the Company, expressed as a percentage, as set forth on Exhibit "A" attached hereto and incorporated herein by this reference. As additional Capital Contributions are made to the Company by a Member or Members, or as amounts are returned to a Member or Members deemed to be a return of Capital by the Managers, the respective Percentage Interests of the Members shall be immediately adjusted to reflect a revised Percentage Interest of each Member by:

a. Determining the total Capital Contributions made by each of the respective Members immediately prior to any additional Capital Contribution (or return of Capital Contributions);

b. Then add any additional Capital Contribution made by each of the respective Member(s) (or otherwise subtract any return of Capital made to each respective Member) to the respective amounts determined under subsection a. above;

c. Then sum total the respective adjusted Capital Contribution amounts as determined under subsection b. above; and

d. Then determine the adjusted respective Percentage Interests of the Members which is a percentage result of a fraction, the numerator of which is the respective amount determined for each Member under subsection b. above, and the denominator of which is the sum total of the respective adjusted Capital Contribution amounts as determined under subsection c. above.

With respect to each occasion that the Percentage Interests of the Members is adjusted as provided herein, the adjusted Percentage Interests for each of the Members may be referenced by an Exhibit to this Agreement created by the Managers.

3.4 **Other Matters**. The Managers may from time to time unanimously declare, and the Company may distribute profits to the Members if, after distribution is made, the assets of the Company are in excess of all liabilities of the Company other than liabilities to Members on account of their Capital Contributions. Unless otherwise provided, retained profits shall be deemed an increase in the Capital Contributions of the Members. A separate Capital Account shall be maintained for each Member. No Member shall make any withdrawals from their respective Capital Account without prior Consent of the Board of Managers. If the Capital Account of a Member becomes impaired, its share of subsequent Company profits shall be first credited to the Member's Capital Account until the Capital Account has been restored.

3.5 **Liability of Members.**

A. No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company, except for such personal guarantees and indemnifications by a Member relating to a liability of the Company, and except as otherwise provided in accordance with the LLCA or any other applicable statute, rule or regulation. A Member shall not be required to lend any funds to the Company or to repay to the Company, any Member or any creditor of the Company, any portion or all of any negative balance in such Member's Capital Account.

B. A Member may, under certain circumstances, be liable to the Company, for the benefit of Company creditors, with respect to amounts received as the return of any part of its Capital Contribution. It is the intent of the Members that no distribution (or any part of any distribution) made to any Member shall be deemed a return or withdrawal of capital, even if such distribution represents, in full or in part, a distribution of depreciation or any other non-cash item accounted for as a loss or deduction from or

offset to the Company's income, and that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. If any court of competent jurisdiction holds, however, that notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member. At the time that cash distributions may become substantial, the Members may file annual amendments to the Articles of Organization reducing the Capital Contributions of the Members by an amount equal to the cash distribution for the past year which constitutes a return of capital.

C. A Member in the Company shall not be liable directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of or chargeable to the Company or another Member or Members, whether in tort, contract, or otherwise, arising from omissions, negligence, wrongful acts, misconduct performed or committed while the Company is formed and in the course of the Company business by another Member or an employee, agent, or representative of the Company.

3.6 **Membership Certificate.** The Membership Interest in the Company owned by the Members constitutes the personal estate of the Members that may be transferred and assigned in accordance with the terms and provisions of this Agreement, and the Company may, from time to time, adopt and issue a Membership Interest Certificate which evidences the Member's Interest in the Company. Said Membership Interest Certificate shall only represent, or evidence, the Member's Percentage Interest in the Company. The transfer or encumbrance (by operation of law or otherwise) of the Membership Interest evidenced by the Certificate shall be restricted in accordance with the terms of this Agreement. The Membership Interest represented by the Certificate may not be sold, transferred or otherwise disposed of unless the Member complies with all of the terms of this Agreement and the laws of the State.

## ARTICLE IV

## CAPITAL OF THE COMPANY

4.1 **No Interest on Capital Contributions.** No Member shall be paid interest on any Capital Contribution.

4.2 **Treatment of Capital Contributions.** Except as otherwise provided under the LLCA, no Member shall have the right to withdraw, or receive any return of its Capital Contribution, except as specifically provided in this Agreement. No Capital Contribution may be returned in the form of property other than in cash.

4.3 **Interest of Creditor.** A secured creditor who makes a nonrecourse loan to the Company will not have or acquire at any time, as a result of making the loan, any

direct or indirect interest in the profits, capital or assets of the Company, other than as a secured creditor.

## ARTICLE V

## ACCOUNTS, BOOKS AND RECORDS, ACCOUNTING, REPORTS, TAX ELECTIONS, ETC.

5.1 **Capital Accounts.** A Capital Account shall be established for each Member on the books and records of the Company. All Taxable Income and Tax Losses allocated to the Members, and all distributions made to the Members shall be credited or charged, as the case may be, to their Capital Accounts, and the Capital Accounts shall be maintained pursuant to the rules contained in the Treasury Regulations under Section 704(b) of the Code. Upon liquidation of the Company, liquidating distributions are required in all cases to be made in accordance with positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable Company year during which such liquidation occurs. In addition, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulation Section 1.704-(b)(2)(ii)(d)(4), (5) or (6), such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate a deficit balance in the Member's Capital Account as quickly as possible. It is intended that this subsection will meet the requirements of a "qualified income offset" as defined in Treasury Regulations § 1.704-1(b)(2)(ii)(d), and this subdivision is to be interpreted and applied consistent with that intention.

5.1.1 **Nonrecourse Deductions**. If a Member's Capital Account has a deficit balance at any time and the deficit or increase in deficit was caused by the allocation of nonrecourse deductions as defined in Treasury Regulations § 1.704-2(b), then beginning in the first taxable year of the Company in which there are nonrecourse deductions or in which the Company makes a distribution of proceeds of a nonrecourse liability that are allocable to an increase in minimum gain as defined in Treasury Regulations § 1.704-2(d) and thereafter throughout the full term of the Company, the following rules shall apply:

(i) Nonrecourse deductions shall be allocated to the Members in a manner that is reasonably consistent with the allocations that have substantial economic effect as defined in Treasury Regulations § 1.704-1 or some other significant item attributable to the property securing the nonrecourse liabilities, if applicable; and

(ii) If there is a net decrease in minimum gain for a taxable year, each Member will be allocated items of Company income and gain for that year equal to that Member's share of the net decrease in minimum gain as defined in Treasury Regulations § 1.704-2(g)(2).

5.2 **Books and Records.**

A. Books and records of the Company shall be maintained at the principal office of the Company or at any other place designated by the Board of Managers and shall be available for examination by any Member or its duly authorized representatives at any and all reasonable times. Except as otherwise provided in this Agreement, the Company may maintain such books and records and may provide such financial or other statements as the Board of Managers, in its sole discretion, deems advisable.

B. If requested by the Members, the Accountant shall compile all annual financial statements and reports to the Members, and shall prepare for execution by the Tax Matters Partner all tax information, returns or reports of the Company.

5.3 **Accounting and Fiscal Year.** The books of the Company shall be kept on the cash basis for all purposes, including tax purposes. The fiscal year of the Company shall be the calendar year, which may be changed at any time at the sole discretion of the Board of Managers.

5.4 **Bank Accounts.** The bank accounts of the Company shall be maintained in such institution as the Board of Managers shall determine. The funds of the Company shall not be commingled with the funds of any other Person.

5.5 **Reports.**

A. **Tax Information.** Within 75 days after the end of each fiscal year, the Tax Matters Partner shall send to each Person who was a Member at any time during the fiscal year then ended such tax information as shall be necessary for the preparation by such Member of its Federal income tax return.

B. **Annual Reports.** Within 120 days after the end of each fiscal year, the Managers shall send to each Person who was a Member at any time during the fiscal year then ended (1) a balance sheet as of the end of such fiscal year and statements of income, Members' equity and changes in financial position for such fiscal year, and (2) a cash flow statement (which need not be audited).

5.6 **Depreciation and Tax Elections.**

A. With respect to all depreciable assets of the Company, if any, the Company may elect to use, so far as permitted by the provisions of the Code, accelerated depreciation methods. The Company may change to or elect some other method of depreciation so long as such other method is, in the opinion of the Managers, most advantageous to a Majority in Interest of the Members.

B. With respect to an election by the Company for adjustment to the basis of Company property as additional investors are admitted as Members, if the Company files such an election, in accordance with the Treasury Regulations under Code Section 754, the basis of Company property shall be adjusted, in the case of a distribution of property, in the manner provided in Code Section 734 and, in the case of a transfer, in the manner provided in Code Section 743. Such an election shall apply with respect to all distributions of property by the Company and to all transfers of Interests in the Company during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the company, subject to such limitations as may be provided by the Treasury Regulations under Code Section 754.

## ARTICLE VI

## DISTRIBUTIONS AND ALLOCATIONS

6.1 **Allocation of Taxable Income and Tax Losses.**

A. Except as specifically provided in Section 6.1B below, Taxable Income and Tax Losses of the Company shall be determined and allocated with respect to each fiscal year of the Company as of, and within 75 days after, the end of such year, and such Taxable Income and Tax Losses shall be allocated in accordance with Section 6.3 below.

B. To the extent that any interest income is received by the Company from one or more negotiable recourse promissory notes executed by any Member with respect to its Capital Contribution to the Company, such interest amount shall be specifically allocated to said Member. The Company Capital Account balance of the Member shall be properly adjusted to reflect such special allocations.

C. The allocation of Taxable Income and Tax Losses arising from the sale of all or substantially all of the assets of the Company, which leads to the dissolution of the Company shall be adjusted to the extent feasible so that the Members will not recognize gain or loss pursuant to Section 731 of the Code upon the dissolution and liquidation of the Company.

6.2 **Distributions of Cash.** All Distributable Cash shall be distributed at such times and in such amounts as the Board of Managers shall determine. Distributable Cash shall be distributed in accordance with Section 6.3 below.

6.3 **Determination of Allocations and Distributions Among Members.** Except as provided otherwise in this Agreement, all Distributable Cash distributable to the Members, and all Taxable Income and Tax Losses allocable to the Members shall be determined on a daily, monthly or other basis, as determined by the Board of Managers using any permissible method under section 706 of the Code and the

Treasury Regulations thereunder, and allocated, as the case may be, to each Member entitled to such distribution or allocation. In the event that the Board of Managers do not otherwise agree to the allocation or distribution of such Distributable Cash, Taxable Income and Tax Losses, the unallocated and undistributed Distributable Cash, Taxable Income and Tax Losses shall be allocated and distributed in accordance with the Percentage Interests of the Members entitled to such distribution or allocation.

6.4 **Limitations on Distributions.** A Member may not receive a distribution from the Company to the extent that, after giving effect to such distribution, all liabilities of the Company, other than liabilities to Members on account of their Interests, exceed the fair market value of the assets of the Company.

6.5 **Qualified Income Offset.** If any Member unexpectedly receives any adjustments, allocation or distributions described in clauses (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of Company Taxable Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the adjusted capital account deficit created by such adjustments, allocations or distributions as quickly as possible. This Section 6.5. is intended to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d)(3).

6.6 **Minimum Gain Chargeback**. If there is a net decrease in Company minimum gain during a fiscal year, each Member will be allocated, before any other allocation under this Article VI, items of income and gain for such fiscal year (and if necessary, subsequent years) in proportion to and to the extent of an amount equal to such Member's share of the net decrease in Company minimum gain determined in accordance with Regulations Section 1.704-2(g)(2). This Section 6.6 is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Regulations Section 1.704-2(f).

6.7 **Member Nonrecourse Debt Minimum Gain Chargeback.** Notwithstanding any other provision of this Article VI, but except this Section 6.7, hereof, if there is a net decrease in Member nonrecourse debt minimum gain attributable to a Member nonrecourse debt during any fiscal year of the Company, each Member who has a share of the Member nonrecourse debt minimum gain attributable to such Member nonrecourse debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Taxable Income and gain for such year (and, if necessary, subsequent years) in an amount equal such Member's share of the net decrease in Member nonrecourse debt minimum gain attributable to such Member nonrecourse debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.7 is intended to comply with a minimum gain chargeback requirement of that Section of the Regulations and shall be interpreted consistently therewith.

6.8 **Member Nonrecourse Deductions.** Any Member nonrecourse deductions for any fiscal year or other period shall be specially allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member nonrecourse debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(2).

6.9 **Special Allocations.** Any special allocations of items of Taxable Income pursuant to Sections 6.6, 6.7 and 6.8 shall be taken into account in computing subsequent allocations of Taxable Income pursuant to Section 6.3, so that the net amount of any items so allocated and the gain, loss and any other item allocated to each Member pursuant to Section 6.3 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 if such special allocations had not occurred.

6.10 **Section 404(c) Allocations.** Any item of income, gain, loss and deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company and which is required or permitted to be allocated to such Member for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such property and its fair market value at the time of its contribution shall be allocated to such Member solely for income tax purposes in the manner so required or permitted.

## ARTICLE VII

## RIGHTS, POWERS AND DUTIES OF THE MANAGERS

7.1 **Management and Control of the Company:** Subject to the consent of the Members, where required by this Agreement, the Board of Managers shall have the exclusive right and authority to manage the business of the Company and is hereby authorized to take any action of any kind and to do anything and everything that the Board of Managers deems necessary in accordance with the provisions of this Agreement and applicable law. Each Manager shall be entitled to one (1) vote upon each matter submitted to a vote of the Board of Managers.

7.2 **Appointment of Board of Managers**. The Board of Managers shall be comprised of not less than One (1) nor more than Three (3) Managers who shall be appointed for a term of one (1) year and shall serve until his or her successor is duly appointed or until such Manager's death, resignation or removal. Any Manager may be removed from time to time with or without cause by an affirmative vote of a Majority in Interest of the Members. Successor Managers shall be appointed by the Members.

7.3 **Decisions Requiring Majority Approval.** Except only regarding the matters requiring Majority in Interest vote of the Members under Section 7.4, or the unanimous approval of all of the Members under Section 7.5 hereof, the approval or

consent of a majority of the Managers shall be sufficient to make any and all decisions or to resolve any differences among the Managers relating to the business and affairs of the Company. The approval of a majority of the Managers shall be necessary to authorize any act or transaction on behalf of the Company which is not for the purpose of carrying on the Company's business in the usual way, including (without limitation) the following:

A. the establishment of bank accounts for the deposit of all cash receipts of the Company;

B. the employment, fixing of terms of employment, and termination of employment of any or all employees, accountants, legal counsel or other consultants;

C. to vote on and determine any issue or policy matter related to the Company brought before the Board of Managers including, but not limited to issues relating to the continuity of life of the Company, the transferability of Membership Interests, legal matters relating to the Company, obtaining liability insurance, obtaining life insurance policies on the Managers or Members, creating and administering the employee benefit programs of the Company, and the financial activity or policy of the Company;

D. to determine which books and records are to be kept by the Company on a regular basis; and

E. to select and/or revise any Company name, trademark, logo or other similar intangible asset of the Company.

The Members consent and agree that the approval of the Members holding at least a Majority in Interest shall be required to authorize the Company to enter into any contracts, agreements, documents, instrument, notes, deeds, mortgages, deeds of trust, or other documents of conveyance or indebtedness, or incur any indebtedness, that are in excess of Five Thousand Dollars ($5,000.00) in amount but less than Twenty-five Thousand Dollars in amount ($25,000.00), and which performance of such agreement, document or instrument shall exceed twelve (12) months from execution. Subject to such Member Consent requirements as otherwise provided herein, no Member shall take any action on behalf of the Company or otherwise bind the Company.

All of the Company's expenses shall be billed directly to and paid by the Company. The Company shall pay the following expenses: (i) the costs of personnel employed by the Company and involved in the business of the Company; (ii) the costs paid to any lender for borrowed money, and taxes and assessments applicable to the Company; (iii) legal, audit, accounting, appraisal and engineering fees; (iv) printing, engraving and other expenses and taxes incurred in connection with the issuance,

distribution, transfer, registration, and recording of documents evidencing ownership of Interests or in connection with the business of the Company; (v) the cost of insurance in connection with the business of the Company; (vi) expenses of organizing, revising, amending, converting modifying or terminating the Company; (vii) the costs and expenses incurred in qualifying the Company to do business in any jurisdiction, including fees and expenses of any resident agent appointed by the Company; the cost of preparing and disseminating to Members the reports described in Section 5.5, and the cost of preparing and filing reports and tax returns with governmental agencies; (viii) the costs incurred in connection with any litigation or regulatory proceedings in which the Company is involved; (ix) the cost of any computer services used by the Company; and (x) all such other costs and expenses necessary to conduct the business of the Company.

7.4 **Matters Requiring Majority Approval.** No Member, Manager or other Person shall have the authority to do any of the following on behalf of the Company without the prior approval or concurrence of a Majority in Interest of all Members:

A. to enter into, or otherwise authorize the Company to enter into any contracts, agreements, documents, or instrument that exceeds Five Thousand Dollars ($5,000.00) in amount but is less than Twenty-five Thousand Dollars in amount ($25,000.00); and

B. to enter into, or otherwise authorize the Company to enter into any contracts, agreements, documents, or instrument which performance of such agreement, document or instrument shall exceed twelve (12) months from execution.

7.5 **Matters Requiring Unanimous Approval.** No Member, Manager or other Person shall have the authority to do any of the following on behalf of the Company without the prior unanimous approval of all of the Members:

A. to revise or amend the Articles in any manner;

B. to elect to sell all or substantially all of the Company's assets;

C. to elect to dissolve the Company;

D. Except as provided in Section 11.2 herein, to revise or amend this Operating Agreement in any manner;

E. to cause any Member to have any personal liability arising from any action by the Company;

F. to cause additional capital to be contributed to the Company that would alter the Percentage Interest of any Member, or to otherwise amend or

alter the capital structure of the Company, except that if any Member shall refuse to participate in additional capital contributions, the percentage interests of the Members shall be adjusted pursuant to Section 3.3.

G. To merge or consolidate with any one or more limited liability companies, corporations, partnerships or other business entities.

H. To enter into, or otherwise authorize the Company to enter into any contracts, agreements, documents, or instrument that equals or exceeds Twenty-five Thousand Dollars in amount ($25,000.00).

I. To enter into, or otherwise authorize the Company to enter into any notes, deeds, mortgages, deeds of trust, or other documents of conveyance or indebtedness, or incur any indebtedness or otherwise encumber title to any property, real or personal, owned by the Company.

7.6 **Duties and Obligations of the Board of Managers**

A. The Managers shall take such action as may be necessary or appropriate for the continuation of the Company's valid existence and in order to form or qualify the Company under the law of any jurisdiction in which the Company is doing business or in which such formation or qualification is necessary to protect the limited liability of the Members, or in order to continue in effect such formation or qualification, the Managers shall file or cause to be filed for recordation in the office of the appropriate authorities of the State, and in the proper office or offices in each other jurisdiction in which the Company is formed or qualified, such certificates and other documents as are required by the applicable statutes, rules or regulations of any such jurisdiction.

B. The Managers shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Company.

C. The Managers shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in the immediate possession or control of the Board of Managers. The Board of Managers shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Company.

7.7 **Authority of Tax Matters Partner.** The Tax Matters Partner is hereby authorized to perform the following acts with respect hereto:

A. To enter into any settlement with the Internal Revenue Service or the Secretary with respect to any tax audit or judicial review, in which agreement the Tax Matters Partner may expressly state that such agreement shall bind the Members, except that such settlement agreement shall not bind any Members who (within the time

prescribed pursuant to the Code and regulations thereunder) file a statement with the Secretary providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on behalf of such Member;

B. In the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a "final adjustment") is mailed to the Tax Matters Partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the United States Tax Court, the District Court of the United States for the district in which the Company's principal place of business is located, or the United States Claims Court;

C. To intervene in any action brought by any Member for judicial review of a final adjustment;

D. To file a request for administrative adjustment with the Secretary at any time and, if any part of such request is not allowed by the Secretary, to file a petition for judicial review with respect to such request;

E. To enter into an agreement with the Internal Revenue Service to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item; and

F. To take any other action on behalf of the Board of Managers, Members or the Company in connection with any administrative or judicial tax proceeding to the extent permitted by applicable law or regulations.

7.8 **Limitation on Liability of Managers; Indemnification**

A. In carrying out their duties hereunder, the Managers shall not be liable to the Company or to any Member for any actions taken in good faith and reasonably believed by them to be in the best interest of the Company or in reliance on the provisions of this Operating Agreement or the Articles of Organization, or for good faith errors of judgment, but shall only be liable for willful misconduct or gross negligence in the performance of their duties as Managers. The Managers shall not be expected to devote their full time and attention to the affairs of the Company, but shall devote such amounts of time and attention as are reasonable and appropriate in their good faith judgment under the circumstances prevailing from time to time.

The Company shall indemnify, save harmless and pay all judgments and claims against each Manager arising from any loss, liability or damage incurred by them or the Company by reason of any act performed or omitted to be performed by them in connection with the business of the Company, including costs and attorneys' fees (which attorneys' fees may be paid as incurred) and any amounts expended in settlement of any claims of liability, loss or damage, provided that such Managers were not guilty of gross negligence or misconduct. Pursuant to the preceding sentence, an

affiliate of a Manager will be indemnified if its liability arises solely as a result of such affiliate's status as an affiliate of one of the Managers or if the affiliate has undertaken the obligations of a Manager or acted on behalf of a Manager. The satisfaction of any indemnification and saving harmless shall be from and limited to Company assets, and no Member shall have any personal liability on account thereof.

B. Notwithstanding the foregoing Section 7.7A, no Manager of the Company shall be indemnified from any liability, loss or damage incurred by them in connection with any claim or settlement involving allegations that the Securities Act of 1933 or any state securities laws were violated by such Manager, or by any such other person or entity unless: (a) the Manager or other Persons seeking indemnification are successful in defending such action; or (b) such indemnification is specifically approved by a court of law which shall have been advised as to the current position of the Securities and Exchange Commission regarding indemnification for violations of securities law, provided that such court approval will not be required if Company counsel advises that the matter of indemnification for violations of securities law has been settled by controlling precedent.

## ARTICLE VIII

## MEMBERS

8.1 **Admission of Additional Members**. Upon the Consent of all Members of the Company, the Company is authorized to admit any person as an additional member of the Company (each an "Additional Member" and collectively the "Additional Members"). Each such Person shall be admitted as an Additional Member at the time such person (I) executes this Agreement or a counterpart of this Agreement and (ii) is named as a Member on the attached Exhibit "A". The legal fees and expenses associated with such admission shall be borne by the Company.

8.2 **Allocations**. Additional Members shall not be entitled to any retroactive allocation of the Company's income, gains, losses, deductions, credits or other items; provided that, subject to the restrictions of Section 706(d) of the Code, Additional Members shall be entitled to their respective share of the Company's income, gains, losses, deductions, credits and other items arising under contracts entered into before the effective date of the admission of any Additional Members to the extent that such income, gains, losses, deductions, credits and other items arise after such effective date. To the extent consistent with Section 706(d) of the Code and Treasury Regulations promulgated under that Section, the company's books may be closed at the time Additional Members are admitted (as though the Company's tax year had ended) or the Company may credit to the Additional Members pro rata allocations of the Company's income, gains, losses, deductions, credits and items for that portion of the Company's Fiscal Year after the effective date of the admission of the Additional Members.

8.3 **Restrictions on Transfers of Interests.**

A. Except to the extent provided below, no Member may transfer or assign by contract or operation of law all or any portion of the Member's interest in the Company. Notwithstanding anything to the contrary set forth below, if a Member of the Company does not obtain the prior written Consent of all the other Members of the Company to the transfer or assignment by contract or operation of law of all or any portion of such transferring Member's interest in the Company to a Non-Member Transferee, then even if the transfer is otherwise permitted by this Article VIII, such transferee shall have no right to participate in the management of the Company or to become a Member of the Company. In such event, the Non-Member Transferee shall only be entitled to receive the share of the Company's profits or other compensation by way of income allocable to the transferred interest and the return of any Capital Contributions to which the transferring Member would otherwise have been entitled with respect to the transferred interest. Any Member of the Company may in such Member's sole discretion withhold Consent to any such transfer or assignment.

B. Voluntary Sale or Assignment to a Member. A Member shall have the right for any reason at any time, to voluntarily sell, assign or transfer all or any portion of their Membership Interest in the Company to an existing Member. The terms and conditions of any such sale, assignment or transfer shall be as determined and agreed upon by the parties.

C. Voluntary Sale or Assignment to a Non-Member. Should any Member, for any reason at any time, desire to voluntarily sell or assign their Membership Interest to a Non-Member, then and in that event such sale or assignment shall be subject to the provisions of this Agreement, and shall be governed by the terms and conditions hereof, including the following:

(1) If any Member desires to sell, assign, or transfer their Membership Interest to a Non-Member, such Selling Member shall give notice in writing of such desire to the Company and each of the Remaining Members, or other Remaining Member as the case may be, stating the price and terms at which the Selling Member desires to sell, assign, or otherwise transfer such Membership Interest, whereupon the Company shall have the exclusive right and option for twenty (20) days to elect to purchase all of said Selling Member's Membership Interest at the price and terms of purchase stated in the notice from Selling Member. During such consideration period as provided herein for the Company, the Selling Member shall make no other disposition of such Membership Interest.

(2) In the event that the Company shall not have exercised such option during such consideration period, then for a period of Twenty (20) days, commencing on the day following the last day of the aforementioned consideration period, the Remaining Member, or each of the Remaining Members, as the case shall be, may elect to purchase on a Proportionate Share

basis, at the price per Interest stated in the notice from Selling Member all of the Membership Interest owned by Selling Member. If only one (1) Remaining Member shall elect to purchase the Membership Interest of the Selling Member, such Remaining Member shall disregard the "Proportionate Share" limitation imposed above, and may purchase all of such Membership Interest being offered by the Selling Member. During such twenty (20) day consideration period Selling Member shall make no other disposition of such Membership Interest.

(3) In the event that neither the Company, or the Remaining Member or the Remaining Members, as the case shall be, shall have elected, within the stated time periods, to purchase in the aggregate all of the Membership Interest owned by Selling Member, then in such event the Selling Member may sell or assign to any person all or any part of the Membership Interest owned by said Member, at a price and on terms identical to that stated in such notice given by Selling Member, provided however:

(i) such Selling Member must reoffer such Membership Interest to the Company and the Remaining Member, or Remaining Members as the case may be, in accordance with (1) and (2) above if the price and terms of such sale or transfer are less than, or more than, first offered to the Company, the Remaining Member, or Remaining Members as the case may be, so that the Company, Remaining Member, or Remaining Members as the case may be, shall always have the right to purchase on the basis of any terms subsequently offered to a third party purchaser or transferee;

(ii) such sale or transfer to a third party purchaser or transferee must be consummated within thirty (30) days following the expiration of the consideration period provided for in (1) and (2) above. If such sale or transfer is not consummated within thirty (30) days following the expiration of the aforementioned consideration period, then the Selling Member must either withdraw the proposal to sell or otherwise transfer such Membership Interest, or give a new notice as required in (1) above, and in the latter event the option provisions of (1) and (2) above shall again be applicable; and

(iii) a Member may assign or transfer its Membership Interest by a duly executed, written instrument of assignment or such instrument of transfer, the terms of which are not in contravention of any of the provisions of this Agreement. If all of the Member(s) do not Consent to the proposed transfer or assignment of part or all of a Member's Interest to a Non-Member, the Non-Member Transferee of the Member's Interest shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The Non-Member Transferee shall only be entitled to receive the share of profits and losses

or other compensation by way of income and the return of Capital Contributions to which the transferring Member would otherwise be entitled. Such Non-Member shall be admitted only if all of the Member(s) Consent. Notwithstanding the foregoing, no Member may sell, assign, transfer or exchange its Membership Interest:

(1) If in the opinion of counsel for the Company, such sale, assignment, transfer or exchange would result (a) when considered with all other sales, assignments, transfers and exchanges of Interests in the Company within the previous 12 months, in the Company being terminated within the meaning of Section 708 of the Code, or (b) in the Company being treated as a corporation for Federal income tax purposes; or

(2) If counsel for the Company shall be of the opinion that such sale, assignment, transfer or exchange would be in violation of any applicable Federal or state securities laws (including any investor suitability standards).

(iv) Any attempted sale, assignment, transfer or exchange in contravention of the provisions of this Article VIII shall be void and ineffectual and shall not bind or be recognized by the Company.

(4) In the event that the Company, the Remaining Member, or the Remaining Members, shall have elected to purchase in the aggregate all of the Membership Interest offered by the Selling Member, then the sale of all of such Membership Interest shall be consummated by the assignment and delivery of the Membership Interest, representing all of the Membership Interest owned by Selling Member, to the purchaser of such Membership Interest, and the payment to Selling Member of the purchase price for all of such Membership Interest stated in the notice from the Selling Member.

(5) In order to exercise any option described above, the exercising party must deliver to the Selling Member in person or by registered or certified mail addressed to such Selling Member's last known address, by no later than the last day of such exercising party's consideration period, a notification stating the percentage of Membership Interest covered by the exercise.

(6) So long as any part of such purchase price shall remain unpaid, the Selling Member shall have the right to examine the books and records of the Company and receive copies of all accounting reports and tax returns prepared for or on behalf of the Company; however, all information disclosed by such accounting reports or tax returns shall be deemed confidential. If the Company breaches any of its obligations hereunder, the Selling Member may, without

thereby waiving any other remedies available, declare the entire unpaid purchase price immediately due and payable.

D. Death of a Member. Upon the death of a Member, or in the event a Membership Interest is owned by Joint Tenants, the death of a Member shall mean upon the last to die of the Joint Tenants (such deceased Member shall mean "Decedent"), all of the Membership Interest owned by said Decedent may be sold to and purchased by the Company from the Decedent's personal representative at the purchase price ("Purchase Price") and on the terms as hereinafter provided in Sub-Section (1) of Sub-Section D. of this Article VIII; provided, however, that the Decedent's personal representative and the Company shall each elect (at each party's sole discretion) to purchase and sell said Interest. The closing of such purchase and sale shall take place at the office of the Company at a date designated by the Company which shall not be more than thirty (30) days following the date of the qualification of the personal representative and not less than ten (10) days following such date, except as such date may be controlled by the Probate Court or other court of competent jurisdiction. The term "personal representative" for all purposes contained herein shall be deemed to include the trustee of a trust, which might hold title to the Membership Interest and the time restrictions applicable to a personal representative shall also apply to a trustee. In the event that the Personal Representative elects to sell the Membership interest, but the Company does not elect to purchase said Membership Interest in accordance with the terms of this Section, all of the Membership Interest owned by said Decedent, and to which their personal representative shall be entitled, may be sold to and purchased by the Remaining Member, or Remaining Members as the case may be, in accordance with Sub-Section (1) of Sub-Section D. of this Article VIII from the Decedent's personal representative at the Purchase Price and on the terms as hereinafter provided; provided, also, that the Decedent's personal representative and the Remaining Member or Remaining Members elect to purchase and sell said interest. The closing of such purchase and sale shall take place at the office of the Company at a date designated by the Remaining Members which shall not be more than thirty (30) days following the date of the qualification of the personal representative and not less than ten (10) days following such date, except as such date may be controlled by the Probate Court or other court of competent jurisdiction.

(1) Purchase Price.

If a purchase of a Member's Interest is undertaken under the provisions of Section D. of Article VIII of this Agreement, the Purchase Price of the Interest shall be the amount determined and agreed to by and between the Decedent's personal representative and the Company, the Remaining Member, or the Remaining Members, as such case may be.

The Purchase Price as determined above shall be final and conclusive and shall not be subject to recomputation by reason of events occurring or becoming known subsequent to the date of any Members death.

In the event the Personal Representative and the Company, the Remaining Member or the Remaining Members are unable to agree on a Purchase Price or the terms of payment, then the Personal Representative may offer the Member's Interest for sale in accordance with Section 8.3(c)

(2) So long as any part of the Purchase Price of Member's Interest remains unpaid, the Company, without the consent of the Decedent's personal representative, shall not:

(i) declare or pay Cash Distributions or take any distribution of any kind in amounts larger than has been customary for the Company;

(ii) reorganize its capital structure, except to lawfully reduce its capital to provide sufficient surplus so as to perform its obligations hereunder as hereinabove provided;

(iii) merge or consolidate with any other entity; or

(iv) sell any of its assets except in the regular course of business.

(3) Whenever the Company, a Remaining Member or the Remaining Members shall be, pursuant to the provisions hereof, undertake the purchase of any Interest, the personal representative of the Decedent shall do all things and execute and deliver all papers and documents as may be necessary to consummate such purchase.

8.4 **Assignees and Substituted Members**.

A. If a Member becomes Bankrupt, the Trustee or receiver of its estate shall have all the rights of a Non-Member Transferee for the purpose of settling or managing its estate and such power as a Non-Member Transferee possesses to assign all or any part of its Membership Interest and to join with the assignee thereof in satisfying conditions precedent to such assignee's becoming a Substituted Member in accordance with this Section and Section 8.2 hereof. In the event that the conditions precedent to such assignee becoming a Substituted Member are not satisfied, such assignee shall be a Non-Member Transferee of the Member's Interest, and shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The Non-Member Transferee shall only be entitled to receive the share of profits and losses or other compensation by way of income and the return of Capital Contributions to which the bankrupt Member would otherwise be entitled. Unless and until a Substituted Member is admitted in its stead, such bankrupt Member shall retain the statutory rights of an assignor of a limited liability company interest under the LLCA.

B. The Company need not recognize for any purpose any assignment or transfer of all or any fraction of the Membership Interests of a Member unless (i) the Company shall have received a fee in the amount established by it from time to time sufficient to reimburse it for all its actual costs in connection with such assignment or transfer, including, but not by way of limitation, any advice of counsel or otherwise in connection with such assignment or transfer; (ii) the Company shall have received such evidence of the authority of the parties to such assignment or transfer, including, but not by way of limitation, certified corporate resolutions and certificates of fiduciary authority, as its counsel may request; and (iii) there shall have been filed with the Company and recorded on the Company's books a duly executed and acknowledged counterpart of the instrument making such assignment or transfer, and such instrument evidences the written acceptance by the assignee of all of the terms and provisions of this Agreement, represents that such assignment or transfer was made in accordance with all applicable laws and regulations.

C. An assignee of a Membership Interest may become a Substituted Member only if all of the following conditions are first satisfied:

(i) the instrument of assignment sets forth the intentions of the assignor that the assignee succeed to the assignor's Interest as a Substituted Member in its place;

(ii) the Members have Consented to the admission of the assignee as a Substituted member;

(iii) the assignee shall have fulfilled the requirements of this Article VIII; and

(v) the assignee shall have paid all reasonable legal fees and filing costs incurred by the Company in connection with its substitution as a Member.

D. An assignee of Membership Interests who does not become a Substituted Member and who desires to make a further assignment of its Membership Interests shall be subject to all the provisions of this Article VIII to the same extent and in the same manner as a Member desiring to make an assignment of Membership Interests.

## ARTICLE IX

## DISSOLUTION AND LIQUIDATION OF THE COMPANY

9.1 **Events Causing Dissolution.**

A. The Company shall dissolve upon the happening of any of the following events:

(i) The unanimous written agreement of the Members to dissolve, wind up, and liquidate the Company;

(ii) The judicial dissolution of the Company;

(iii) The sale or other disposition of all or substantially all of the assets of the Company.

The Members hereby agree that, notwithstanding any provision of the LLCA, the Company shall not dissolve prior to the occurrence of a liquidating event described above. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a liquidating event, the Members hereby agree to continue the business of the Company without a winding up or liquidation until the occurrence of a liquidating event.

B. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to dissolution, but the Company shall not terminate until the Articles of Organization shall have been cancelled and the assets of the Company shall have been distributed. Notwithstanding the dissolution of the Company, prior to the termination of the Company the business of the Company and the affairs of the Members shall continue to be governed by this Agreement, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the assets of the Company have been distributed pursuant to this Section and the Company has terminated.

9.2 Liquidation.

A. Upon dissolution of the Company, the Members shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Section and cause the cancellation of the Articles of Organization.

B. After payment of liabilities owing to creditors of the Company, the Managers shall set aside as a reserve such amounts as the Managers deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Said reserve may be paid over by the Managers to a bank, trust company or other financial institution to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the Managers may deem advisable, the amount in such reserve shall be distributed to the Members in the manner set forth in Section 9.2 C below.

C. After paying such liabilities and providing for such reserves, the Managers shall cause the remaining net assets of the Company to be distributed to the Members. All distributions to the Members upon liquidation of the Company, including distributions in kind discussed below, shall be made in accordance with the Member's Percentage Interest.

D. If the Managers shall determine that an immediate sale of part or all of the Company's assets would cause undue loss to the Members, the Managers may, after having given Notification to all the Members, to the extent not then prohibited by any applicable law of any jurisdiction in which the Company is then formed or qualified, either (i) defer liquidation of and withhold from distribution for a reasonable time any assets of the Company except those necessary to satisfy the Company's debts and obligations or (ii) distribute any assets to the Members in kind. If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the fair market value thereof, and any Member entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Members so entitled. The fair market value of such assets shall be determined by an independent appraiser selected by the Managers.

E. Each Member shall look solely to the assets of the Company for all distributions with respect to the Company and its Capital Contribution thereto and its share of Distributable Cash, and profits and losses thereof, and shall have no recourse therefor, upon dissolution, or otherwise, against any Manager, Managers, Members or other Member. No Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

## ARTICLE X
## MEETINGS AND VOTING RIGHTS OF MEMBERS

10.1 **Meetings.**

A. Meetings of the Members for any purpose may be called by a Manager or Member(s). Notice of such meeting shall state the purpose of the proposed meeting and the matters proposed to be acted upon thereat. Meetings shall be held at the principal office of the Company or at such other place as may be designated by the calling Manager or Member(s). In addition, the Manager or Member(s) may submit any

matter upon which the Members are entitled to act to the Members for a vote by written Consent without a meeting.

B. Notification of any meeting to be held pursuant to Section 10.IA shall be given not less than 10 days nor more than 60 days before the date of the meeting, to each Member at his record address, or at such other address which he may have furnished in writing to the Company. Such Notification shall state the place, date and hour of the meeting. The Notification shall state the purpose or purposes of the meeting. If a meeting is adjourned to another time or place, and if an announcement of the adjournment of time or place is made at the meeting, it shall not be necessary to give Notification of the adjourned meeting. The presence in person or by proxy of a Majority in Interest of the Members shall constitute a quorum at all meetings of the Members, provided, however, that if there be no such quorum holders of a Majority in Interest, the Members so present or so represented may adjourn the meeting from time to time without further Notification, until a quorum shall have been obtained. No Notification of the time, place or purpose of any meeting of Members need be given to any Member who attends in person or is represented by proxy (except for a Member attending a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business on the ground that the meeting is not lawfully called or convened) or to any Member entitled to such Notification who, in writing executed and filed with the records of the meeting either before or after the time thereof, waives such Notification.

C. For the purpose of determining the Members entitled to vote on, or to vote at any meeting of the Members, or any adjournment thereof, or to vote by written Consent without a meeting, the Manager or Member(s) requesting such meeting or vote may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than 50 days nor less than 10 days before any such meeting or submission of a matter to the Members for a vote by written Consent.

D. At each meeting of Members, the Managers present or represented by proxy shall elect such officers and adopt such rules for the conduct of such meeting as they shall deem appropriate.

10.2 **Voting Rights of Members**

A. With regard to any matter on which a Member may vote, a Member shall be entitled to cast one vote: (i) at a meeting, in person, by written proxy or by a signed writing directing the manner in which he desires that his vote be cast, or (ii) without a meeting, by a signed writing directing the manner in which he desires that his vote be cast, which writing must be received by the other Members prior to the date upon which the votes of the Members are cast. A Member in bankruptcy, its trustee or receiver, shall be deemed a Non-Member Transferee and shall not be entitled to vote or exercise any other rights of Member, but shall be restricted to those rights of a Non-Member Transferee as set forth in this Agreement. Every proxy must be signed by the Member

or his attorney-in-fact. No proxy shall be valid after the expiration of 12 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it. Only the votes of Members of record on the Notification date, whether at a meeting or otherwise, shall be counted. The laws of the State pertaining to the validity and use of corporate proxies shall govern the validity and use of proxies given by the Members.

B. Unless otherwise provided by law, any action required to be or which may be taken at any meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to such action.

C. Except as otherwise provided herein, a Majority In Interest of the Members shall be required in order for the Members to Consent to any action for or on behalf of the Company.

10.3 **Limitation on Action by Members**

A. The right of the Members to vote shall not be effective in any manner and any vote shall be void ab initio if, prior to or within fifteen (15) days after such vote either:

(i) the Company shall have received an opinion of counsel, which counsel is satisfactory to a Majority In Interest of the Members, that such action may not be effected without subjecting the Members to liability under the LLCA or under the laws of such other jurisdiction in which the Company owns properties or is doing business; or

(ii) a court of competent jurisdiction shall have entered a final judgment to the foregoing effect.

## ARTICLE XI

## AMENDMENTS TO OPERATING AGREEMENT

11.1 **Additional Members**. Each additional Member and Substituted Member shall become a signatory hereof by signing such number of counterpart signature pages to this Agreement and such other instrument or instruments, and in such manner, as the Managers shall determine. By so signing, each Additional Member and Substituted Member, as the case may be, shall be deemed to have adopted, and to have agreed to be bound by all the provisions of this Agreement.

11.2 **Amendments Without Consent of Members.**

A. Except as provided in Subsection B of this Section 11.2, the Managers shall submit to the Members the text of any proposed amendment to this Agreement and any statement by the proposer thereof relating thereto. The Managers may include in any submission its views as to the proposed amendment. Any such proposed amendment shall be adopted if, within 90 days after the submission thereof to the Members, all of the Members shall have Consented thereto. The effective date of an amendment pursuant to this Section shall be the date on which the required Consents shall have been given. Any proposed amendment that is not adopted may be resubmitted, but not more often than once every six months.

B. In addition to any amendment otherwise authorized herein, the Managers may amend this Agreement from time to time without the Consent of the other Members:

(i) to add to the representations, duties or obligations of the Managers, or surrender any right or power granted to the Managers herein, for the benefit of the other Members;

(ii) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof;

(iii) to make all filings as may be necessary or proper to provide that this Agreement, shall constitute, for all purposes, an agreement of the Members under the terms of the laws of the State as in effect from time to time; and

(iv) to amend the provisions of this Agreement relating to the allocations of Taxable Income and Taxable Losses among Members, including, without limitation, provisions relating to the frequency of such allocations, if the Members are advised at any time by the Company's Accountants or legal counsel that the allocations provided therein are unlikely to be respected for federal income tax purposes, either because of promulgation of Treasury Regulations under Section 704 of the Code or other developments in the law. The Managers are hereby empowered to amend such provisions to the minimum extent necessary in accordance with the advice of the Accountants and counsel to effect the plan of allocations and distributions provided in this Agreement. New allocations made by the Managers in reliance upon the advice of the Accountants or counsel described above shall be deemed to be made pursuant to the fiduciary obligation of the Managers to the Members, and no such new allocation shall give rise to any claim or cause of action by any Member.

C. Notwithstanding any other provision hereof, this Agreement may not be amended without the Consent of the Members to be adversely affected by any amendment that: (i) converts a Member into a Manager; (ii) modifies the limited liability of a Member; (iii) alters the interest of the Managers or Members in Taxable Income or Tax Losses or distributions from the Company, except as otherwise provided herein; or (iv) adversely affects the status of the Company to be taxable as a partnership for Federal income tax purposes.

11.3 **Execution of Amendments.** If this Agreement shall be amended as a result of adding or substituting a Member, the amendment to this Agreement shall be signed by a Manager and by the Person to be substituted or added and, if a Member is to be substituted by the assigning Member. If this Agreement shall be amended to reflect the designation of an additional Manager, such amendment shall be signed by the other Manager or Managers and by such additional Manager.

11.4 **Recording of Amendments.** In making any amendments, there shall be prepared and filed for recordation by the Managers such documents and certificates as shall be required to be prepared and filed under the laws of the State and under the laws of other jurisdictions under the laws of which the Company is then formed or qualified, not less frequently, in the case of the addition or substitution of a Member, than thirty (30) days thereafter.

## ARTICLE XII

## MISCELLANEOUS PROVISIONS

12.1 **Indemnification** With the approval of a majority of the Managers, the Company may indemnify any person who is a party (or is threatened to be made a party) to any action, suit or proceeding (whether civil, criminal, administrative or investigative), if such person is a party by reason of the fact that he or she is or was a Member, employee or agent of the Company, or is or was serving at the request of the Company as a member, manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise. This person may be indemnified against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

12.2 **Successors.** This Operating Agreement and all of the terms and provisions thereof shall be binding upon the Members, and any new Members and their respective legal representatives, heirs, successors and permitted assigns.

12.3 **Delivery of Agreement to Members.** Unless otherwise requested in writing by any Member, the Board of Managers shall not be required to deliver or mail a

certified or other copy of this Agreement or any amendment hereto in respect thereof to such Member.

12.4 **Binding Provisions.** The covenants and agreements contained herein shall be binding upon, and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the respective parties hereto.

12.5 **Counterparts.** This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the same counterpart.

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

RCS & SONS, INC., Member

Robert Schropp, President

IRISH, LTD., Member

Kevin Irish, Partner

## EXHIBIT "A"

## HARRISON STREET BROOK VALLEY LIMITED MANAGEMENT COMPANY, LLC

| MEMBERS | PERCENTAGE INTEREST | CAPITAL CONT. |
|---|---|---|
| RCS & Sons, Inc.<br>1700 Farnam Street, Suite 2888<br>Omaha, NE 68102-2002 | 34% | $340.00 |
| Irish, Ltd.<br>16820 Frances Street<br>Omaha, NE 68130 | 66% | $660.00 |

6578-11/331500


Residential Mortgage Services
13939 Gold Circle
Omaha, NE 68144
Attn: Merle

RE: Policy: TA-48018

Dear Merle,

Enclosed please find the Loan Policy of Title Insurance for the loan given to Mr. and Mrs. Hooper, on the property located at 130 Longwood Drive, Papillion, Nebraska.

If we may be of further service, please call.

Sincerely,

**Janet Clark**

**From:** "Maenner, James" <jmaenner@cbremega.com>
**To:** "Janet Clark (E-mail)" <jclark@spencetitle.com>; "Edwards, Doris" <dedwards@cbremega.com>
**Cc:** "Ted Baer (E-mail)" <tbaer31106@aol.com>; "Ryan Boe (E-mail)" <rboe@ldmlaw.com>; "Maurice Hoo (E-mail)" <mhoo@reitamericas.com>; "Bob Pelshaw (E-mail)" <bob@pvllc.com>
**Sent:** Monday, August 30, 2004 4:54 PM
**Subject:** Southroads Purchase Agreement

Janet - You have or should be receiving the earnest money deposit for REIG-USA LLC's purchase of Southroads Mall. Can you send Doris Edwards of our office a cash receipt of this deposit? She needs it for her records with the Nebraska Real estate Commission. Thanks for your help. Please call or reply if you have any comments or questions.

James W. Maenner, SIOR,CCIM | Vice President
CB Richard Ellis | Brokerage Services – Office
14301 FNB Parkway, Suite #100 | Omaha, NE 68154
T 402.697.5861 | F 402.697.5859
jim.maenner@cbre.com | www.cbre.com/jim.maenner

CBRE
CB RICHARD ELLIS

**Rick Schmidt**

**From:** "Hatch, Janet" <JHatch@mnmk.com>
**To:** <rschmidt@spencetitle.com>
**Sent:** Tuesday, August 31, 2004 9:33 AM
**Attach:** InterScan_Disclaimer.txt
**Subject:** Ownership & Encumbrance Report

Dear Rick:

As confirmation of our telephone conversation, please provide an Ownership and Encumbrance Report on Lots 1-8 inclusive, Block 88, Original City of Omaha. I've also asked you to provide information regarding any easements or restrictions or other documents of record that would typically show as a special exception in a commitment or title policy. You need not make copies of these documents, but merely provide the book and page reference together with grantor/grantee and title of the instrument.

Please provide this report to me personally.

Thanks so much for your help.

Janet Gentry Hatch
1601 Dodge Street, Suite 3700
Omaha
341-3070; fax 341-0216

# Spence Title Services, inc.

September 24, 2002

Ms. Shaun James
Gross & Welch Law Offices
2120 South 72nd Street
Omaha, Nebraska 68124

RE: Phoenix Properties, Inc.

Dear Ms. James:

This letter will confirm that Spence Title Services did record on September 24, 2002, in Sarpy County Nebraska, the following documents:

Assignment dated September 23, 2002, recorded September 24, 2002, at 8:25 A.M., as Instrument Number 2002-37388, assigning the Deed of Trust recorded on March 29, 2001, as Instrument Number 2001-07907, from Darland Construction Co., Beneficiary to Phoenix Properties, LLC. (Also assigns other unrecorded documents)

Assignment dated September 23, 2002, recorded September 24, 2002, at 8:25 A.M., as Instrument Number 2002-37379, assigning the Deed of Trust recorded on March 29, 2001, as Instrument Number 2001-07906, from Darland Construction Co., Beneficiary to Phoenix Properties, LLC. (Also Assigns other unrecorded documents)

Copies of the recorded documents are attached.

Yours truly,

Janet Clark
10 pages attached

*1905 HARNEY STREET - SUITE 210 OMAHA, NEBRASKA 68102*
*TELEPHONE: (402) 345-8844 TELECOPY: (402) 345-4634*

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2002 35178
2002 SEP 25 A 8: 25
COPY
REGISTER OF DEEDS

Courier
Verify
D.E.
Proof
Fee $ 31.00
Ck ☐ Cash ☐ Chg ☒
Stamped Copy

After recording, return to: Shaun M. James, Gross & Welch, P.C., 2120 S. 72nd St., #800, Omaha, NE, 68124, (402) 392-1500

## ASSIGNMENT

In consideration of One Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DARLAND CONSTRUCTION COMPANY ("Assignor"), hereby sells, transfers and assigns to PHOENIX PROPERTIES, LLC, a Nebraska limited liability company ("Assignee"), and Assignee's successors, transferees and assigns, all of the right, title and interest of Assignor in and to:

1. That certain Deed of Trust executed March 21, 2001, by and between Brook Valley VII Joint Venture ("Debtor") and Assignor, and recorded as instrument number 2001-07907 in the office of the Register of Deeds of Sarpy County, Nebraska (a true and accurate copy of which is attached hereto as Exhibit "A");

2. That certain Guaranty Agreement dated March 21, 2001, by and between Debtor and Assignor(a true and accurate copy of which is attached hereto as Exhibit "B"); and

3. That certain Forbearance Agreement dated March 21, 2001, by and between Prime Realty, Inc., Prime Realty Development, Inc and James V. McCart, as such Forbearance Agreement pertains to the Guaranty Agreement and the Deed of Trust(a true and accurate copy of which is attached hereto as Exhibit "C");

And all of which encumber the real property described as:

The Lots 4B and 5B, in Brook Valley Business Park, a Subdivision, as surveyed, platted, and recorded, in Sarpy County, Nebraska.

Assignor represents and warrants to Assignee that Assignor is the owner and holder of the indebtedness and the above-described documents evidencing and securing said indebtedness.

Dated this 23rd day of September, 2002.

"Assignor"

DARLAND CONSTRUCTION COMPANY

By: _____

STATE OF NEBRASKA )
) ss:
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this day of September, 2002, by _____, as _____ of Darland Construction Company, on behalf of said corporation.

GENERAL NOTARY - State of Nebraska
SHAUN M. JAMES
My Comm. Exp. May 30, 2006

_____
Notary Public

EXHIBIT "A"

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2001-07907
2001 MR 29 AM 10:27
REGISTER OF DEEDS

Counter D
Verify
D.E.
Proof
Fee $ 16.00
Ck ☒ Cash ☐ Cng ☐
3171

Return to:
Rickerson & Kruger
11422 Miracle Hills Drive
Suite 401
Omaha, NE 68154-4420

# DEED OF TRUST

**THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING GUARANTOR AGREEMENT EXECUTED ON THIS DATE.**

1. **FOR VALUABLE CONSIDERATION,** Trustor transfers, to Eric W. Kruger, Trustee, for the security of Beneficiary Parlay Construction Co., the real property, described as follows (the Property):

Lots 4B and 5B, Brook Valley Business Park, a subdivision, as surveyed platted and recorded, Sarpy County, Nebraska

2. **PAYMENT OF INDEBTEDNESS.** Trustor shall pay upon demand the indebtedness evidenced by the Guarantor Agreement executed on this date ("the Agreement");

3. **DEFAULT.** Trustor shall be in default if it does not make payment when due pursuant to the Agreement; and

4. **POWER OF SALE.** Upon Trustor's default, Beneficiary shall have the power of sale and may proceed pursuant to the Nebraska Trust Deeds Act, Neb. Rev. Stat. §76-1001, et seq., as it may be amended from time to time.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the 21 day of March, 2001.

TRUSTOR: Brook Valley VII Joint Venture,
by:

James V. McCart

STATE OF NEBRASKA )
) ss.
COUNTY OF DOUGLAS )

The foregoing Deed of Trust was acknowledged before me this 21 day of March, 2001 by James V. McCart, on behalf of Brook Valley VII Joint Venture.

Notary Public

GENERAL NOTARY - State of Nebraska
DANA M. ALLINGTON
My Comm. Exp. March 6 2003

07907

EXHIBIT "B"

## GUARANTOR AGREEMENT

WHEREAS, Brook Valley VII Joint Venture (hereinafter "Guarantor") owns Lot 4B, Brook Valley Business Park; and Lot 5B, Brook Valley Business Park;

WHEREAS, Prime Realty, Inc., Prime Realty Development, Inc. and/or James V. McCart (hereinafter "Debtor") are General Partners or Managing Partners of Guarantor;

WHEREAS, Guarantor is economically interested and dependant upon the financial success of Debtor;

WHEREAS, Debtor is currently in default under a contract for construction entered into with Darland Construction Company and has entered into a Forbearance Agreement with Darland;

WHEREAS, Guarantor stands to benefit by Darland Construction Company's execution of a forbearance agreement relative to payments owed to Darland by Debtor;

WHEREAS, Guarantor is desirous of guaranteeing the debt of Debtor to Darland Construction Company and securing said guarantee with a deed of trust in the above described real estate; and

WHEREAS, Darland's execution of a forbearance agreement shall serve as consideration for this Guarantor Agreement and the Deed of Trust to be executed simultaneously herewith.

NOW THEREFORE, in consideration of forgoing preamble Guarantor does hereby guarantee the commitments of Debtor as set forth in the Forbearance Agreement entered into on this date and between Debtor and Darland Construction Company.

Dated this 21st day of March, 2001.

GUARANTOR:
Brook Valley VII Joint Venture,

By: James V. McCart
James V. McCart

EXHIBIT "C"

**FORBEARANCE**

This Forbearance Agreement is made and entered into this 20th day of February, 2001, by and among Prime Realty, Inc. a Nebraska corporation, Prime Realty Development, Inc, and James V. McCart (hereafter simply referred to as either "Prime" or "McCart" or "Debtors") and Darland Construction Company, a Nebraska Corporation (hereinafter simply "Darland").

WHEREAS, Darland is a creditor pursuant to Construction Contracts dated June 10, 1998, March 15, 1999, February 2, 2000, and November 6, 2000. As of February 13, 2001, Debtors owe $1,640,205.02 to Darland as is more specifically itemized in Exhibit "A" which is attached hereto and incorporated by this reference;

WHEREAS, Debtors are in material default;

WHEREAS, Debtors acknowledge that Darland is entitled to exercise its rights and remedies under the Construction Contracts, but, nonetheless, the Debtors have requested that Darland forbear from taking any action against them on certain terms and conditions as set forth below;

WHEREAS, Darland has agreed to forbear from certain action, provided that such forbearance is on the terms set forth herein and that forbearance does not waive or otherwise prejudice any rights or remedies available to Darland; and

WHEREAS, Debtors agree, as a condition precedent to Darland's obligation to perform under this agreement, that Debtors shall provide Darland with several sureties guaranteeing Debtors' performance under this agreement and said sureties shall pledge parcels of real estate having a value of at least $1,600,000.00.

NOW THEREFORE, in consideration of the mutual covenants, representations and agreements contained herein, and for adequate and fair consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Debtors' Acknowledgement, Warranty and Representation.
   a. Pursuant to above referenced Construction Contracts, Debtors owe Darland $1,640,205.02 as of February 13, 2001;
   b. Debtors acknowledge that Darland has not been charging any interest upon this debt and that in consideration of Debtors'

completion of the agreements contained herein, Darland will continue to forbear charging interest; and

c. Debtors warrant and represent that they are under no duress to execute this Agreement and that Debtors do not have any offsets or counterclaims which would in any way affect or impact Darland's ability to collect the amounts set forth above.

2. Payments. Debtors agree to use their best efforts to, as soon as possible begin regular payments. However, in any event the Debtors will have the entire debt paid to Darland on or before December 31, 2001.

3. Termination of this Agreement. Notwithstanding anything else contained herein, the forbearance shall terminate upon the earlier occurrence of any of the following events:

a. The breach or violation by Debtors of any term, covenant or provision of this Agreement;

b. The filing of a petition, consent to relief, or the entry of any decree or order pursuant to the United States Bankruptcy Code, or the appointment of a receiver, liquidator, trustee or similar representative of Debtors; or

c. The filing of any lawsuit against Debtors by any vendor, or any prejudgment attachment or other seizure of property belonging to the Debtors.

This Agreement shall be governed and construed under the laws of the State of Nebraska.

DATED this 28th day of February, 2001.

PRIME REALTY, INC. and
PRIME REALTY DEVELOPMENT, INC

By: James V McCart
James V. McCart, its President

James V McCart
James V. McCart, Individually

DARLAND CONSTRUCTION
COMPANY, Creditor

By:
Jerry Kelly, its President

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2002 37379
2002 SEP 24 A 8:53 R
COPY
REGISTER OF DEEDS

Counter
Verify
D.E.
P(001)
Fee $ 30.50
Ck ☐ Cash ☐ Chg ☒ JS
Stamped Copy

After recording, return to: Shaun M. James, Gross & Welch, P.C., 2120 S. 72nd St., #800, Omaha, NE. 68124, (402) 392-1500

## ASSIGNMENT

In consideration of One Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DARLAND CONSTRUCTION COMPANY ("Assignor"), hereby sells, transfers and assigns to PHOENIX PROPERTIES, LLC, a Nebraska limited liability company ("Assignee"), and Assignee's successors, transferees and assigns, all of the right, title and interest of Assignor in and to:

1. That certain Deed of Trust executed March 21, 2001, by and between Brook Valley IV Joint Venture ("Debtor") and Assignor, and recorded as instrument number 2001-07906 in the office of the Register of Deeds of Sarpy County, Nebraska (a true and accurate copy of which is attached hereto as Exhibit "A");

2. That certain Guaranty Agreement dated March 21, 2001, by and between Debtor and Assignor(a true and accurate copy of which is attached hereto as Exhibit "B"); and

3. That certain Forbearance Agreement dated March 21, 2001, by and between Prime Realty, Inc., Prime Realty Development, Inc. and James V. McCart, as such Forbearance Agreement pertains to the Guaranty Agreement and the Deed of Trust(a true and accurate copy of which is attached hereto as Exhibit "C");

And all of which encumber the real property described as:

The South 405 feet of Lot 24, (a/k/a Lot 24A) in Brook Valley Business Park, a Subdivision, as surveyed, platted, and recorded, in Sarpy County, Nebraska.

Assignor represents and warrants to Assignee that Assignor is the owner and holder of the indebtedness and the above-described documents evidencing and securing said indebtedness.

Dated this 23rd day of September, 2002.

"Assignor"

DARLAND CONSTRUCTION COMPANY

By: _____

STATE OF NEBRASKA )
) ss:
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this ___ day of September, 2002, by _____, as _____ of Darland Construction Company, on behalf of said corporation.

GENERAL NOTARY - State of Nebraska
SHAUN M. JAMES
My Comm. Exp. May 30, 2006

_____
Notary Public

EXHIBIT "A"

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2001 07906
2001 MR 29 AM 10: 27
REGISTER OF DEEDS

Counter DM
Verify
D.E.
Proof
Fee $ 5.50
Cash ☒ Chg ☐
3171

Return to:
Rickerson & Kruger
11422 Miracle Hills Drive
Suite 401
Omaha, NE 68154-4420

## DEED OF TRUST

**THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING GUARANTOR AGREEMENT EXECUTED ON THIS DATE.**

1. **FOR VALUABLE CONSIDERATION**, Trustor transfers, to Eric W. Kruger, Trustee, for the security of Beneficiary, DARLING CONSTRUCTION CO. the real property, described as follows (the Property):

Lot 24A, Brook Valley Business Park, a subdivision, as surveyed platted and recorded, Sarpy County, Nebraska

2. **PAYMENT OF INDEBTEDNESS**. Trustor shall pay upon demand the indebtedness evidenced by the Guarantor Agreement executed on this date ("the Agreement");

3. **DEFAULT**. Trustor shall be in default if it does not make payment when due pursuant to the Agreement; and

4. **POWER OF SALE**. Upon Trustor's default, Beneficiary shall have the power of sale and may proceed pursuant to the Nebraska Trust Deeds Act, Neb. Rev. Stat. 76-1001, et seq., as it may be amended from time to time.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the 21 day of March, 2001.

TRUSTOR: Brook Valley IV Joint Venture, by:

James V. McCart

STATE OF NEBRASKA )
) ss.
COUNTY OF DOUGLAS )

The foregoing Deed of Trust was acknowledged before me this 21 day of March, 2001 by James V. McCart, on behalf of Brook Valley IV Joint Venture.

Notary Public

GENERAL NOTARY-State of Nebraska
TANNA M. ALLINGTON
My Comm. Exp. March 3 2003

07906

EXHIBIT "B"

## GUARANTOR AGREEMENT

WHEREAS, Brook Valley IV Joint Venture (hereinafter "Guarantor") owns Part of Lot 24, Brook Valley Business Park;

WHEREAS, Prime Realty, Inc., Prime Realty Development, Inc. and/or James V. McCart (hereinafter "Debtor") are Joint Venturers of Guarantor;

WHEREAS, Guarantor is economically interested and dependant upon the financial success of Debtor;

WHEREAS, Debtor is currently in default under a contract for construction entered into with Darland Construction Company and is, on this date entering into a Forbearance Agreement with Darland;

WHEREAS, Guarantor stands to benefit by Darland Construction Company's execution of a forbearance agreement relative to payments owed to Darland by Debtor;

WHEREAS, Guarantor is desirous of guaranteeing the debt of Debtor to Darland Construction Company and securing said guarantee with a deed of trust in the above described real estate; and

WHEREAS, Darland's execution of a forbearance agreement shall serve as consideration for this Guarantor Agreement and the Deed of Trust to be executed simultaneously herewith.

NOW THEREFORE, in consideration of forgoing preamble Guarantor does hereby guarantee the commitments of Debtor as set forth in the Forbearance Agreement entered into on this date and between Debtor and Darland Construction Company.

Dated this 28th day of February, 2001.

GUARANTOR:
Brook Valley IV Joint Venture
Prime Realty, Inc., General Partner
James V McCart, President

EXHIBIT "C"

**FORBEARANCE**

This Forbearance Agreement is made and entered into this 18th day of February, 2001, by and among Prime Realty, Inc. a Nebraska corporation, Prime Realty Development, Inc, and James V. McCart (hereafter simply referred to as either "Prime" or "McCart" or "Debtors") and Darland Construction Company, a Nebraska Corporation (hereinafter simply "Darland").

WHEREAS, Darland is a creditor pursuant to Construction Contracts dated June 10, 1998, March 15, 1999, February 2, 2000, and November 6, 2000. As of February 13, 2001, Debtors owe $1,640,205.02 to Darland as is more specifically itemized in Exhibit "A" which is attached hereto and incorporated by this reference;

WHEREAS, Debtors are in material default;

WHEREAS, Debtors acknowledge that Darland is entitled to exercise its rights and remedies under the Construction Contracts, but, nonetheless, the Debtors have requested that Darland forbear from taking any action against them on certain terms and conditions as set forth below;

WHEREAS, Darland has agreed to forbear from certain action, provided that such forbearance is on the terms set forth herein and that forbearance does not waive or otherwise prejudice any rights or remedies available to Darland; and

WHEREAS, Debtors agree, as a condition precedent to Darland's obligation to perform under this agreement, that Debtors shall provide Darland with several sureties guaranteeing Debtors' performance under this agreement and said sureties shall pledge parcels of real estate having a value of at least $1,600,000.00.

NOW THEREFORE, in consideration of the mutual covenants, representations and agreements contained herein, and for adequate and fair consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Debtors' Acknowledgement, Warranty and Representation.

   a. Pursuant to above referenced Construction Contracts, Debtors owe Darland $1,640,205.02 as of February 13, 2001;

   b. Debtors acknowledge that Darland has not been charging any interest upon this debt and that in consideration of Debtors'

completion of the agreements contained herein, Darland will continue to forbear charging interest; and

c. Debtors warrant and represent that they are under no duress to execute this Agreement and that Debtors do not have any offsets or counterclaims which would in any way affect or impact Darland's ability to collect the amounts set forth above.

2. Payments. Debtors agree to use their best efforts to, as soon as possible begin regular payments. However, in any event the Debtors will have the entire debt paid to Darland on or before December 31, 2001.

3. Termination of this Agreement. Notwithstanding anything else contained herein, the forbearance shall terminate upon the earlier occurrence of any of the following events:

a. The breach or violation by Debtors of any term, covenant or provision of this Agreement;

b. The filing of a petition, consent to relief, or the entry of any decree or order pursuant to the United States Bankruptcy Code, or the appointment of a receiver, liquidator, trustee or similar representative of Debtors; or

c. The filing of any lawsuit against Debtors by any vendor, or any prejudgment attachment or other seizure of property belonging to the Debtors.

This Agreement shall be governed and construed under the laws of the State of Nebraska.

DATED this 28th day of February, 2001.

PRIME REALTY, INC. and
PRIME REALTY DEVELOPMENT, INC

By: James V McCart
James V. McCart, its President

James V McCart
James V. McCart, Individually

DARLAND CONSTRUCTION
COMPANY, Creditor

By:
Jerry Kelly, its President

# First Nebraska Title And Escrow Company

2425 S. 120th St.
Omaha, NE 68144
Phone: 402-691-9933 Fax: 402-691-9970

DATE: 8-6-02

TO: Christy

FIRM/COMPANY:

FAX NUMBER: 697-5859

RE:

FROM: Beth

# OF PAGES TO FOLLOW:_____

*If full transmission is not received, please contact sender.