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**ABC REAL ESTATE INVESTMENTS, LLC
OPERATING AGREEMENT**

THIS OPERATING AGREEMENT (this "Agreement" or "Operating Agreement") of **ABC REAL ESTATE INVESTMENTS, LLC**, a Delaware limited liability company (the "Company"), is entered into and executed as of _____, 2000, by and among Howard Howard ("Howard") and Barry Barry ("Barry") (collectively, the "Members" and individually, each is a "Member"). Howard is also designated the Manager of the Company and is sometimes referred to herein as the "Managing Member."

WITNESSETH:

WHEREAS, the Company is being formed to own and invest in real estate and related personal property (collectively, "Property"). In addition, the Company may acquire and hold for investment and ultimately dispose of assets of any nature and description.

WHEREAS, the Company has been organized pursuant to a Limited Liability Company Certificate of Formation ("Certificate") filed with the Delaware Secretary of State, pursuant to the Delaware Limited Liability Company Act, as amended (the "Act" at Title 6, Chapter 18 of the Delaware Code Annotated).

WHEREAS, the Members have agreed to enter into this Agreement to regulate the affairs of the Company, the conduct of its business, and the relations of its Members; and

WHEREAS, the Members have agreed that this Agreement shall serve as an "operating agreement" within the meaning of the Act.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Formation; Name; Organization.

(a) The Company has been formed as a limited liability company under the Act.

(b) The name of the Company shall be ABC Real Estate Investments, LLC.

(c) The Members agree to execute such certificates or documents, to make such filings and recordings, and to effect all other acts, including the filing or recording of the Certificate or any amendments to the Certificate and assumed name certificates, and any amendments thereto, in the appropriate offices in the States of Delaware and Illinois as the Members may deem appropriate or as may be required in order to comply with all applicable laws.

2. **Purposes.**

(a) The purpose of the Company shall be to carry on the business of investing in real property, directly or indirectly, by acquiring, owning, renovating, developing, holding for investment, operating, mortgaging, managing, leasing and otherwise exploiting and ultimately disposing of the Property. Title to the Property (or the interest of the Company in all or any portion thereof) may be taken and held in the name of the Company or an Illinois land trust in which the entire beneficial interest shall be owned by the Company and the power of direction vested in the Managing Member. In addition, the Company may acquire and hold for investment and ultimately dispose of assets of any nature or description. The Company shall have the power to do all acts and things necessary or useful in connection with the foregoing.

The purposes of the acquisition of the Property includes maintaining continuity of management with regard to the Property, facilitating gift giving to family members, preventing the partition of the Property, protecting the Property and interests therein from potential future claimants of Members, facilitating the administration of real estate and proceeds therefrom and reducing the cost of administering real estate and proceeds therefrom in any guardianship or probate proceeding of family members, and maintaining control of real estate or proceeds therefrom within the family.

(b) In carrying out the purposes of the Company, the Company is authorized to do the following:

(1) execute and deliver all documents in connection with acquiring and financing the acquisition of the Property;

(2) operate, maintain, finance, improve, own, sell, convey, assign, mortgage or lease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Company;

(3) borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by mortgage, pledge or other lien on any assets of the Company;

(4) enter into, perform and carry out contracts of any kind, including contracts with any Member or affiliated entity, necessary or incidental to the accomplishment of the purposes of the Company;

(5) bring and defend actions at law or in equity;

(6) make interim investments of the Company's funds in, among other things, obligations of federal, state and local governments or their agencies, mutual banks, commercial paper, bankers' acceptances, money market funds and bank certificates of deposit; and

(7) engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable and permitted by the Act in connection with the accomplishment of the purposes of the Company.

3. **Place of Business and Principal office; Registered Agent and Registered Office.**

(a) The principal place of business of the Company and the principal office of the Company shall be located at c/o Howard Howard, 123 Main Street, Any Town, USA, or at such other place within the State of Illinois as the Managing Member may designate by notice to the other Members.

(b) The initial registered agent and registered office of the Company shall be ABC Corporate Services, Inc., (Address). The Managing Member may designate such Delaware corporation or individual resident in the State of Delaware or such other address in the State of Delaware as registered agent and registered office, respectively, as the Managing Member may, in his sole judgment, deem appropriate.

4. **Term and Fiscal Year.**

(a) The term of the Company shall commence as of the date hereof and shall continue in perpetuity, unless and until the Company is sooner terminated in accordance with the terms of this Operating Agreement or as otherwise provided by law.

(b) The first fiscal year of the Company shall terminate on December 31, 2000, and succeeding fiscal years shall terminate on December 31st of each year thereafter, or on such other date as the Company shall terminate as herein provided.

5. **Capital**

(a) Each Member shall contribute to the capital of the Company the amount set forth after such Member's name on Exhibit A and shall be allocated the "Units" representing their ownership interests set forth opposite their names. Prior to the dissolution and liquidation of the Company, no Member shall be entitled to withdraw any part of such Member's capital contribution, except that distributions made in accordance with Section 6 may represent in whole or in part a return of capital. No Member shall have the right to demand the return of such Member's capital contribution at any time.

(b) If at any time and from time to time during the term of the Company, the Managing Member determines that (i) additional funds are required by the Company to satisfy Company obligations, and (ii) such funds are not otherwise available to the Company on terms acceptable to the Managing Member, then, in such event, the Managing Member may so notify all Members (x) advising the Members of the amount of additional funds which the Managing Member determines are required by the Company; (y) specifying the date by which each Member shall be required to

contribute his pro rata share of such additional funds (as determined by the percentage determined by dividing a Member's Units by 100), which date shall not be less than fifteen (15) days following the date of such notice; and (z) requesting that such Member contribute to the capital of the Company his pro rata share of the additional funds required (said notification is herein referred to as the "Capital Call"). Each Member agrees to contribute to the capital of the Company his pro rata share of the additional funds determined by the Managing Member to be required by the Company, as specified in the Capital Call.

(c) In the event that a Member (the "Defaulting Member") fails to make any additional capital contribution required hereby on or before the date the same is due, as specified in the Capital Call, the Members who have made all capital contributions required of them (collectively, the "Non-Defaulting Members"), shall have the right, but not the obligation, to loan to the Company (a "Member Loan") the amount of the Defaulting Member's delinquent additional capital contribution. If more than one Non-Defaulting Member desires to make a Member Loan, the Member Loan shall be allocated among them in the same proportion that the Units of each such Non-Defaulting Member desiring to make the Member Loan bears to the Units of all Non-Defaulting Members desiring to make the Member Loan, or as such lending Members shall otherwise agree. Each Member Loan shall (i) be non-recourse to the Members; (ii) be payable only out of Company assets, prior to distributions to Members of Net Cash Receipts under Section 6(b), (iii) bear interest at a per annum rate equal to the prevailing prime rate of interest in effect from time to time, as published in the "Money Rates" section of The Wall Street Journal (said rate of interest to change when and as the published prime rate changes); and (iv) be repayable at any time without premium or penalty.

(d) A separate capital account shall be determined and maintained for each Member in accordance with Section 704(b) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder. There shall be credited to each Member's capital account (i) the amount of money contributed by the Member to the Company, (ii) the fair market value of any property contributed by the Member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Code Section 752), (iii) the Member's share of income or gain (or items thereof), including income and gain exempt from tax, and there shall be charged against each Member's capital account, (iv) the amount of money distributed to the Member by the Company, (v) the fair market value of any property distributed to the Member by the Company (net of any liabilities securing such distributed property that such Member is considered to assume or take subject to under Code Section 752), and (vi) the Member's share of loss and deduction (or items thereof). Members' capital accounts shall be further increased or decreased as may be required by Treasury Regulation Section 1.704-1(b)(2)(iv). To the extent a Member's capital account is greater than zero, such excess is hereinafter referred to as a "positive balance." To the extent that a Member's capital account is less than zero, said amount is hereinafter referred to as a "deficit balance."

(e) Upon the transfer of all or part of an interest in the Company, the capital account of the transferor that is attributable to the transferred interest carries over to the transferee Member.

(f) No Member shall have personal liability for liabilities or obligations of the Company, except to the extent of their capital as set forth at Section 5(a) hereof. Subject to Section 5(b), no Member shall be required to make any further or additional contributions to the capital of the

Company or to lend or advance funds to the Company for any purpose. No Member shall be entitled to the return of his capital, except to the extent, if any, that distributions of such capital are made or deemed to be made to such Member pursuant to this Operating Agreement.

(g) No interest or additional share of profits shall be paid or credited to the Members on their capital accounts, or on any undistributed profits or funds left on deposit with the Company; provided, however, that nothing herein contained shall be construed to prevent or prohibit the payment of interest on account of loans made by the Members to the Company. Any loans made to the Company by a Member shall not increase his capital contribution or interest in the Profits, Losses or Net Cash Receipts of the Company, but shall be a debt due from the Company and repaid accordingly.

(h) No Member shall have the right to withdraw any capital that it shall have paid to the Company, except in accordance with the provisions of this Operating Agreement.

6. **Allocations and Distributions.**

(a) **Certain Definitions.** For the purpose of this Operating Agreement:

(1) The terms "Profits" and "Losses" shall mean the net profits or losses of the Company for federal income tax purposes as finally determined for each fiscal year of the Company.

(2) "Net Cash Receipts" shall mean all cash received by the Company during any fiscal year from all sources less cash expended or reserved in the sole discretion of the Managing Member for currently due and maturing liabilities (including debts to Members and affiliates), expenses, capital expenditures and obligations of the Company or obligations secured by the assets of the Company.

(3) "Minimum Gain" shall have the meaning given it in Treasury Regulation Section 1.704-2(d) or any successor Regulation, and shall generally mean the amount by which the non-recourse liabilities secured by any assets of the Company exceeds the adjusted tax basis of such assets as of the date of determination.

(b) **Distribution of Net Cash Receipts.** Net Cash Receipts, if any, shall be distributed to the Members in accordance with their Units at such intervals as the Managing Member deems advisable, subject to Section 6(g).

(c) **Allocation of Profits or Losses.** Profits or Losses shall be allocated among the Partners as follows:

(1) Profits and Losses shall be allocated to the Members in proportion to their Units.

(2) For purposes of the allocation of Profits, if any, pursuant to this Section 6(c), the portion of such Profits, if any, constituting a recapture of ordinary income shall be

allocated among the Members in the same ratio as the deductions with respect to such recapture were allocated to the Members or their predecessors in interest.

(d) **Qualified Income Offset.** Notwithstanding the foregoing, in the event any Members unexpectedly receive any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Company income and gain shall be specially allocated to such Members in an amount and manner sufficient to eliminate the deficit balances in their capital accounts created by such adjustments, allocations, or distributions as quickly as possible and to the extent possible. For purposes of determining a Member's deficit capital account balance for purposes of this Section 6(d) and Section 6(e), (i) any deficit balance shall be reduced by any limited dollar amount of such deficit balance that such Member is obligated to restore, or is treated as being obligated to restore, no later than the end of the Company fiscal year in which such Member's interest is liquidated (or, if later, within 90 days after such liquidation), and (ii) a Member shall be treated as having a current obligation to restore a deficit balance to the extent of the Member's share of any Minimum Gain that would be allocable to such Member at the time of any determination made under this Section 6(d). Any special allocations of items of income or gain pursuant to this Section 6(d) shall be taken into account for the purpose of equitably adjusting subsequent allocations of profits so that the net allocations, in the aggregate, allocated to each Member pursuant to this Section 6 and the capital accounts of each Member, shall, as quickly as possible and to the extent possible, and without violating the constraints on deficit balances prescribed by this Section 6(d), be the same as if no special allocations had been made under this Section 6(d).

(e) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, to the extent required under Treasury Regulation Section 1.704-2(f), in order that the Operating Agreement contains a "minimum gain chargeback," if there is a net decrease in Partnership Minimum Gain during a Company taxable year, all Members with deficit capital account balances at the end of such year (as determined under Section 6(d) above) shall be allocated, before any other allocation of Company items for such taxable year, items of income and gain for such year (and, if necessary, subsequent years) in the amount and in the proportions needed to eliminate such deficit capital account balances as quickly as possible.

(f) **Partner Nonrecourse Debt.** Notwithstanding any other provision of this Agreement, any item of Company loss, deduction or expenditures described in Code Section 705(a)(2)(B) that is attributable to a Partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to those Members that bear the economic risk of loss for such Partner nonrecourse debt, and among such Members in accordance with the ratios in which they share such economic risk, determined in accordance with Treasury Regulation Section 1.704-2(i). If there is a net decrease for a Company taxable year in any partner nonrecourse debt minimum gain of the Company, each Member with a share of such partner nonrecourse debt minimum gain as of the beginning of such year shall be allocated items of gross income and gain in the manner and to the extent provided in Treasury Regulation Section 1.704-2(i)(4).

(g) **Contributed Property.** Income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of

such property to the Company for federal income tax purposes and its fair market value at time of contribution in accordance with Code Section 704(c) and the Treasury Regulations thereunder.

(h) **Priority and Distributions of Property.** No Member shall have priority over any other Member either as to the return of capital or as to Profits, Losses or distributions, and distributions of Net Cash Receipts, when made, shall be made to the Members at the same time in accordance with their Units, provided that any liquidating distributions shall be made to the Members in accordance with their capital accounts. No Member shall have the right to demand or receive property other than cash for his capital in the Company or in payment of his share of Profits or Net Cash Receipts. The Managing Member shall determine when distributions shall be made and the amount of the distributions, subject to his fiduciary duties to the Company and the other Members.

7. **Management.**

(a) The Managing Member, subject to the Act and the terms and provisions of this Agreement, shall have full power of management and control of the conduct and operation of the Company's business. In addition to the rights and powers herein conferred, the Managing Member shall possess and may exercise all of the rights and powers of a manager as provided in (but subject to the limitations and restrictions of) the Act, as now in effect or as hereafter from time to time amended. The Managing Member shall not be required to devote all or a specific portion of his time to the business of the Company. In furtherance, and not in limitation of the Managing Member's investment powers, the Managing Member is authorized to retain for an unlimited time any property originally constituting part of the Partnership's assets or subsequently added thereto, and to invest and reinvest the Partnership's property in any one or more of the following types of investments: (i) common and preferred stocks, voting trust certificates, options, and futures contracts, (ii) secured and unsecured bonds, (iii) savings accounts, savings and deposit certificates and other kinds of bank, savings and loan, building and loan and mutual savings bank savings plans, with or without deferred maturities and penalties for early redemption, (iv) open and closed-end mutual funds and interests in other common trust and investment funds, (v) investment company shares, (vi) real estate investment trusts, (vii) mortgages, (viii) secured and unsecured notes, (ix) improved and unimproved residential, commercial and industrial real estate and agricultural land (including, without limitation, such real estate and land which is held in land trusts and interests in land trusts), (x) limited partnership and limited liability company interests (including, without limitation, interests in residential, commercial and industrial real estate and agricultural land ventures and other like equity investments), (xi) leases of real or personal property, and (xii) other property of any kind, real or personal, domestic or foregoing, without regard to whether any such investment is listed on any stock exchange or other public market, registered with any securities commission or similar body, or subject to contractual, legal or other restrictions (including, without limitation, "investment letter" restrictions) and without regard to productivity, risk or diversification.

(b) The other Members, in their capacities as such, shall not take part in the management of the business of, or transact any business for, the Company, and shall have no power to contract for or act on behalf of the Company (except to the extent a Member is also the Managing Member). The

Members shall have such rights concerning the conduct of Company affairs as are provided by the Act to the extent not inconsistent with the provisions of this Agreement.

(c) The Managing Member is hereby authorized and vested with the power on behalf of the Company to cause the Company to acquire and finance the acquisition of the Property; to sell, transfer, convey, exchange, encumber, or otherwise deal with all or any part of the Property and other assets of the Company; to borrow money or incur indebtedness on behalf of the Company; to repay, refinance, recast, increase, modify or extend any indebtedness of the Company; and to execute or cause to be executed any instruments in connection with the foregoing to carry out the intentions and purposes hereof.

(d) The Members hereby expressly and specifically grant to the Managing Member the power and authority, on behalf of the Company and without further consent of the other Members, to (i) transfer, convey and relinquish without consideration to the Company all of the Company's rights, title and interest in and to the Property to any mortgagee or other security interest holder in such Property or its successor or assigns ("secured party"), provided that there has occurred an event of default under the indebtedness secured by the Property and that said secured party has demanded said transfer, conveyance and relinquishment; and (ii) to grant to any secured party the power and authority to appoint any attorney of any court to confess judgment against the Company, provided that there has occurred an event of default under the mortgage or other security instrument held thereby, including the power and authority to execute or cause to be executed for and on behalf of the Company any instruments in connection with the foregoing.

(e) The Managing Member may engage on behalf of, and at the expense of, the Company, such persons, firms or corporations as the Managing Member in his reasonable judgment shall deem advisable for the conduct and operation of the business of the Company, including without limitation, managers, leasing, rental and sales agents and brokers, mortgage bankers, lawyers, accountants, architects, engineers, consultants, contractors and purveyors of other services or materials for the Company or the Property on such terms and for such compensation or costs as the Managing Member, in his reasonable judgment, shall determine.

(f) The Managing Member may, on behalf and at the expense of the Company, engage the Managing Member or a Member or a firm in which the Managing Member, a Member, or an officer, director, stockholder or Affiliate of any of them, has an interest, to render services to the Company and for the Property, provided that the fees or other compensation payable for such services are specifically authorized by the terms of this Agreement or are comparable to or less than those prevailing in arm's-length transactions for similar services.

(g) The Managing Member, and his agents and affiliates shall not be liable, responsible or accountable in damages or otherwise to the Company or any of the Members or their successors or assigns for any acts performed or omitted within the scope of the authority conferred on the Managing Member and such agents and affiliates by this Agreement, including, without limitation, the transfer or conveyance of the Property and the grant of power and authority respecting a confession of judgment as provided for in Section 7(d) hereof, provided that the Managing Member or such agents or affiliates shall act in good faith and shall not be guilty of willful misconduct or gross negligence.

(h) Nothing herein contained shall impose any obligation upon any third party dealing with the Company to inquire as to the authority of the Managing Member, and any such third party shall be fully justified in relying upon such authority.

(i) The Managing Member may do the following only with the prior written consent of all of the other Members:

- (1) Do any act in contravention of the Operating Agreement;
- (2) Cause the Company to become a surety, guarantor or accommodation party to any obligation not related to the Company's business or assets;
- (3) Do any act which would make it impossible to carry on the ordinary business of the Company;
- (4) Liquidate or dissolve the Company; and
- (5) Possess Company property in the Managing Member's name or assign the rights in specific Company property for other than a Company purpose.

8. **Other Activities of the Members.** Any Member (or any affiliate thereof) may engage and possess an interest in any other business venture of any nature, kind, or description, including, but not limited to, a property or business competitive with the Property or the businesses conducted by the Company. No Member (nor any affiliate of a Member) shall have any obligation whatsoever to offer other investment opportunities to the Company or any Member or share with the Company or any other Member any profits or distributions from any other investment opportunity.

9. **Banking, Records, and Tax Matters.**

(a) All funds of the Company shall be deposited or invested in its name in accounts with banks or savings and loan associations, in "money-market" funds or securities of the United States government, or like investment or depository media designated by the Managing Member, and the Managing Member or his designees shall have the right to draw checks thereon and make, deliver, accept, and endorse negotiable instruments in connection with the Company's business.

(b) Accurate books, records, and accounts shall be maintained by the Company showing its assets, liabilities, operations, transactions, and financial condition. Each Member shall have the right to inspect and copy such materials at all reasonable times and during regular business hours.

(c) As soon as practicable following the close of each fiscal year of the Company, the Managing Member shall cause to be prepared (at Company expense) a United States Partnership Income Tax Return and appropriate state income tax returns, and shall cause to be furnished to each person who was a Member during the fiscal year then ended, a schedule of that Member's share of income, credits, and deductions on the form then prescribed by the Internal Revenue Service. All elections and options available to, or determination as to items of income or expense of, the Company for federal or state income tax purposes shall be taken, rejected, or made by the Company in the discretion of the Managing Member.

(d) In the event of a distribution of property made in the manner provided in Section 734 of the Code, or in the event of a transfer of any interest in the Company permitted by this Operating Agreement made in the manner provided in Section 743 of the Code, the Managing Member, on behalf of the Company, may in his discretion, file an election under Section 754 of the Code in accordance with the procedures set forth in the applicable regulations promulgated thereunder. Any additional costs or expenses incurred by the Company as a result of such an election shall be borne pro rata by the Member or Members benefitting from such election.

(e) The Managing Member is hereby appointed the "tax-matters partner" of the Company for all purposes, pursuant to Sections 6221-6231 of the Code. The Company shall not be obligated to pay any fees or other compensation to the tax-matters partner in its capacity as such, provided that the Company shall reimburse the tax-matters partner for any and all reasonable out-of-pocket costs and expenses (including reasonable attorneys' and other professional fees) incurred by it in its capacity as tax-matters partner. The Company shall indemnify, defend, and hold the tax-matters partner harmless from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as tax-matters partner.

10. **Manager's Interest.**

(a) The Manager may not at any time sell, assign, or encumber his interest as Manager of the Company or withdraw or retire from the Company except with the prior written consent of a majority in interest of the Members. Retirement or withdrawal from the Company shall not relieve the Manager from any obligation theretofore incurred by him hereunder.

(b) If the Manager is adjudged bankrupt, enters into an assignment for the benefit of creditors, has a receiver appointed to administer his interest in the Company, is the subject of a voluntary or involuntary petition for bankruptcy that is not dismissed or vacated within 90 days of filing, applies to any court for protection from his creditors, or has such interest seized by a judgment creditor, or if the Manager shall die, be adjudicated incompetent or become permanently disabled (the foregoing events are collectively referred to hereinafter as an "Event of Retirement"), said Manager shall immediately retire as a Manager of the Company. If a Manager retires (i) he (or his administrator, executor, personal representative or successor) shall become a Special Member retaining his interest (as a Manager) in the Profits, Losses and Net Cash Receipts of the Company, but as such Special Member, he shall have no right to participate in the management of the affairs of the Company and he shall be disregarded as a Special Member (but not with regard to Units actually owned by him) in determining whether any consent, approval or other action has been given or taken by the Members; and (ii) the remaining Manager(s) shall remain as such and the Members hereby agree and consent that the Company shall continue in effect and shall not terminate, subject to the provisions of Section 10(e).

(c) Any person, other than a Manager, who acquires, in any manner whatsoever (except as herein otherwise provided) the interest, or any portion thereof, of a Manager, shall not be a Manager but shall be entitled to become a Special Member upon written acceptance and adoption of all of the terms and provisions of this Agreement and compliance with the requirements of Section 11 herein. Such person shall, to the extent of the interest acquired, be entitled only to the transferor Manager's rights, if any, in the Profits, Losses and Net Cash Receipts of the Company, but shall not acquire any

right or interest in any payment or distribution to the Members, as such, pursuant hereto. No such person shall have any right to participate in the management of the affairs of the Company, and the interest acquired by such person shall be disregarded in determining whether any approval, consent or other action has been given or taken by the Members.

(d) If a Manager at any time withdraws or suffers an Event of Retirement and there is no remaining Manager, the Members shall have the right, within 90 days thereafter, by the vote of Members owning a majority of the Units, to appoint one or more new Managers as replacement Manager(s). In such event, the Members shall create for such replacement Manager(s) such interest in the Company Profits, Losses and Net Cash Receipts, as the Members may agree upon, from among their collective interests in the Company.

(e) In the event of the timely appointment of a replacement or additional Manager(s) pursuant to this Section, the relationship of the Members shall be governed by the provisions of this Agreement, the Company shall be continued, and the replacement or additional Manager(s) shall have (or if there shall be more than one Manager, share) all of the management rights, duties, responsibilities, authority, and powers provided the Manager in this Agreement. In the event that the Members fail to select a replacement or additional Manager(s), whichever the case may be, within 90 days following retirement of the last remaining Manager, the Company shall be considered to be "Member-Managed" and all actions shall be approved by a majority in interest of the Members.

11. Assignment of Member's Interest.

(a) Subject to Section 23, a Member may not assign all or any part of his interest in the Company, or resign or otherwise withdraw from the Company, without first obtaining the prior written consent of the Managing Member, whose consent may be withheld in his sole and absolute discretion; provided, however, that the Managing Member must consent to a transfer by a Member of all or a part of his interest to members of his immediate family or to a trust or partnership or limited liability company directly or indirectly for the benefit of members of his immediate family, provided that the requirements of Section 11(b) are satisfied. For purposes of this Agreement, "members of a Member's immediate family" shall mean his spouse, descendants, spouses of descendants, brothers, sisters, father or mother.

(b) No person shall be admitted as an additional or substituted Member under this Operating Agreement unless and until:

(1) an assignment contemplated by paragraph (a) of this Section 11 is made in writing, signed by the assigning Member, and accepted in writing by the assignee, and a duplicate original of such assignment is delivered to and approved by the Managing Member;

(2) the prospective admittee executes and delivers to the Company a written agreement, in form reasonably satisfactory to the Managing Member, pursuant to which said person agrees to be bound by this Operating Agreement and confirms the power of attorney contained herein (this may be done in an amendment to this Operating Agreement as referenced in (iii) below or by separate instrument); and

(3) an appropriate amendment to this Operating Agreement is executed.

(c) In the event an assignment is made in accordance with the terms hereof, unless otherwise required by the Code:

(1) the effective date of such assignment shall be the date the written instrument of assignment is delivered to the Company and approved by the Managing Member;

(2) the Company and the Members shall be entitled to treat the assignor of the assigned interest as the absolute owner thereof in all respects and shall incur no liability for allocations of Profits and Losses and distributions of Net Cash Receipts made in good faith to such assignor until such time as the written instrument of assignment actually has been received and approved by the Members and recorded in the books of the Company; and

(3) the division and allocation of Profits and Losses attributable to the Units between the assignor and assignee during any fiscal year of the Company shall be based upon the length of time during such fiscal year, as measured by the effective date of such assignment, that the assigned interest or Units were owned by each of them, except that, with regard to the sale of any substantial asset, the allocation of the income or loss attributable to such sale shall be allocated to the Members based upon the date or dates such income was earned or losses were sustained by the Company.

(d) The cost of processing and perfecting an admission contemplated by this Section (including reasonable attorneys' fees incurred by the Company) shall be borne by the party seeking admission as a Member to the Company.

12. **Withdrawal, Retirement, Death, Incompetency, Insolvency or Dissolution of a Member.** A Member shall have no right to withdraw, retire or resign from the Company. The death, incompetency, insolvency or dissolution of a Member shall not terminate the Company. Upon the death of a Member, his executor, administrator, or successor in interest shall have all of the rights and duties of a Member for the purpose of settling his estate.

13. **Transferees and Successors.** Any person acquiring or claiming an interest in the Company, in any manner whatsoever, shall be subject to and bound by all terms, conditions, and obligations of this Operating Agreement to which his predecessor in interest was subject or bound, without regard to whether such person has executed a counterpart hereof or any other document contemplated hereby. No person, including the legal representative, heir, or legatee of a deceased Member, shall have any rights or obligations greater than those set forth in this Operating Agreement, and no person shall acquire an interest in the Company or become a Member thereof except as permitted by the terms of this Operating Agreement. This Operating Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, permitted assigns, heirs, legatees, beneficiaries, legal representatives, executors, administrators, and successors in trust.

14. **Termination.**

(a) Upon termination of the Company, its assets shall be converted to cash or its equivalent, and its affairs shall be wound up with reasonable speed, but with a view towards obtaining fair value for Company assets, and thereupon unless otherwise required under the Act, the proceeds of liquidation remaining after payment of all debts and liabilities and provision for reserves shall be

distributed among the Members in accordance with their capital accounts. If there is no Managing Member to effect such liquidation, a majority in interest of the Members may designate any person, firm or corporation, as a liquidating trustee, for that purpose who shall have all of the rights, powers, and authority of a Managing Member stated herein in connection therewith.

(b) Each Member hereby waives any and all rights to partition the Property, or any other asset of the Company, or any part thereof, or otherwise to divide (whether through an action in equity or through some other means) the beneficial interest in any nominee holding title to any such asset.

15. **No Personal Liability for Return of Capital and Loans.** No Member shall be liable personally for the return or repayment of all or any portion of the capital of any Member, or for the repayment of all or any portion of any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any such loan shall be made solely from the assets of the Company (which shall not include any right of contribution from the Managing Member).

16. **Indemnification.**

(a) The Company shall indemnify, defend, and hold the Managing Member and his affiliates, employees, officers, directors, and agents, and their respective successors, executors, administrators, and personal representatives (collectively, the "Indemnitees"), harmless from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) sustained or incurred as a result of any act or omission concerning the business or activities of the Company or pursuant to this Operating Agreement; provided that any such Indemnitee shall not be guilty of gross negligence or willful misconduct and shall have acted in good faith within what such Indemnitee reasonably believed to be the scope of his (or its) authority for a purpose that he (or it) reasonably believed to be in the best interests of the Company. Such indemnification shall be made only to the extent of the assets of the Company.

(b) In the event the Company is made a party to any litigation or otherwise incurs any loss or expense as a result of or in connection with any Member's (i) personal obligations or liabilities unrelated to Company business, or (ii) breach of any representation or warranty made to the Company, such Member shall indemnify and reimburse the Company for all such loss and expense incurred, including reasonable attorneys' fees, and the interest of such Member in the Company may be charged therefor.

17. **Amendments.** This Operating Agreement may be modified or amended only with the written agreement of a majority in interest of the Members (including the interest of the Managing Member); provided however, that (i) any amendment which reflects the assignment of an interest hereunder which is consented to by the Managing Member under Section 11 may be made solely by the Managing Member; and (ii) any amendment regarding the term of the Company pursuant to Section 4(a) or regarding Section 7(i) may be made only with the written consent of all of the Members; and (iii) any amendment which reduces a Member's interest in Net Cash Receipts or otherwise adversely affects a Member, requires the consent of the affected Member.

18. **Governing Law.** This Operating Agreement shall be regarded for all purposes as a Delaware document, and the validity and construction thereof shall be determined and governed by

the laws of the State of Delaware. If any provision of this Operating Agreement, or the application of such provision to any person or circumstance, shall be held illegal, invalid, or unenforceable, or in conflict with the Act or other applicable law, the remainder of this Operating Agreement, or the application of such provision to persons or circumstances other than those to which it is held illegal, invalid, unenforceable, or in conflict, shall not be affected thereby.

19. **Notice.** All notices, requests, and demands herein required or permitted to be given or made shall be deemed to be effectively served and delivered (i) on the date of personal or courier delivery; (ii) the date of transmission by telecopy or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by courier delivery, or by registered or certified mail, postage prepaid, return receipt requested; or (iii) three (3) business days after the date of deposit in the United States by registered or certified mail, postage prepaid, return receipt requested, and

(a) if intended for the Company, addressed or telecopied to the Company at the principal office or facsimile phone number of the Company; and

(b) if intended for a Member, addressed or telecopied to that Member at its address or facsimile phone number appearing below its name on the signature pages hereof (or the signature page of any amendment hereto);

or to such other person or at such other address or facsimile phone number designated by written notice given to the Company and all Members in accordance herewith.

20. **Counterparts.** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one Operating Agreement.

21. **Interpretation.** The use of the masculine, feminine, or neuter gender and the use of the singular or plural number shall not be given the effect of any exclusion or limitation herein; and the use of the word "person" or "party" shall mean and include any individual, trust, corporation, partnership, or other entity. All Section titles and captions contained herein are for convenient reference only and shall not be deemed a part of the context of this Operating Agreement.

22. **Power of Attorney.** Each Member, by execution of this Agreement (and any successor in interest to the Members), irrevocably constitutes and appoints John (or any successor Managing Member) their true and lawful attorney-in-fact, with full power of substitution, in their name, place, and stead to make, execute, sign, acknowledge, swear to, publish, record, and file, on behalf of such Members and on behalf of the Company, the following:

(a) The Certificate, a certificate of doing business under an assumed name, and any other certificates or instruments or amendments to any of the foregoing that may be required to be filed by the Company or the Members under the laws of the States of Delaware and Illinois, and any other jurisdiction whose laws may be applicable;

(b) A certificate of cancellation of the Company and such other instruments as may be deemed necessary or desirable by said attorney upon the termination of the Company;

(c) Any and all amendments of the instruments described in subsections (a) and (b) above and to this Operating Agreement, provided such amendments either are required by law to be filed to maintain the Company as a validly existing limited liability company, are necessary to correct statements herein, or are consistent with this Operating Agreement (including, without limitation, any amendments (i) admitting or substituting Members, or (ii) that have been authorized by the Members as provided in Section 17); and

(d) Any and all such other instruments as may be deemed necessary or desirable by said attorney to carry out fully the provisions of this Operating Agreement in accordance with its terms.

The foregoing grant of authority is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death, incapacity of each Member and the delivery of an assignment by the Members of the whole or any portion of their interest in the Company, and shall survive the death or incapacity of any assignee of a Member, and the delivery by such assignee (or any successor) of the whole or any portion of his or her interest in the Company.

23. **Right of First Refusal.**

(a) Notwithstanding anything to the contrary contained in Section 11(a), if a Member desires to sell all (but not less than all) of his Units in the Company to a third party purchaser, the selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Units, stating the terms and conditions upon which the purchase is to be made and the consideration offered. The selling Member shall give written notification to the remaining Members of his intention to transfer such Units, furnishing to the remaining Members a copy of the written offer to purchase such Units, and the name and business and personal address of the proposed transferee.

(b) Within 60 days of the receipt of the notice of intention to transfer Units by the last of the Members to receive such notice, the remaining Members may exercise an option to purchase that proportion of the Units proposed to be transferred which equals the proportion which the Units owned by such remaining Member at the time of his receipt of the notice is of the total Units then owned by all the remaining Members. The purchase option granted in this paragraph is herein referred to as the "Primary Option."

(c) If a Member fails to exercise a Primary Option granted to him to purchase the Units proposed to be transferred, each remaining Member who is granted and who exercises a Primary Option may within ten days after the expiration of the 60-day option period provided under Section 23(b), exercise an option to purchase the Units with respect to which a Member has failed to exercise his Primary Option (hereinafter "the Option Units"). In the case of a single remaining Member, his option shall be to purchase all of the Option Units. In the case of two or more remaining Members, each such remaining Member's option shall be to purchase the portion of Option Units which bears the same proportion to the total Option Units as the Units owned by each such remaining Member at the time of receipt of the notice provided for above bears to the total Units then owned by all such remaining Members; provided that all such remaining Members may, by agreement among themselves, determine the proportions in which they may exercise the option granted in this paragraph. The purchase option granted by this paragraph is referred to as the "Secondary Option."

(d) In the event the remaining Members (or any one or more of the remaining Members) give written notice to the selling Member of their desire to exercise this right of first refusal and to purchase all of the selling Member's Units which the selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty days after written notification to the selling Member of the remaining Member's or Members' election to exercise their right of first refusal.

(e) Notwithstanding this Section 23, this Section 23 is in all respects subject to Section 11, and a selling Member or a third party purchaser of a selling Member's Units shall have no right to require the Managing Member to consent to a transfer of a Member's Units and to admit such third party purchaser as an additional or substituted Member. If such consent is not obtained, or the requirements of Section 11(b) are not otherwise complied with, a third party purchaser shall, to the extent of the Units acquired, be entitled only the transferor Member's rights, if any, in the Profits, Losses, and Net Cash Receipts of the Company, but in no event shall such person have any right to participate in the affairs of the Company, and the Units acquired by such person shall be disregarded in determining whether any approval, consent or other action has been given by the Members.

24. **Entire Agreement.** This Operating Agreement represents the entire agreement and understanding of the parties hereto, and all prior or concurrent agreements, understandings, representations, and warranties in regard to the subject matter hereof are and have been merged herein and are superseded hereby.

IN WITNESS WHEREOF, the undersigned hereby execute this Operating Agreement, as of the date first written above.

Howard Howard
123 Main Street
Any Town, USA

Barry Barry
123 Main Street
Any Town, USA

LAWYERS' MENTOR

EXHIBIT A

<u>NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>COMPANY UNITS</u>
Howard Andrews 624 Laurel Wilmette, IL 60091	\$990.00	99
Barry Siegal 321 Burr Oak Deerfield, IL 60015	<u>\$10.00</u>	<u>1</u>
Totals	\$1,000.00	100.0

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LAWYERS' MENTOR