

OPERATING AGREEMENT

for

_____, LLC
a California Limited Liability Company

1. FORMATION:

- 1.1 Date of Agreement: _____, 20_____.
- 1.2 Name of Limited Liability Company: _____, LLC,
a California Limited Liability Company.
- 1.3 Place of Business: The address of the Limited Liability Company is _____.
_____.
The address may be changed by the Manager by giving at least 10 days' prior written notice to the members.
- 1.4 Management: Management of the Limited Liability Company shall be vested in a single Manager. The Manager of the Limited Liability Company shall be _____.
- 1.5 Members: See Exhibit "A".
- 1.6 Applicable Law: The Limited Liability Company is formed under the part of the California Corporations Code known as the Beverly-Killea Limited Liability Company Act.
- 1.7 No Permits Obtained: The membership interests in the Limited Liability Company have not been registered with any government agency, and no permits have been obtained.
- 1.8 Articles of Organization: The Manager shall file articles of organization for the Limited Liability Company (Form LLC-1) with the California Secretary of State.
- 1.9 Purpose: The Limited Liability Company's purpose is to hold title and operate as a long-term investment the real estate described in Exhibit "B".
- 1.10 Term of the Limited Liability Company: The Limited Liability Company starts on the date of this agreement and will end 30 years from the date unless terminated earlier.
- 1.11 Limited Liability: No member or Manager shall be liable for any Limited Liability Company losses greater than his capital contribution.

2. CAPITAL CONTRIBUTIONS AND DISTRIBUTIONS OF FUNDS:

- 2.1 Capital Contributions: The Limited Liability Company's capital shall be:
_____ dollars (\$_____) as set forth in Exhibit "A".
- 2.2 Loans to Limited Liability Company: A member may only lend money to the Limited Liability Company with the Manager's approval. The loan shall be kept in a separate account.
- 2.3 Definition of "Spendable Income": "Spendable Income" means net receipts remaining from ownership of assets by the Limited Liability Company after deductions for all expenditures on operating expenses, reserves, interest and loan reduction, excluding depreciation schedules.
- 2.4 Distribution of Spendable Income: Spendable Income is to be distributed first to the Class A members in a sum equal to _____% a year, cumulative, of their original contributions; then to Class B members in a sum equal to _____% a year, cumulative, of their original contributions. Any remaining Spendable Income shall be distributed pro rata to all members based on their ownership interest.
- 2.5 Participation in Proceeds of Refinance/Sale: Net proceeds from the sale or refinance of all or some of the Limited Liability Company property shall be distributed first to the Class A members, until they have received their capital contributions, plus _____% a year on their original capital contribution since the date of contribution, less any disbursements received; then to Class B members until they have received their capital contributions plus _____% a year on

their original capital contribution since the date of contribution, less any disbursements received. All remaining funds shall be distributed pro rata to all members based on their ownership interest.

- 2.6 Depreciation Allocation: Should the Limited Liability Company file a Federal Income Tax Form 1065 with the Internal Revenue Service (IRS), depreciation shall be taken on the shortest straight-line method permitted and allocated to the members pro rata based on their ownership interest.

3. MANAGEMENT, COMPENSATION, DUTIES AND POWERS:

- 3.1 Management of Limited Liability Company Property: The Manager has full charge of the management of the Limited Liability Company property, subject to Section 11.2.
- 3.2 Compensation: No member or Manager shall be paid for working for the Limited Liability Company or for being a member, except as this section provides.
- 3.3 Real Estate Fees: The Manager will receive a fee of \$_____ cash for services in the creation and formation of the Limited Liability Company. On a later resale of the property, the Manager is to receive _____% of the price of any resale, and in the event of a refinance, _____% of the refinancing, if he is the procuring cause of the resale or refinance.
- 3.4 Management Fee: The Manager shall receive a fee for his management of the Limited Liability Company property of _____.
- 3.5 Duties: The Manager shall do what is needed to conduct the Limited Liability Company business.
- 3.6 Indemnification: Except for a breach of fiduciary duty to the Limited Liability Company and its members, the Limited Liability Company shall indemnify the Manager and officers against judgments, settlements, penalties, fines or expenses of any kind incurred as a result of acting as an agent of the Limited Liability Company.
- 3.7 Other Officers (Titles, Duties and Compensation): _____.

4. ACCOUNTS AND ACCOUNTING:

- 4.1 Inspection of Limited Liability Company Records: The Limited Liability Company shall maintain accurate books at its principal office on the cash method of accounting. All members may inspect such books at reasonable times upon reasonable notice. A separate income and capital account shall be maintained for each member.
- 4.2 Annual Audit and Report to Members: The Manager shall audit the books and deliver to each member, within 30 days after the end of each calendar year, a balance sheet and annual operating statement showing each member's capital account, the distributions to each member, and each member's allocation, by percentage of ownership, of all income, expenses and interest received or paid in the ownership and operation of the property. A majority interest of the members may order an audit of the Limited Liability Company books, at the Limited Liability Company's expense, by an accountant named by a majority of members in ownership.
- 4.3 Annual Income Tax Returns: If the Limited Liability Company is comprised of 10 or fewer members, husband and wife holding an interest together being one, the company shall file no federal partnership income tax returns (Federal Income Tax Form 1065 and Schedule K-1) and each member shall individually report his pro rata allocation of gross income, operating expenses and interest, and calculate his own depreciation and reportable income or loss from operations.

The Limited Liability Company shall file a Limited Liability Company return (Franchise Tax Board Form 568) annually with the California Franchise Tax Board.

5. ASSIGNMENT OF INTEREST, SUBSTITUTED MEMBER:

- 5.1 Assignment of Interest: A member may assign his membership interest to any other member at any time after he has first given the manager 10 days' notice to buy his interest on the same terms agreed upon with another member.
- 5.2 Invalid Assignment of Interest: All other assignments or transfers of members' interests are terminated according to the method under Section 6.

6. TERMINATION OF MEMBERSHIP INTERESTS:

- 6.1 Termination of Manager: The termination of the Manager does not terminate any of the Manager's rights as a member.
- 6.2 Events Causing Termination of a Member: A member may be terminated if any of the following events occur:
 - a. He dies, unless survived in interest by a joint tenant;
 - b. He is adjudged insane or incompetent, or is committed to a mental institution;
 - c. He transfers his interest to a non-member under Section 5.2 without obtaining prior consent from each remaining member;
 - d. He fails to immediately remove a charging order against his interest;
 - e. He files for bankruptcy;
 - f. He voluntarily retires, withdraws or resigns as a member;
 - g. He is expelled by court order or by all of the remaining members; or
 - h. He fails to contribute capital to the Limited Liability Company as agreed to in Section 2.1.
- 6.3 Notice of Termination: Service upon the member to be terminated of a written notice stating the cause for termination and the effective date of termination terminates all of his powers and his right to share in Limited Liability Company profits as of the effective date. The effective date is 30 days after service of the notice. Each remaining member shall be served under Section 13.2 both a copy of the notice of termination and a notice of the option rights held by the remaining members under Section 7.

7. OPTION TO PURCHASE:

- 7.1 Option to Purchase Upon Termination: Upon the termination of a member's interest under Section 6, the remaining members may:
 - a. Dissolve and liquidate the Limited Liability Company under Section 10.1; or
 - b. Buy the terminated member's entire interest. Where more than one member exercises his option, those exercising shall purchase their pro rata share based on their aggregate ownership interest.
- 7.2 Notice of Exercise of Option:
 - a. When a member dies, notice of the option shall be given to the deceased's representative within 120 days after the representative's appointment.
 - b. When a member's interest is terminated under Section 6, notice of the exercise of the option shall be given to the terminated member before the effective date of termination, and in the way a notice of termination is given under Section 6.3.

8. VALUATION OF LIMITED LIABILITY COMPANY INTEREST:

- 8.1 Dead, Incompetent or Insane Members: If an election is made to purchase the interest of a member terminated because of death, incompetency or insanity, the value of the interest shall equal:
 - a. The sum of:
 - 1. The member's capital contributions less distributions; and
 - 2. The balance of the member's income account;

- b. Less:
 - 1. All unpaid assessments due;
 - 2. All other debts to the Limited Liability Company;
 - c. Plus the member's interest in the "additional value" of the Limited Liability Company assets, determined as follows:
 - 1. Each member has a pro rata ownership share of the additional value;
 - 2. Within 30 days after the close of each calendar year, the members shall execute an "Agreement of Additional Value" (Exhibit "C"). The Agreement shall state an amount set by the members as the increased value of the Limited Liability Company assets over the members' invested capital and purchase and improvement loan balances;
 - 3. The additional value set within two years before the termination of a deceased, incompetent or insane member binds the remaining members and their successors in interest;
 - 4. If additional value was not set within two years before the termination of the deceased, incompetent or insane member, it shall be set by arbitration under Section 13.5.
- 8.2 Other Members: If an election is made to buy the interest of a member who is terminated for reasons other than death, incompetency or insanity, the value of the membership interest shall equal the amount described in Section 8.1, excluding any "additional value."

9. PAYMENT FOR PURCHASE PRICE:

- 9.1 Dead, Incompetent or Insane Members: Payment of the amount described in Section 8.1 shall be made in _____ equal annual installments including interest of _____% a year. The first installment is due _____ (_____) days after the death, incompetency or insanity of the member. The amount owed shall be evidenced by a promissory note having an alienation-acceleration clause and an attorney fees clause, which shall be executed by all members exercising the option. The note shall be secured by a pledge of the interest purchased.
- 9.2 Other Members: The amount described in Section 8.2 shall be due and payable upon sale of the Limited Liability Company's property. It shall be evidenced by a non-interest bearing promissory note which shall be executed by all members exercising the option, and shall be secured by a pledge of the interest purchased.

10. DISSOLUTION OF LIMITED LIABILITY COMPANY AND DISTRIBUTION OF CAPITAL:

- 10.1 Dissolution:
- a. The Limited Liability Company shall be dissolved when all the members agree, or upon the death, withdrawal or termination of any member.
 - b. If the Limited Liability Company is dissolved due to death, withdrawal or termination of a member, the Limited Liability Company may continue by a vote of the remaining members under Section 12 within 90 days of the event causing the dissolution.
- 10.2 Accounting: Upon dissolution, the Manager shall take account of Limited Liability Company assets and liabilities. The assets shall be sold quickly and for fair value.
- 10.3 Termination of Business: The Limited Liability Company shall do no further business after dissolution other than that needed to wind up the business and distribute the assets.
- 10.4 Distribution of Proceeds: Proceeds from the liquidation of Limited Liability Company assets and non-liquidated assets shall be distributed as follows:
- a. All Limited Liability Company liabilities shall first be paid;
 - b. All debts owed to members shall be paid;
 - c. All remaining funds are to be distributed according to the method described in Section 2.5.
- 10.5 After Dissolution: The members shall continue to divide assets and liabilities after dissolution according to the method provided in Section 10.4.

11. LIMITATIONS ON MEMBERS' AUTHORITY:

- 11.1 Manager: Unless all members consent in writing, the Manager may not violate this agreement, make it impossible to perform the Limited Liability Company's business, or confess to judgment against the Limited Liability Company.
- 11.2 Members: No member may engage in the management or control of the Limited Liability Company business, except as required under a property management contract with the Manager, signed by each member, to produce the necessary control factor over operations of the property for federal income tax rental loss deductions by members reporting individually under Section 4.3.
- 11.3 Members: No member may withdraw or reduce his contribution to the capital of the Limited Liability Company except as allowed by the buy and sell provisions of this agreement. No member may sue the Limited Liability Company for partition. No member may demand property other than cash or notes in return for his contribution. No member has priority over any other member, except as provided in this agreement for Class A memberships. No member shall have the power or right to cause the termination and dissolution of the Limited Liability Company, except as set forth in this agreement.
- 11.4 Other Ventures: Any member may have an interest in any other business venture. Neither the Limited Liability Company nor any other member has any right, by this agreement, in any such venture or to its income or profits.

12. VOTING:

- 12.1 Unanimous Votes: The following matters shall require an unanimous vote of the members of the Limited Liability Company:
 - a. The assignment of a member's interest to a person who is not a member of the Limited Liability Company; and
 - b. A decision to continue the Limited Liability Company after the Limited Liability Company is dissolved due to death, withdrawal or termination of any member.
- 12.2 Majority Vote: In all other matters in which a vote is required, a vote of a majority in interest of the members shall be sufficient.
- 12.3 Amendments: A majority in interest of the members may vote to amend the articles of organization or the operating agreement of the Limited Liability Company.
- 12.4 Removal of Manager: A majority in interest of the members may vote to remove the Manager of the Limited Liability Company and substitute a new Manager.

13. MISCELLANEOUS PROVISIONS:

- 13.1 Validity: If any part of this agreement is invalid, the validity of the remainder of the agreement will not be affected.
- 13.2 Notice: All notices shall be written and personally delivered or sent by regular mail and registered, or by certified mail, return receipt requested, postage prepaid, to the parties and to the Limited Liability Company at the address stated herein.
- 13.3 Survival of Rights: This agreement binds the parties and their successors in interest.
- 13.4 Paragraph Headings: The paragraph headings do not affect the meaning of this agreement.
- 13.5 Before any party to this agreement files an action on a dispute arising out of this agreement which remains unresolved after 30 days of informal negotiations, the parties agree to enter into non-binding mediation administered by a neutral dispute resolution organization and undertake a good faith effort during mediation to settle the dispute.
- 13.6 Arbitration: Any dispute between any member and the Limited Liability Company, or regarding any activities of the Manager that cannot be settled by the Manager or by mediation, shall be arbitrated under the rules of the American Arbitration Association.

I AGREE TO THE TERMS OF THIS OPERATING AGREEMENT

Date: _____, 20____ MANAGER: _____

ADDENDUM TO OPERATING AGREEMENT

for

_____, LLC,
a California Limited Liability Company

Members

	<u>Amount of Capital Contribution</u>	<u>Nature of Contribution</u>	<u>Percentage of Interest</u>
MANAGER:			
_____	-0-	Not Applicable	-0-
_____	-0-	Not Applicable	-0-
 CLASS A MEMBERS:			
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
 CLASS B MEMBERS:			
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
_____	\$ _____	_____	_____ %
TOTALS:	\$ _____		<u>100</u> %

Exhibit "B"

ADDENDUM TO OPERATING AGREEMENT

for

_____, LLC,
a California Limited Liability Company

Legal Description

The real property in the County of _____, State of California,
described as follows:

ADDENDUM TO OPERATING AGREEMENT

for

_____, LLC,
a California Limited Liability Company

Provisions for Additional Value

The operating agreement contains provisions at Section 8.1(c) for "additional value" and requires, within 30 days after each calendar year, that the parties to the operating agreement agree upon any additional valuation then existing.

It is agreed this _____ day of _____, 20____, as follows:

The additional valuation as of this date is \$_____. This figure is exclusive of loans, if any, which exist against the interest held by the Limited Liability Company and exclusive of all capital contributions.

This amends the operating agreement to include this additional valuation.

I agree to the terms stated above.

Date: _____, 20____ _____
(MEMBER)

SIGNATURE PAGE FOR OPERATING AGREEMENT

By Manager and Members

I hereby agree to purchase Class A membership interest(s) in _____
_____, a California Limited Liability Company in the sum of \$_____.
Enclosed herewith is my check for the total sum made payable to _____
_____.

The undersigned hereby executes this page as part of the operating agreement.

METHOD OF TITLE

I desire to hold legal title to my ownership interest in the Limited Liability Company as:

- Joint Tenants with _____
- Tenants in Common with _____
- Separate Property _____
- Community Property with _____
- Community Property with Right of Survivorship with _____
- Revocable Intervivos Trust, entitled _____

MEMBER

Name: _____ Signature: _____

Address: _____

Telephone: (____) _____

Social Security: _____ - _____ - _____

ACCEPTED:

_____, 20____.
(Manager) (Date)