



STATE OF NEW MEXICO

**MAGGIE TOULOUSE OLIVER**

SECRETARY OF STATE

***CERTIFICATE OF COMPARISON***

OF

**Sunport Apartments, LLC**

**5699649**

The Office of the Secretary of State certifies that the attached is a true and complete copy of the 5 page document on file in this office.

This Certification is in accordance with Section:

**53-19-1 to 53-19-74 NMSA 1978**

Dated: **May 11, 2020**

**In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.**



*Maggie Toulouse Oliver*

**Maggie Toulouse Oliver  
Secretary of State**

# OFFICE OF THE SECRETARY OF STATE

## NEW MEXICO

### *Certificate of Organization*

OF

**Sunport Apartments, LLC**

**5699649**

**New Mexico**

The Office of the Secretary of State certifies that the Articles of Organization, duly signed and verified pursuant to the provisions of the

**Limited Liability Company Act**

**53-19-1 to 53-19-74 NMSA 1978**

have been received and are found to conform to law. Accordingly, by virtue of the authority vested in it by law, the Office of the Secretary of State issues this Certificate of Organization and attaches hereto a duplicate of the Articles of Organization.

Dated: **July 6, 2018**

**In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.**



*Maggie Toulouse Oliver*

**Maggie Toulouse Oliver  
Secretary of State**



OFFICE OF THE SECRETARY OF STATE  
NEW MEXICO

**Limited Liability Company**  
**ONLINE ARTICLES OF ORGANIZATION**

The undersigned, acting as organizer(s) of a Limited Liability Company pursuant to the New Mexico Limited Liability Company Act, adopt the following Articles of Organization:

**ARTICLE ONE:** The name of the Limited Liability Company is:

**Sunport Apartments, LLC**

**ARTICLE TWO:** The period of duration is: Perpetual

**ARTICLE THREE:**

(1) The name of the initial registered agent at the address is:

First Name	Last Name
Peter	Gineris

(2) The New Mexico street address of the company's initial registered agent is:

Type	Address	City	State	Zip	Country
Physical Address	6509 Coors Blvd NW	Albuquerque	NM	87120	USA

(Post Office Box is not acceptable. Provide a description of the geographical location if a street address does not exist.)

(3) The street address of the company's principal place of business, if different from its registered agent's address is:

Address	City	State	Zip	Country
6509 Coors Blvd NW	Albuquerque	NM	87120	USA

(4) The mailing address of the Limited Liability Company is:

Address	City	State	Zip	Country
NONE	NONE	NONE	NONE	USA

**Email Address:** pgineris@gmail.com

**Phone:** NONE

**ARTICLE FOUR:** (Check only if applicable):

☒ YES Management of the business and affairs of the company is vested in a manager(s).

Manager Name and address:

Name	Physical Address	Mailing Address
Cornerstone Capital LLC	6509 Coors Blvd NW, Albuquerque, NM 87120	6509 Coors Blvd NW, Albuquerque, NM 87120

**ARTICLE FIVE:** (Check only if applicable):

☐ YES The Limited Liability Company is a single member Limited Liability Company.

Member Name and  
address:

Name	Physical Address	Mailing Address
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**ARTICLE SIX:** If these Articles of Organization are not to be effective upon filing with the Secretary of State's Office, the effective date is *(if an effective date is specified here, it cannot be a date prior to the date the articles are received by the Secretary of State's Office.)*

**Effective Date**

07/06/2018

**Purpose:** Develop, Own and Manage Multifamily Properties - DOMMP.

**NAICS Code:** Real Estate and Rental and Leasing - 531110

**NAICS Sub Code:** Lessors of Residential Buildings and Dwellings

**Organizer(s) Printed Name(s):**

(Typing the First and Last Name of the Organizer(s), is the equivalent of an electronic signature.)

First Name	Last Name
Peter	Gineris

**Limited Liability Company**

**ONLINE STATEMENT OF ACCEPTANCE OF APPOINTMENT  
BY DESIGNATED INITIAL REGISTERED AGENT**

I,

Peter

Gineris

hereby acknowledge that the undersigned individual accepts the appointment as Initial Registered Agent of **Sunport Apartments, LLC** the Limited Liability Company which is named in the annexed Articles of Organization.

(Typing the First and Last Name of Initial Registered Agent, is the equivalent of an electronic signature.)



OFFICE OF THE SECRETARY OF STATE  
NEW MEXICO

**July 9, 2018**

PETER GINERIS  
6509 COORS BOULEVARD NW  
ALBUQUERQUE, NM 87120

**RE: Sunport Apartments, LLC**  
**Business ID #: 5699649**

The Office of the Secretary of State has approved and filed the Articles of Organization for the above captioned organization effective July 6, 2018. The enclosed Certificate of Organization is evidence of filing, and should become a permanent document of the organization's records.

Please be advised that although the Certificate of Organization has been approved, you must also comply with all other federal or state laws applicable to your organization. This includes, but is not limited to state licensing requirements. It is the organization's sole responsibility to obtain such compliance with all legal requirements applicable thereto prior to engaging in the business for which it has obtained approval of the referenced document.

If you have any questions, please contact the Corporations Bureau at (505) 827-3600 or toll free at 1-800-477-3632 for assistance.

Corporations Bureau



**OPERATING AGREEMENT**  
**OF**  
**SUNPORT APARTMENTS, LLC**  
**A NEW MEXICO LIMITED LIABILITY COMPANY**

This Operating Agreement ("Operating Agreement") of Sunport Apartments, LLC, a New Mexico limited liability company (the "Company"), is made and entered into effective as of July 18, 2018, by and between the parties whose signatures appear on the signature page hereof.

**ARTICLE I**  
**DEFINITIONS**

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

- 1.1 "Assignee" shall mean the owner of an Economic Interest who is not a Member.
- 1.2 "Bankruptcy" or "Bankrupt" shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due; or, an admission in writing by such Person of its inability to pay its debts generally, including a general assignment by such Person for the benefit of creditors.
- 1.3 "Business" shall mean any lawful activity, including ownership of real or personal property, whether or not engaged in for profit.
- 1.4 "Distributable Cash" means all cash, revenues and funds received by the Company, less the sum of the following to the extent paid or set aside by the Company: (a) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (b) all cash expenditures incurred incident to the normal operation of the Company's business; and (c) such reserves as the Manager deems necessary to the proper operation of the Company's business, including future expansion and diversification.
- 1.5 "Economic Interest" shall mean a Member's or Assignee's share of one or more of the Company's net profits, net losses and distributions of the Company's assets pursuant to this Operating Agreement and the LLC Act; but shall not include any right to participate in the management or affairs of the Company; to receive information related to the operations or affairs of the Company; or to vote on, consent to, or otherwise participate in any decision of the Members or Managers.
- 1.6 "Incapacity" shall mean a human Person's inability, by reason of accident, illness or age, to give prompt and intelligent attention to that Person's financial affairs, duties or obligations, which shall be confirmed in a written statement signed by a licensed physician competent to render such opinion.

1.7 "Internal Revenue Code" shall mean the Internal Revenue Code of 1986 and all applicable Regulations there under, as the Internal Revenue Code and the Regulations may be amended from time to time.

1.8 "LLC Act" shall mean the New Mexico Limited Liability Company Act.

1.9 "Majority Interest" shall mean the Sharing Ratios of one or more Members which taken together exceed 50% of the aggregate of all Members' Sharing Ratios, unless this Operating Agreement shall require a greater majority percentage, for example, a 67% Majority Interest, for a particular vote or purpose. In the event that the Company shall have only one Member, the vote of the sole Member shall constitute a Majority Interest of 100% and shall also constitute a unanimous consent of the Member(s). Any vote of the sole Member shall be effective whether written, oral, or by course of conduct; even though this Operating Agreement may expressly require written consent; except that any vote to amend this Operating Agreement, to transfer a Membership Interest or to dissolve the Company, must be in writing.

1.10 "Manager" shall mean that Person or those Persons managing the business affairs and properties of the Company as provided in Article 5, below.

1.11 "Members" shall mean one or more Members of the Company. In the event that the Company shall have only one Member, then the term, "Members" shall refer to the sole Member.

1.12 "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member pursuant to this Operating Agreement and the LLC Act (except to the extent that the latter is modified by this Operating Agreement, as allowed by the LLC act). Provided, however, that there shall be two (2) classes of Membership Interest: Limited Membership Interest and Management Membership Interest. Except as otherwise specifically provided in this Operating Agreement, a Limited Membership Interest shall have no right to participate in the management and/or control of the Company. A Management Membership Interest shall have full rights to participate in and control the management of the Company. There shall be a total of One Hundred (100) units of Membership Interest ("Membership Units"), including Limited Membership Interests ("Limited Units") and Management Membership Interests ("Management Units").

1.13 "Profits, Income, Losses and Deductions." "Profits" or "Income" shall include all forms of net income, profits or gains, including capital gains; and "Losses" and "Deductions" shall include all forms of net losses, including capital losses, and all flow through deductions, such as Internal Revenue Code Section 179 and charitable deductions.

1.14 "Person" shall mean an individual, partnership, limited liability company, trust, estate, association, corporation, or any other legal entity, as the context may indicate.

1.15 "Proceeding" shall mean any threatened, pending, or completed suit, trial, hearing, or other judicial or administrative action or activity, civil or criminal, the result of which



may be that a court, arbitrator, agency or Person may enter a judgment, order, decree, or other determination which, if not appealed and reversed, would be binding upon the Company, a Member or other Person subject to the jurisdiction of such court, arbitrator, agency or person.

1.16 "Sharing Ratio" shall mean the ratio that the value of each Member's or Assignee's positive capital account balance (as defined in Section 704 of the Internal Revenue Code and the Regulations promulgated there under) bears to the combined value of all Members' and Assignees' positive capital account balances. If the only holder of an interest in the Company is the sole Member, then the sole Member's Sharing Ratio shall be 100%.

## **ARTICLE 2**

### **FORMATION OF COMPANY**

2.1 Name. The name of the Company is: Sunport Apartments, LLC.

2.2 Principal Place of Business. The principal place of business of the Company within the State of New Mexico shall be, 6509 Coors Blvd., NW, Albuquerque New Mexico, 87120. The Company may locate its place of business and registered office at any other place or places as the Manager may from time to time deem advisable.

2.3 Registered Office and Registered Agent. The Company shall maintain a Registered Office and a Registered Agent in the State of New Mexico, and in all other states in which it conducts its business, at all times. The Company's initial Registered Office shall be at the office of its Registered Agent at 6509 Coors Blvd., NW, Albuquerque, NM, 87120, and the name of its initial Registered Agent at such address shall be Peter J. Gineris. The Registered Office and Registered Agent may be changed from time to time by filing the address of the new Registered Office and/or the name of the new Registered Agent pursuant to the LLC Act.

2.4 Term. The term of the Company shall be as set forth in the Articles of Organization as filed with the Public Registration Commission of the State of New Mexico, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or those mandatory provisions of the LLC Act which may not be modified by this Operating Agreement.

## **ARTICLE 3**

### **BUSINESS OF COMPANY**

3.1 Permitted Businesses. The business of the Company shall be:

a. to develop, acquire, own, invest in, improve, manage, operate, lease, encumber, mortgage, pledge, hypothecate, exchange, sell, divide, transfer, dispose of, and otherwise deal with all forms of real and/or personal property as well as any and all property interests therein;

b. to invest in, own and/or engage in any lawful business or activity for the protection or benefit of the Company and its assets; and to exercise all powers and engage in all

activities necessary to or reasonably connected with the Company's business which may be legally exercised and/or engaged in by a limited liability company under the LLC Act.

3.2 Additional Purposes. Additional purposes for which the Company was organized are to: provide for the management of family-owned assets; protect family assets from potential creditors' claims against family members; provide flexibility in business planning not available through trusts, corporations, or other entities; provide for administration and management of assets during periods of disability of family members, or the probate of the estates of family members; consolidate fractional interests in family assets; establish a method by which annual gifts can be made without fractionalizing ownership of individual family assets; continue the ownership of family assets and restrict the right of non-family members to acquire interests in family assets; prevent the transfer of a family member's interest in the Company as a result of a marital dissolution; and promote the family's knowledge and communication regarding family assets.

#### **ARTICLE 4** **LIMITED LIABILITY**

To the maximum extent allowed under the LLC Act, a Member, Manager, or Assignee shall not be personally liable under any judgment, decree, or order of any court, or in any other manner, for any debt, liability, or any other obligation of the Company.

#### **ARTICLE 5** **RIGHTS AND DUTIES OF MANAGERS**

5.1 Management. The business and affairs of the Company shall be managed by its Manager. (If more than one Manager is in office, all Managers, for convenience, are sometimes referred to as the "Manager" in this Agreement.) Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of the LLC Act, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business. At any time when there is more than one Manager duly acting for the Company, any one Manager may take any action permitted to be taken by the Manager, (a) unless the approval of more than one of the Managers is expressly required pursuant to this Operating Agreement, (b) unless otherwise decided by the written decision of the Member(s) owning the Management Units, or (c) unless otherwise agreed by a unanimous written decision of the Managers among themselves.

5.2 Number, Tenure and Qualifications. The Company shall initially have one Manager, **Cornerstone Capital LLC**. The number of Managers of the Company shall be determined by the written consent of the Member or Members owning the Management Units, but in no instance shall there be less than one Manager. Each Manager shall hold office until said Manager's successor shall have been elected and qualified. Managers shall be appointed by the affirmative vote of the Member(s) owning the Management Units.

5.3 Certain Powers of Manager. Without limiting the generality of Section 5.1, the Manager shall have power and authority (consistent, however, with any specific limitations set forth in this Section 5.3), on behalf of the Company:

a. To acquire property from any Person as the Manager may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

b. Without the approval of a Majority Interest, to borrow up to an aggregate total of Ten Million Dollars (\$10,000,000) for the Company from banks, other lending institutions, the Manager, Members, or Affiliates of the Manager or Members on such terms as the Manager deems appropriate; and, in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted, or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the LLC Act, by agents or employees of the Company expressly authorized by the Manager in writing to contract such debt or incur such liability;

c. To purchase liability and other insurance to protect the Company's property and business;

d. To hold and own any Company real and/or personal properties in the name of the Company;

e. To invest any Company funds (by way of example but not limitation) in time deposits, governmental obligations, commercial paper, equities or any other investments;

f. Upon the approval of a Majority Interest of the Members, to sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan, so long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound; provided, however, that the affirmative vote of the Members shall not be required with respect to any sale or disposition of the Company's assets in the ordinary course of the Company's business;

g. To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Manager, to the business of the Company;

h. To employ accountants, legal counsel, managing agents or other professionals and/or experts to perform services for the Company and to compensate them from Company funds;

i. To enter into any and all contracts or other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve; and

j. In addition to the other authority granted to the Manager pursuant to this Operating Agreement, the Manager shall have the authority to enter into transactions for the purchase and sale of securities and other investments, including, without limitation, stocks (preferred or common), bonds, mutual funds and certificates of deposit; to maintain a margin and short account and through such account to purchase securities on margin, sell securities which the trust does not own (i.e., short sales) and to borrow securities in connection therewith, to borrow money, to secure the performance of the trust's obligations to the accounts and to grant authority to a brokerage firm, acting as principal or otherwise, to pledge, repledge, hypothecate or rehypothecate assets of the trust; and to trade in all types of options, including, without limitation, the purchase of puts and calls and the writing (sale) of covered and uncovered puts and calls.

k. To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Operating Agreement or by the Manager in writing, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniary for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager in writing to act as an agent of the Company.

5.4 Manager's Duty of Care. The Manager shall perform the Manager's duties as Manager in good faith, with the highest degree of fiduciary duty in relation to each and all of the Members and Assignees (if any), and in a manner that the Manager reasonably believes to be in the best interests of the Company. Except for gross negligence, fraud, or willful misconduct, any Manager who so performs his or her duties as Manager shall not have any liability to the Company or the other Members by reason of being or having been a Manager of the Company.

5.5 Manager's Duty of Loyalty. Except as provided in Section 5.6, each Manager (and each Member) shall have the highest degree of duty of loyalty to the Company and shall account to the Company and hold for the Company as trustee any property, profit, or benefit derived without the consent of the Members from the use or appropriation of business or property opportunities clearly and convincingly offered to the Company alone.

5.6 Manager and Members Have No Exclusive Duty to Company. The Manager shall not be required to manage the Company as the Manager's sole and exclusive function and any Manager and/or Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any other Manager or Member or Assignee shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Manager and/or Member or to the income or proceeds derived therefrom. Neither the Manager nor any Member shall incur any liability to the Company, to any other Manager, or to any of the Members as a result of engaging in any other business or venture. However, no Member or Manager may directly compete with

the Company except with the written approval of a Majority Interest.

5.7 Indemnification of the Manager, Members, Employees and Other Agents.

a. The Company shall indemnify every Member and Manager in respect of all payments made and personal liabilities incurred in the ordinary and proper conduct of the Company's business or for the preservation of the Company's business or property. The Company may advance expenses pursuant to this indemnification or may reimburse the Member.

b. The Company shall indemnify its Manager and its Members for all judgments, settlements, penalties, fines and all other expenses, including reasonable attorneys' fees, incurred pursuant to a Proceeding to which such person is a party because such person is or was a Manager or Member of the Company to the maximum extent permitted under the LLC Act and other applicable law. Such indemnification shall include advances for reasonable expenses as needed by any Manager or Member prior to, during or after the ultimate disposition of the Proceeding. The Company shall indemnify its employees and other agents who are not Managers or Members to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by Members owning a Majority Interest.

c. Provided, however, that this Section 5.7 shall be interpreted consistently with the other provisions of this Operating Agreement, particularly Sections 5.1 through 5.6.

5.8 Removal or Resignation. The Manager, whether or not a Member, may be removed at anytime, with or without cause, by the Majority Interest vote of the Member(s) owning the Management Units. If the Manager is in material breach of any one or more of the material provisions of Sections 5.1 through 5.7, and the Member(s) owning the Management Units fail or refuse to remove and replace the Manager, the Members by a Majority Interest vote may remove and replace the Manager and thereafter the replacement Manager may be removed and replaced only by a Majority Interest vote of the Members, but said subsequent removal and replacement shall be based solely on a material breach of any one or more of the material provisions of Sections 5.1 through 5.7. The Manager may resign as Manager by giving 30 days written notice to all Members. The removal or resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.9 Manager Compensation. The Manager shall be entitled to reasonable compensation. Any waiver of compensation payments in prior years shall not constitute a waiver of compensation in any current year and any waived compensation may be recaptured in future years. The compensation of the Manager, if any, shall be determined from time to time by an affirmative vote of Members holding at least a Majority Interest, and no Manager shall be prevented from receiving such compensation by reason of the fact that the Manager is also a Member of the Company. The Manager shall report to the Members regarding the tax treatment of Manager Compensation, if any, after discussions with the Company's tax advisors. Each



Manager shall be reimbursed for all reasonable expenses incurred in managing the Company.

## **ARTICLE 6**

### **MEMBERS, MEETINGS AND VOTING RIGHTS**

6.1 Names and Addresses of Members and Assignees. The names and addresses of Members and Assignees (if any) are described on Exhibit 6.1 attached hereto and incorporated herein by reference. Exhibit 6.1 shall be updated as necessary by the Manager.

6.2 Meetings. The Members may meet at such times and places, either within or outside the state of the principal place of business of the Company as may be determined by the Members holding a Majority Interest. The agenda and procedures for any such meetings shall be determined by the Members holding a Majority Interest. The Members shall have no obligation to conduct annual meetings or to keep minutes thereof. One or more consents by Members holding a Majority Interest shall serve in lieu of any vote taken at any meeting on any matter relating to the Company.

6.3 Members' Right to Vote on Interested Matters. Unless otherwise expressly provided in this Operating Agreement or otherwise required under the LLC Act, Members who have an interest (economic or otherwise) in the outcome of any particular matter (upon which the Members vote or consent) may vote or consent upon any such matter and their vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

6.4 Access to Information. A Member shall have the right to inspect and copy Company records upon reasonable demand as provided under the LLC Act.

6.5 Withdrawal. Except as otherwise explicitly mandated in non-waivable provisions of the LLC Act, a Member does not have the right to withdraw from the Company, except with the unanimous consent of the Members. In the event of a permitted withdrawal, the withdrawing Member shall have no right to demand the liquidation of the Member's interest by the Company, and after withdrawal, the withdrawing Member shall only have the rights of an Economic Interest owner or Assignee, which shall thereupon become subject to the terms of Article 10 as if the withdrawing Member had attempted to transfer the interest in the Company for less than full consideration.

## **ARTICLE 7**

### **TAX RETURNS, ELECTIONS, AND REPORTS**

7.1 Tax Elections and Returns. The Tax Matters Member (as defined in Section 7.2) shall have the sole authority to file tax elections on behalf of the Company; except that the Tax Matters Member shall make any election requested by a Majority Interest. The Tax Matters Member shall cause the Company to prepare and timely file all federal, state, and local tax returns required to be filed by the Company. The Tax Matters Member on behalf of the Company shall deliver a copy of each such return to the Members as soon as practicable and prior to the due date of any such return, including extensions, together with such additional information as may be required by the Members in order for the Members to file their individual returns



reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

7.2 Tax Matters Member. The Tax Matters Member shall serve as the "Tax Matters Partner" as defined in the Internal Revenue Code. The initial Tax Matters Member shall be Peter J. Gineris.

7.3 Accounting Principles. Unless otherwise determined by the Manager, the profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the cash method of accounting to the extent permissible under the applicable provisions of the Internal Revenue Code.

7.4 Fiscal Year. Unless otherwise determined by the Manager, the Company's accounting period shall be the calendar year.

7.5 Reports. The Manager shall cause to be filed all returns, reports and registrations, and like documents, including payment of required fees, which are required by the LLC Act, which are required by the laws of the United States and/or any state and/or any locality in which the Company conducts its business or activities, or which are otherwise required.

## **ARTICLE 8**

### **CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

8.1 Members' Capital Contributions. The Members shall contribute to the capital of the company such property as the Members shall determine in their sole and absolute discretion. No Member or Assignee is entitled to be paid interest on capital contributions or amounts in his or her capital account; or to the return of any part of his or her contribution to the capital of the Company except as otherwise provided in this Operating Agreement.

8.2 Additional Contributions.

a. No Member or Assignee shall be required to make any additional capital contributions, unless determined to be required to carry on Permitted Businesses by Manager. To the extent approved by the Manager, from time to time, the Members and Assignees may be obligated to make additional capital if the Manager determines that such additional capital contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification). In such event, the Members and Assignees shall have the obligation to participate in such additional capital contributions on a pro rata basis in accordance with their interests in net profits.

b. If any Member or Assignee elects to make less than his or her pro rata share of any additional capital contributions ("Non-Contributing Member"), the other Members or Assignees ("Contributing Members") may contribute the Non-Contributing Member's share on a pro rata basis in accordance with Sharing Ratios or on any other basis the Contributing Members may unanimously agree upon. To the extent that any additional capital contributions are not made in proportion to the existing Sharing Ratios, all Sharing Ratios in the Company shall be adjusted accordingly.

c. The Manager may elect to treat all or a portion of the contributions of Contributing Members as a contribution on behalf of the Non-Contributing Member in the form of loans from the Contributing Members. The loans shall bear interest at a floating interest rate equal to the Prime Rate published by the Wall Street Journal, as periodically adjusted (the "Company Interest Rate") plus 3%. The loans shall be secured by the Non-Contributing Member's interest in the Company. If the Manager elects to treat such contributions as loans, then the Contributing Members shall be entitled to all Distributions to which the Non-Contributing Member would have been entitled (which shall be charged against the Non-Contributing Member's capital account as if they had been distributed to the Non-Contributing Member), and such distributions shall be credited against the loan until it is repaid. At any time, by unanimous vote of the Managers if there are more than one, the Manager shall have the right to convert any such unpaid loan to a capital contribution by the Contributing Members and proportionately reduce the Non-Contributing Member's interest in the Company and Sharing Ratio.

### 8.3 Capital Accounts.

a. A separate capital account will be maintained for each Member and Assignee. The manner in which capital accounts are to be maintained pursuant to this Section 8.3(a) shall comply with the requirements of the Internal Revenue Code and the Regulations promulgated thereunder as applied to limited liability companies particularly, including but not limited to Section 704(b) of the Internal Revenue Code and the Regulations thereunder.

b. Upon liquidation of the Company, liquidating distributions will be made in accordance with the positive capital account balances of the Members and Assignees, as determined after taking into account all capital account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with Section 11.2.

c. Except as otherwise specifically and explicitly required in a non-waivable provision of the LLC Act, no Member or Assignee shall have any liability to restore all or any portion of a deficit balance in such Member's or Assignee's capital account.

8.4 Sharing Ratios. The Sharing Ratios of the Members and Assignees (if any) are described on Exhibit 8.1 attached hereto and incorporated herein by reference. Sharing Ratios shall be adjusted to reflect additional capital contributions to the Company by Members and Assignees and upon the transfer of any interest in the Company. The adjustments shall occur as of the date of the contribution or transfer. The Sharing Ratios shall be also adjusted at such other times deemed by the Manager to be necessary in order to reflect the ratios of positive capital accounts of Members and Assignees.

## **ARTICLE 9**

### **ALLOCATIONS AND DISTRIBUTIONS**

9.1 Allocations of Profits and Losses from Operations. After giving effect to the Special Allocations set forth in Section 9.4, all Income, Profits, Losses and Deductions of the

Company for each Fiscal Year will be allocated to Members and Assignees in accordance with their Sharing Ratios.

9.2 Distributions. All distributions of Distributable Cash shall be made to the Members and Assignees as follows: (a) in proportion to their Sharing Ratios in amounts necessary for the Members to pay federal and state income taxes on their distributive share of income and gain from the Company (to the extent practicable, as determined in the Manager's good faith discretion), (b) in proportion to their Sharing Ratios at such times and in such amounts as the Manager shall determine in the Manager's good faith discretion, and (c) as otherwise determined by a unanimous vote of the Members; except that, no Member or Assignee shall receive any distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the company, other than liabilities to Members on account of their membership interests, would exceed the fair market value of the Company's assets (an "Improper Distribution"). In the case of an Improper Distribution, the Company shall retain the right to demand the immediate repayment of the property distributed, including cash, to the extent necessary to comply with this Section 9.2 and the LLC Act. Any payments for reasonable compensation under Article 5, however, shall not be distributions under this section, and are not subject to this Section and the related requirements of the LLC Act.

9.3 Loans to Company and Members. Nothing in this Operating Agreement shall prevent any Member or Assignee from making secured or unsecured loans to the Company, which loans shall not be counted as capital contributions, by agreement with the Manager. Furthermore, cash payments to Members may be treated as loans rather than distributions upon the approval of the Manager and upon the concurrence of a Majority Interest of the Members, including the Member receiving the payments. Unless otherwise agreed between the Member and the Manager, loans to or from the Company shall bear interest at the published Wall Street Journal Prime Rate, as periodically adjusted, and shall not have a term greater than one year.

9.4 Special Allocations.

a. Regulatory Allocations (For Compliance with the Internal Revenue Code).

i. Minimum Gain Chargeback - Company Nonrecourse Liabilities. Except as otherwise provided in Section 1.704-2(f) of the Internal Revenue Code Regulations ("Treasury Regulations") if there is a net decrease in Company minimum gain during any Company taxable year, each Member shall be specially allocated items of Company income and gain in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-2(g) of the Treasury Regulations. The items so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Treasury Regulations. This Section 9.4(a)(i) is intended to comply with the minimum gain chargeback requirement set forth in Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistent therewith.

ii. Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(l)(4) of the Treasury Regulations, if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Company taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Non recourse Debt,

determined in accordance with Section 1.704-2(l)(5) of the Regulations, shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent years) in the amounts and manner described in Section 1.704-2(l)(4) and Section 1.704-2(j)(5) of the Treasury Regulations. This Section 9.4(a)(ii) is intended to comply with the minimum gain chargeback requirement set forth in Section 1.704-2(l)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

iii. Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1 (b)(2)(ii)(d)(4), (5), and (6) of the Treasury Regulations, items of Company income and gain shall be specially allocated such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted capital account deficit of such Member as quickly as possible; provided, however, that an allocation pursuant to this Section 9.4(a)(iii) shall be made only if and to the extent that a Member would have an adjusted capital account deficit after all other allocations provided for in this Article 9 have been tentatively made as if this Section 9.4(a)(iii) were not in this Agreement. It is intended that this Section 9.4(a)(iii) constitute a "qualified income offset" within the meaning of Section 1.704-1 (b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

iv. The Company shall comply with Section 1.704-2(e) of the Treasury Regulations.

b. Curative Allocations. The allocations set forth in Sections 9.4(a) (the "Regulatory Allocations") are intended to comply with certain requirements of Section 1.704-1(b) of the Treasury Regulations. The Members hereby acknowledge and agree that the Regulatory Allocations may not be consistent with the manner in which the Members intend to make Company distributions. Accordingly, the Managers are hereby authorized and directed to make other allocations of profit, loss, or depreciation among the Members in any reasonable manner that the Managers deem appropriate so as to prevent the Regulatory Allocations from distorting the manner in which the Company distributions would otherwise be divided among the Members pursuant to Section 9.1 hereof. In general, the Members anticipate that this will be accomplished by specially allocating other profits, losses, or depreciation among the Members so that, after such offsetting special allocations are made, the amount of each Member's capital account will be, to the extent possible, equal to the capital account balance such Member would have had if the Regulatory Allocations were not a part of this Agreement and all Company items had been allocated to the Members solely pursuant to Section 9.1 hereof.

## **ARTICLE 10**

### **TRANSFERABILITY**

10.1 General. Except as otherwise specifically provided in this Article 10, or otherwise mandated by the applicable explicit non-waivable provisions of the LLC Act, or otherwise waived by unanimous written consent of all Members, including the transferor Member, a Member shall not have the right to: sell, assign, transfer, exchange, gift, bequeath, dispose of, devise, pledge, encumber, or otherwise transfer, either for consideration or for no consideration, whether or not by operation of law (collectively and individually hereinafter referred to as "transfer"), all or any



part of such Member's Membership Interest without following the applicable procedures outlined in this Article 10. Each Member hereby acknowledges the reasonableness of the restrictions on transfer of Membership Interests imposed by this Operating Agreement in view of the Company purposes and the relationship of the Members. The restrictions on transfer contained herein shall be specifically enforceable.

#### 10.2 Right of First Refusal.

a. Notice and Terms of Proposed Transfer. Any Member who desires to transfer all or any portion of such Person's Membership Interest in the Company ("Selling Member") to any Person ("Proposed Transferee") shall obtain and deliver to the Company and the other Members the following information:

i. offer to purchase such Membership Interest In the case of a transfer for full consideration, a bona fide written, stating the terms and conditions upon which the purchase or transfer is to be made and the consideration offered therefore ("Written Offer").

ii. In the case of a transfer for less than full consideration, or any transfer that is not pursuant to a bona fide offer to purchase for full consideration, a full description of all relevant terms of the transfer, including the Selling Member's good faith estimate of the fair market value of the Membership Interest ("Terms of Transfer").

Any Selling Member shall, at least one hundred twenty (120) days prior to any proposed transfer, give written notice to the Company and remaining Members of such person's intention to so transfer the Membership Interest, furnishing to the remaining Members a copy of the aforesaid Written Offer or Terms of Transfer. The date of delivery to the last Member to receive the written notice shall be the delivery date of the written notice ("First Delivery Date").

b. Exercise of Right of First Refusal. Those remaining Members who shall decide to purchase all of the Selling Member's Membership Interest shall, on a basis pro rata to their Membership Interests or on a basis pro rata to the Membership Interests of those remaining Members exercising their right of first refusal, have the right to exercise a right of first refusal to purchase all of the Membership Interest proposed to be transferred by the Selling Member upon the same terms and conditions as stated in the aforesaid Written Offer to purchase (or, in the case of a transfer for less than full consideration, in accordance with Paragraph 10.2(c) below) by giving written notice to the Selling Member of their intention to do so within sixty (60) days after the First Delivery Date. Upon the unanimous agreement of the remaining Members, the offered Membership Interest shall be purchased by the Company instead of by the remaining Members individually.

The failure of all or a portion of the remaining Members to so notify the Selling Member of their desire to exercise this right of first refusal within said sixty (60) day period shall result in the termination of the right of first refusal and the Selling Member shall be entitled to consummate the transfer of the Membership Interest in the Company to such third party transferee (but only in strict compliance with the Written Offer on the Terms of Transfer, as the case may be). However, if such transfer is not consummated within sixty (60) days of the termination of the right of first refusal (or is not in strict compliance with the Written Offer or the

Terms of Transfer, as the case may be), the Membership Interest shall again be subject to the restrictions imposed by this Article 10.

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, the remaining purchasing Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within one hundred eighty (180) days after the First Delivery Date. The terms of the purchase shall be the same as in the Written Offer.

c. Proposed Transfers For Less Than Full Consideration. In the case of a proposed transfer for less than full consideration, the purchase price to be paid by the Company or the purchasing Members for the interest shall be the price agreed upon by the parties within thirty (30) days following the First Delivery Date, but if there shall be no such agreement within that period, the purchase price shall be determined within sixty (60) days following the end of the thirty (30) day period, as follows: The Company's Certified Public Accountant shall determine (as of the last day of the month preceding the month in which the Terms of Transfer were delivered pursuant to Section 10.2(a)) the book value of the Company on an accrual basis said valuation shall be multiplied by a fraction, the numerator of which shall be the Membership Interest Units being transferred and the denominator of which shall be one hundred (100). The result shall be the Purchase Price. Unless the purchasing Members agree that the Company shall purchase, the purchasing Members shall purchase pro rata to their Membership Interests. The closing shall be on the one hundred eightieth (180th) day following the First Delivery Date and the purchase price shall be paid ten percent (10%) at closing and ninety percent (90%) in level quarterly payments over the one hundred twenty (120) months, with interest payable on the unpaid balance of the purchase price determined by the highest long-term interest rate in effect under Section 7520 of the Internal Revenue Code on the date of the closing.

d. Transferees Bound by Operating Agreement. In the event of a transfer of an interest in the Company to a person other than a Member ("Third Party Transferee"), and as a condition to recognizing the effectiveness and binding nature of any such transfer, the Third-Party Transferee shall be bound by all terms and conditions of this Operating Agreement. In addition, the remaining Members may require the Selling Member and the proposed Third Party Transferee, purchaser, donor or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Manager may reasonably deem necessary or desirable. Failure of the Third-Party Transferee to comply with the Manager's demands shall result in the reduction (as liquidated damages for additional legal, accounting, and other costs) of the Third-Party Transferee's Capital Account by fifteen percent (15%) and said 15% shall be allocated to the other Members' Capital Accounts in proportion to their Sharing Ratios.

e. Transfers Not In Accordance With This Section. If all or any portion of an interest in the Company shall become the property of or is transferred by operation of law from a Member or Assignee to any Person other than in accordance with the terms and provisions of this Article 10, the remaining Members (and, upon unanimous consent of the remaining Members, the Company), within ninety (90) days of the Company's receipt of actual notice of such event, may elect to purchase all or any portion of such interest under the terms and



conditions of Section 10.2(c) of this Agreement, with the ninetieth (90th) day deemed to be the First Delivery Date. If any Member or Assignee pledges or otherwise encumbers any of such Person's Membership Interest as security for repayment of a liability, any party to such pledge or hypothecation shall be bound by all the terms and conditions of this Operating Agreement, including this Section 10.2(e) with respect to the security interest and/or other interest transferred, including, without limitation, upon foreclosure or other enforcement of said security interest or other interest transferred, execution and/or levy on the Membership Interest or Economic Interest, or any similar proceeding involving in any manner a transfer of the interest to the lender or other secured party.

10.3 Transferee Not a Member in Absence of Consent. No transferee who was not a Member immediately prior to the transfer shall become a Member except upon the unanimous written consent of all Members. Such unadmitted transferee shall have no right to participate in the management or affairs of the Company, to receive information regarding the Company's operations or financial affairs, or to become a Member. Such transferee shall be merely an Assignee.

10.4 Exceptions for Certain Transfers to Family Members. A Member may transfer by will, trust, or other instrument, either during life or at death, all or any portion of his interest, including his or her Membership Interest (without regard to Sections 10.2(a), (b) and (c)) to his or her lineal ancestor or lineal descendent (including adopted children), which transferee shall become an Assignee, unless all of the other Members shall decide otherwise.

10.5 Exception for Temporary Incapacity of a Member. During periods of temporary incapacity (lasting not more than one year, unless extended by written consent of a Majority Interest of the remaining Members), a Member's trustee, personal representative, conservator, guardian, or attorney-in-fact, as the case may be, shall have the rights of a Member with respect to the Member's interest. Any conflict as to who may be representing the incapacitated Member shall be conclusively resolved by the Manager. Upon regaining capacity, the Member shall have all of his Membership Interest rights restored. If incapacity should continue beyond one year, the Membership Interest shall thereafter be an Economic Interest only, unless all of the other Members shall otherwise decide.

10.6 Transfers on Death, Incompetency, Dissolution, or Termination. Except as provided in Sections 10.4 and 10.5, if a Member who is an individual dies or becomes legally incompetent, the Member's executor, conservator, or other legal representative may only exercise the powers of an Assignee. If a Member is a corporation, trust (except for a trust as described in Section 10.4), or other entity and is dissolved or terminated, the legal representative or successor of the Member may only exercise the powers of an Assignee; except that the Member who established such corporation, trust, or other entity shall again become a Member to the extent of the Membership Interest received upon dissolution or termination of the corporation, trust, or other entity, subject to the other provisions of this Article 10 (for example, if the Member who establishes a corporation is incapacitated upon its dissolution, Section 10.5 shall apply). Upon the death, incompetency, dissolution or termination of a Member as described in this Section 10.6, the event shall be deemed (unless otherwise decided by a Majority Interest) a tentative transfer and, except as provided in Section 10.4 and 10.5, shall be subject to Section 10.2(c), and the other provisions of this Article 10. An Assignee may become a Member upon

the unanimous vote of the Members.

10.7 Indemnification by Transferor. A Selling Member hereby agrees to indemnify and hold harmless the Company, the other Members, and Assignees from all loss, damages, liabilities, obligations, costs, and expenses (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer not in accordance with or in violation of this Article 10.

10.8 Divorce of a Member. If any Member shall become legally separated or divorced from his or her spouse, and if such spouse is not prior to such proceeding a Member, in that event such separated or divorced Member shall acquire all of any portion of the Membership Interest which may be determined to be owned by such Member's spouse or former spouse as a result of such separation or divorce. Said purchase shall be made by the separated or divorced Member no later than ninety (90) days after the date of the entry of a final decree of separation or divorce by a court of competent jurisdiction. The purchase price of the Offered Interest under this provision shall be determined as set forth in Section 10.2(c) and shall be paid in accordance with Section 10.2(c), unless otherwise agreed by the parties to the transaction. If a separated or divorced Member fails to close said purchase prior to the end of said ninety (90) day period, such failure shall constitute an irrevocable offer to sell all of the Membership Interest owned by the divorced Member's former spouse to the other remaining Members on the terms and conditions set forth in Section 10.2(c). In the event that neither the divorced Member, nor the Company nor the remaining Members elect to exercise their right to purchase said Membership Interest, the former spouse of said Member shall become an Assignee with respect to the interest. In the event the Interest is ever offered by the former spouse to a Third-Party Transferee, the provisions of Section 10.2(c) shall govern. In the event that the Company or the remaining Members acquire an Interest from the former spouse of a Member pursuant to this Section 10.8, the divorced Member (or former Member) shall have the opportunity, for a period not to exceed ninety (90) days, to acquire the Interest from the Company or its Members, as the case may be, on the same terms and conditions by which the Company or Members acquired the Interest plus any expenses related to the acquisition(s).

## **ARTICLE 11**

### **DISSOLUTION, WINDING UP, AND TERMINATION**

11.1 Dissolution. The Company shall dissolve, and its affairs shall be wound up on the first to occur of the following events:

- a. the expiration of the period fixed for the duration of the Company in the Articles, as may be amended by the Members from time to time;
- b. the unanimous written consent of all Members; or
- c. upon the occurrence of an event specified in a non-waivable dissolution provision of the LLC Act.

11.2 Winding Up and Termination.

a. On the occurrence of an event of dissolution, the Manager shall act as liquidator. The liquidator shall diligently proceed to wind up the affairs of the Company as provided in the LLC Act. Until final distribution, the liquidator shall continue to operate and manage the Company's assets and properties. The costs of winding up shall be Company expenses.

b. Any assets of the Company remaining at the conclusion of the winding up process shall be distributed among the Members in an amount equal to their respective positive capital account balances. All distributions in kind, if any, shall only be made with the written consent of a Majority Interest.

c. On completion of such final distribution, the Managers shall file Articles of Dissolution with the State of Colorado and take such other actions as may be necessary to terminate the existence of the Company.

11.3 No Obligation to Restore Deficit Capital Accounts. No Member or Assignee shall be required to pay to the Company, to any other Member or to any third party any deficit balance that may exist in any capital account maintained for such Member or Assignee.

## **ARTICLE 12** **AMENDMENT**

This Operating Agreement may not be amended except by the written consent of all Members of the Company.

## **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

13.1 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed; or, if (a) sent by registered or certified mail, postage and charges prepaid, or (b) sent via a nationally-recognized overnight courier service, and addressed to the Member's, Assignee's and/or Company's last known address, as recorded in the Company's records. The notice shall be effective upon delivery. Refusal by a recipient to accept delivery shall constitute delivery.

13.2 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

13.3 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.4 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.5 Governing Law: Severability. THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by applicable law.

13.6 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

13.7 Entire Agreement. This Agreement constitutes the entire agreement of the Members relating to the subject matter set forth in this Agreement and supersedes all prior contracts, understandings, and/or agreements with respect to the subject matter set forth in this Agreement, whether oral or written.

13.8 Agreement to Use Mediation and Arbitration. The Members have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge and agree that if any dispute arises between them relating to this Agreement, they will in good faith use mediation procedures agreeable to all parties prior to any additional proceedings. The costs of the mediation shall be paid by the Company. The mediation process shall be confidential, and no record shall be made. No conduct, statements, promises, opinions or any other aspects of the mediation process shall be disclosed to any person. In the event that any disputes cannot be resolved using mediation, the Members pledge and agree to submit the dispute to binding arbitration in the city where the Company maintains its principal place of business, under the Commercial Arbitration Rules of the American Arbitration Association. The prevailing party shall be entitled to all costs incurred in connection with such arbitration, including reasonable attorneys' fees and all other reasonable costs and expenses, from the non-prevailing party.

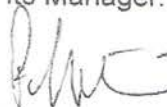
13.9 General Provisions. Paragraph headings and other captions in this Operating Agreement are for convenience only and shall not govern the interpretation or construction of any of the provisions of this Operating Agreement. No waiver of any provision of this Operating Agreement shall be effective unless in writing and signed by a Majority Interest, and any waiver shall be limited solely to the circumstances to which it applied and shall not imply any future waiver, or any waiver of any other term or condition of this Operating Agreement. Each party to this Operating Agreement irrevocably waives during the term of the Company any right that the party may have to maintaining any action for partition with respect to any of the property of the Company. In any legal action permitted under this Operating Agreement to enforce the terms and conditions of this Operating Agreement, the prevailing party shall be entitled to reasonable attorneys' fees (as well as other reasonable costs and expenses) of said legal action. The fact that one of the Members and/or that Member's attorneys may have drafted this Operating Agreement shall not be used for or against that Member in the interpretation, construction, and/or enforcement of this Operating Agreement. Each of the Members represents that said Member is entering into this Operating Agreement and will carry out and perform all of its terms

and conditions in good faith. If any party to this Operating Agreement shall breach or be in default of any one or more of its terms, conditions, and/or provisions, then the Company and the (other) Members shall have, cumulatively whatever remedies are available pursuant to this Operating Agreement, at law, and/or in equity.

**IN WITNESS WHEREOF**, the undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, constitutes the Operating Agreement of Sunport Apartments, LLC adopted by the Undersigned Effective as of the date written above.

**Sunport Apartments, LLC**  
**a New Mexico Limited Liability Company**

By Its Manager: Cornerstone Capital LLC



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Peter J. Gineris

**EXHIBIT 6.1****MEMBERS****MANAGEMENT  
MEMBER****UNITS****ADDRESS**

Cornerstone Capital LLC

50 Management Units

6509 Coors Blvd., NW  
Albuquerque, NM 87120

Zack Snyder

50 Units

Albuquerque, NM 871XX



**EXHIBIT 8.1**  
**SHARING RATIO**

<u>MEMBER</u>	<u>SHARING RATIO</u>
Cornerstone Capital LLC	50.00%
Zack Snyder	50.00%
	<hr/>
TOTAL	100.00%

**FIRST AMENDMENT  
TO OPERATING AGREEMENT**

THIS AMENDMENT is made by and among the limited liability company (the "Company")

**SUNPORT APARTMENTS, LLC**  
and the following who are the "Members" of the Company  
**Cornerstone Capital LLC by its Manager Peter Gineris, Zack Snyder**

RECITALS:


1. The Company is a limited liability company, formed under the laws of New Mexico by the filing of organizational documents on July 6, 2018.
2. The Members previously created an Operating Agreement for the operation and management of the Company, such Agreement being dated July 18, 2018.
3. The Members now wish to amend the current Company Operating Agreement, as is stated and contained herein below, with an Effective Date of July 18, 2018.


AGREEMENT:

Section 1. The Recitals are incorporated into and made a part of this Amendment to Operating Agreement, as if fully restated herein.

Section 2. The current Company Operating Agreement is hereby amended as follows:

Section 6.1: *The updated Exhibit 6.1 as attached hereto shall be incorporated into the Operating Agreement replacing all previous versions.*

By:   
Printed Name: Peter J Gineris  
Title: President, manager, officer  
Dated: 8/6/20

By:   
Printed Name: ZACK SNYDER  
Title: VICE-PRES, MGR, OFFICER  
Date: 8/3/20

## EXHIBIT 6.1

### MEMBERS

<u>MEMBER</u>	<u>UNITS</u>	<u>ADDRESS</u>
Cornerstone Capital LLC Managing Member, President, and an Officer in the Company	50 Units	6509 Coors Blvd., NW Albuquerque, NM 87120
Zack Snyder Member, Vice-President, and an Officer in the Company	50 Units	5800 San Francisco Rd., NE Albuquerque, NM 87109

Old Republic National Title Insurance Company  
Order Number: 1800411 LO

### SPECIAL WARRANTY DEED

Andre Leger and Gloria Leger, husband and wife, for consideration paid, grant to Sunport Apartments, LLC, a New Mexico limited liability company, whose address is: 6509 Coors Blvd. NW, Albuquerque, NM 87120, the following described real estate in Bernalillo County, New Mexico,

Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5), in Block numbered Ten (10) of Unit No. Three (3) of the KIRTLAND ADDITION to the City of Albuquerque, New Mexico as the same is shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on November 1, 1960; and

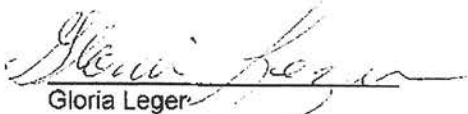
Lots lettered "A", "B", "C", "D", "E" and "F", of Unit No. Three (3) of the KIRTLAND ADDITION to the City of Albuquerque, New Mexico as the same is shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on November 1, 1960.

SUBJECT TO all matters shown on Exhibit A attached hereto;

with special warranty covenants.

Dated: June 14, 2019

  
Andre Leger

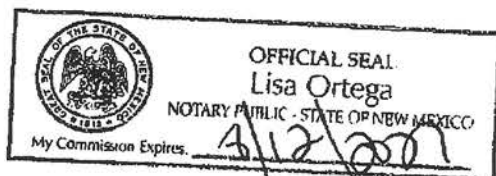
  
Gloria Leger

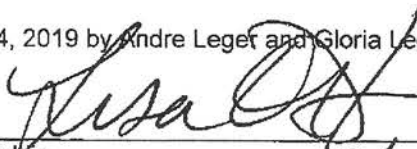
### ACKNOWLEDGMENT

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

This instrument was acknowledged before me on June 14, 2019 by Andre Leger and Gloria Leger.



  
Notary Public

My Commission expires: 8/12/2021

**EXHIBIT "A"**

- Reservations contained in Patent from United States of America, recorded in Book 50, Page 302, records of Bernalillo County, New Mexico.
- Restrictive covenants recorded in Book D169, Page 9, records of Bernalillo County, New Mexico.  
NOTE: This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status or national origin as provided in 42 U.S.C. Sec. 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Sec. 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.
- Easements and notes as shown, noted and provided for on the plat recorded in Plat Book C5, Page 35, records of Bernalillo County, New Mexico.