

**OPERATING AGREEMENT  
FOR  
FOA NAME PLACEHOLDER OWNER GROUP LLC  
A DELAWARE LIMITED LIABILITY COMPANY**

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## INTRODUCTION

An organizer has filed a Certificate of Formation for FOA NAME PLACEHOLDER OWNER GROUP LLC (the “Association”), a Delaware limited liability company, with the Delaware Division of Corporations, and the organizer now desires to adopt this Operating Agreement for the Association. The Association will own real property commonly known as PROPERTY ADDRESS PLACEHOLDER, DOMINICAN REPUBLIC (the “Property”). This Agreement is intended to govern the operation of the Association, and the affairs of the Owners with regard to the Association and the Property.

## ARTICLE 1--DEFINITIONS

The following initially capitalized nouns have the meanings set forth below whenever used in this Agreement.

“**Agreement**” means this Operating Agreement as amended, restated or supplemented from time to time.

“**Assessment**” refers to certain Obligations of Owners to the Association. There are three types of Assessments: (i) Regular Assessments, which are periodic payments all Owners make to fund the operating expenses and reserve needs of the Association and the Property; (ii) Special Assessments, which are occasional payments all Owners make to fund extraordinary or unexpected expenses; and (iii) Reimbursement Assessments, which are fines, fees or charges payable by a particular Owner for services consumed, property damage or loss, or wrongful possession.

“**Association**” means FOA NAME PLACEHOLDER OWNER GROUP LLC, a Delaware limited liability company.

“**Association Personal Property**” means personal property acquired, owned, and maintained by the Association for use by the Parties while using the Property, such as fixtures, furnishings, decorations, appliances, electronics, linens, cookware, tableware, and supplies.

“**Kaverna**” as used in this Agreement means, collectively, Kaverna Homes LLC, a Delaware limited liability company and any other entity controlling, controlled by, or under common control with, Kaverna Homes LLC. The word “control”, as used in this definition, means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies and decision-making, whether through the ownership of voting interests or by contract or otherwise, and/or the possession of direct or indirect equity or beneficial interests in greater than 50% of equity or profits. Notwithstanding this definition, references to Kaverna in this Agreement are not intended to refer to the Association.

“**Default**” is defined in Section 8.5.

“**Effective Date**” means the date determined under Section 9.1.

“**Governmental Regulations**” means all applicable regulations of any governmental entity with jurisdiction over the Property or the Association.

“**Group**” means a group of Parties who together constitute one Owner and who together hold one Ownership Interest.

“**Invitee**” means, for any particular Owner: (i) any Party that is the Owner or is part of the Group comprising the Owner; (ii) any non-Party visiting the Property at the direct or indirect invitation of any such Party; and (iii) any non-Party visiting the Property at the invitation of another person who is such Owner’s Invitee.

“**Lender**” means any person, including the Association, the Manager, Kaverna, a financial institution, or other natural person or entity, that makes a loan to an Owner secured such Owner’s Ownership Interest.

“**Lien**” means any security interest, pledge, hypothecation, or encumbrance of any kind.

“**Manager**” means Kaverna and any successor Manager appointed under Section 5.2.

“**Management Agreement**” means, collectively, any agreement between the Association and the Manager that has not been entirely terminated or superseded by another, subsequent Management Agreement.

**“Mandatory Expenditure”** means any cost explicitly described as such in this Agreement.

**“Notice”** means a writing prepared and transmitted in accordance with Section 9.1.

**“Obligations”** means, with respect to any Party, all liabilities and obligations of such Party to the Association.

**“Owner”** means an individual person that owns the entirety of an Ownership Interest by him/herself. When an Ownership Interest is owned by more than one person, the term “Owner” refers, collectively, to the group of persons that owns the Ownership Interest.

**“Ownership Interest”** means a discrete set of rights and duties as defined in this Agreement, including a right to vote and a right to use the Property, and the duty to pay certain expenses and adhere to certain rules. There are exactly eight Ownership Interests, each permanently assigned an identifying number (“Ownership Interest 1”, “Ownership Interest 2”, and “Ownership Interest 3”) as shown on its Ownership Certificate. When an Ownership Interest is transferred, its number, and all rights and obligations associated with it, shall remain the same.

**“Owner Representative”** is defined in Section 2.3.

**“Party”** means any individual or entity that is an Owner in his/her own right, or part of a Group that is an Owner.

**“Party Certification”** means the form filled out by each Party when he/she/it first acquires an interest in the Association. The template for this form is attached to this Agreement as Exhibit A.

**“Property”** means the real property commonly known as PROPERTY ADDRESS PLACEHOLDER, DOMINICAN REPUBLIC.

**“Rules”** is defined in Section 8.1.

## **ARTICLE 2--ORGANIZATIONAL MATTERS**

### **2.1 ASSOCIATION STATUS AND PURPOSE.**

- A.** The Association is a manager-managed limited liability company formed under the laws of the State of Delaware. The rights and liabilities of the Owners shall be determined pursuant to applicable law and the Agreement. To the extent that the rights or obligations of any Owner are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall control.
- B.** The Association’s purpose is to maintain and preserve the Property and the Association Personal Property in excellent condition, to provide each Owner the benefits of owning a spectacular and luxurious vacation home without the worries, burdens and costs of individually acquiring, furnishing, and managing the home, and to minimize the risks of owning with others through a comprehensive system of management infrastructure and payment guarantees. By signing this Agreement and becoming part of the Association, each Party confirms that he/she will not take part in day-to-day management, and will have very little control over the operation, of the Association or the Property.
- C.** Use of the Property is restricted to Owners and their guests, each of whom will have usage rights. The Property will never be rented. The Association has no business purpose and will not engage in any income-generating activity. The revenue of the Association will consist solely of Owner membership dues and fees, all income will be used for the management, maintenance, and care of the Property and Association Personal Property, and for activities provided to or on behalf of Owners. The Association shall not distribute any amounts (other than rebates of excess membership dues) to any Owner or individual, and may elect to have Internal Revenue Code §528 (applicable to nonprofit homeowners associations) apply.
- D.** The Ownership Interests are not intended to be investment opportunities. While the Property and the Ownership Interests might increase in value, no one should purchase an Ownership Interest with the intention of earning income or profit.
- E.** Except as expressly set forth in this Agreement or in the Rules, or required by law, no Owner shall be personally liable for any debt, obligation, or liability of the Association, whether that liability or obligation arises in contract, tort, or otherwise. Notwithstanding the preceding sentence, however, it is expressly intended that the Owners be responsible to the Association for costs and expenses associated with the Property as provided in this Agreement and the Rules, and nothing in this Agreement, the Rules, or applicable law, shall be interpreted to relieve any Owner or Party from the obligations imposed by this Agreement and the Rules.

**2.2 REPRESENTATIONS AND DISCLOSURES.** Signing this document signifies that the signer acknowledges, understands and agrees with each of the representations in this Section. The Association is intended to be a nonprofit entity, and Ownership Interests are intended to be time-based homeowners association interests, under all applicable federal and state law. Although it is possible that the Property and/or Ownership Interests may increase in value, the expectation of income or profit is not the primary motivating factor underlying the signer’s purchase of an Ownership Interest. No individual or entity has at any time expressly or implicitly represented, guaranteed, or warranted that: (i) the purpose of the Association is to generate fees, income or profits of any kind to or for the benefit of any Party; (ii) the purchase of an Ownership Interest is likely to generate any income, profit or investment return for any Party; or (iii) that a Party may easily sell or transfer an Ownership Interest. Ownership of an ownership interest is unlikely to result in more favorable tax treatment (with regard to income tax, estate tax, property tax, transfer tax, or any other type of tax, whether imposed by the United States government, the government of a state within the United States, any government entity of the Dominican Republic, or any government entity of the country of residence of a Party)

as compared with direct ownership of the Property. The right to transfer, or create a Lien against, an Ownership Interest is restricted as set forth in this Agreement. The Party has been advised to consult with his/her own attorney regarding all legal matters concerning the Association and the tax consequences of participating in the Association, and has done so, to the extent he/she considers necessary.

### 2.3 OWNERSHIP INTERESTS AND OWNERS.

- A. Association ownership is divided into eight discrete shares referred to as Ownership Interests. The number of Ownership Interests is intended to be permanently fixed. The transfer of a portion of an Ownership Interest will never have the effect of creating one or more additional Ownership Interest, or adding to the number of Owners (which shall always be equal to the number of Ownership Interests). Rather, the transfer of a portion of an Ownership Interest shall mean that the transferee becomes part of the Group that owns such Ownership Interest. No person shall be entitled to claim that he/she is only obligated to pay or fulfill only a percentage or other portion of the obligations associated with an entire Ownership Interest.
- B. Where an Ownership Interest is owned by a single natural person, such individual shall be deemed an Owner and a Party. Where an Ownership Interest is owned by a Group, such persons shall collectively be deemed one Owner, and each of the natural persons shall be deemed a Party. Where an Ownership Interest is owned by a single entity, the entity shall be deemed an Owner and a Party. Natural persons or entities that hold ownership or beneficial interests in the entity shall not be deemed Owners or Parties under this Agreement. Where an Ownership Interest is owned by a Group that includes an entity, the Group, collectively, shall be deemed one Owner, and each natural person and entity within the Group shall be deemed a Party; however, natural persons or entities that hold ownership or beneficial interests in the entity shall not be deemed Owners or Parties under this Agreement.
- C. When an Ownership Interest is owned by a Group, the following additional provisions shall apply: (i) each entity and natural person within the Group shall be jointly and severally liable for all obligations and responsibilities associated with such Ownership Interest; (ii) any act or omission by any Party who is part of such Group, or any Invitee of any such Party, shall be deemed the act or omission of the Group; and (iii) all rights associated with the Ownership Interest are jointly held by the persons within the Group and, absent a written agreement or provision of law to the contrary, all such persons shall be deemed to have equal control of such rights. Each Group must provide Notice to the Manager within ten days of the date on which there is any addition, subtraction or other change to the Parties constituting the Group. In addition, within ten days from the Effective Date of a Notice from the Manager so requesting, the Owner Representative for the Group shall: (i) disclose the full legal names of each person with any direct or indirect ownership interest in the Group; and (ii) obtain the signature of any person or entity within the Group on a document guaranteeing the obligations of the Group to the other Owners under the terms of this Agreement.
- D. At all times, each Ownership Interest shall have exactly one natural person acting as its Owner Representative; no Ownership Interest shall have two or more Owner Representatives. When an Ownership Interest is owned by a single natural person, such person shall be deemed the Owner Representative. When an Ownership Interest is owned by a single entity or a Group, the identity of the Owner Representative shall be as specified in a Notice, signed by all Parties comprising the Owner, sent or given to the Manager. The identity of the Owner Representative may be changed for any Ownership Interest, at any time, in the same manner. Notwithstanding anything to the contrary in this Agreement, during any period when there is no single person properly designated as the Owner Representative for an Ownership Interest, the Owner of such Ownership Interest shall not be entitled to vote or receive Notices under this Agreement, but the Manager shall be deemed to have provided Notice to such Owner when the Notice is sent to any Party who is part of the Owner or holds an interest in any entity that is such a Party.

**2.4 OWNERSHIP CERTIFICATE.** Each Ownership Interest shall be represented by an Ownership Certificate in the form attached to this Agreement as Exhibit B. The Ownership Certificate for a particular Ownership Interest may be replaced from time to time in connection with transfers of the Ownership Interest or loss of an Ownership Certificate, provided that no new or replacement Ownership Certificate shall be created or issued unless the previously existing Ownership Certificate for that particular Ownership Interest has been destroyed or, in the case of loss, an affidavit attesting to the loss is signed by the Owner Representative. Each Ownership Certificate shall identify the Ownership Interest number designation (such as "Ownership Interest 1", "Ownership Interest 2" etc.) for the Ownership Interest it represents. In general, as provided in Section 4.12, the original Ownership Certificate for each Ownership Interest shall be kept by the Manager; however, in instances where a loan made by a Lender is secured by the Ownership Interest, the original Ownership Certificate shall be held by the Lender. In either case, only copies of Ownership Certificates shall be distributed to Owners.

## ARTICLE 3—USING THE PROPERTY

### 3.1 USAGE RESERVATIONS.

- A. **Usage Rights Overview.** Each Ownership Interest shall be entitled to reserve usage of the Property for specific periods of time ("Usage Blocks") and, during that time, the Owner shall have the exclusive right to use the Property subject only to the limitations in this Agreement and the Rules. There are two categories of reservations, Advance-Planned Reservations and Short-Notice Reservations, and each category is subject to different policies as described below.
- B. **Permitted Users.** During an Owner's reserved Usage Block, the Property may be used by any Invitee of the Owner who reserved it, including a person who stays overnight at the Property when no Party is present (an "Unaccompanied Guest"). At least 24 hours before the beginning of the Usage Block, the Owner must provide Notice to the Manager of the number of persons the Owner

expects to be present during the Usage Block and, when Unaccompanied Guests will be there, the name(s) and mobile telephone number(s) of each Unaccompanied Guest. Advertised rentals and reciprocal exchanges of the Property are prohibited. A rental or exchange shall be considered “advertised” if it is offered to the general public, or through any website or publication. Each Owner may exchange all or part of his/her Usage Block with another Owner. Notice of an exchange must be provided to the Manager at least seven (7) days prior to the beginning of any exchanged usage period. When an Owner receives usage through an exchange, such Owner shall be deemed to have assumed all of the usage-related responsibilities imposed by this Agreement upon the Owner to whom the usage was previously assigned, and the Owner who relinquished the usage shall be deemed to have been released of all such responsibilities.

**C. General Reservation Limits and Rules.** The following restrictions apply to all Owner reservations.

- (1) Each Ownership Interest may reserve use of the Property for a maximum of 45 total Usage Days during any 365-day period, of which no more than [REDACTED] may be Peak Usage Days. In general, a “Usage Day” means a single 24-hour period beginning at 4PM; however, on the last day of a Usage Block, the Usage Day shall end at 11AM to allow adequate time for the Property to be inspected, cleaned and readied for the next arrival. A “Peak Usage Day” means a Usage Day within one of the following “Peak Usage Periods”: [REDACTED].
- (2) The maximum length of each Usage Block is 28 Usage Days; however, an Ownership Interest may reserve two or more Usage Blocks back-to-back, subject to the annual limits described in Subsection (1) above.
- (3) When an Owner cancels a reservation 60 or more days before its first day, the cancelled reservation shall be treated as if it never existed for the purposes of the annual limits described in Subsection (1) above. However, except as otherwise provided in the last sentence of this Subsection (3), when an Owner cancels less than 60 days in advance, each of the Usage Days of the cancelled reservation shall count for the purposes of calculating whether the Owner has exceeded the annual limits unless either: (i) another Owner reserves some or all of the Usage Days released by the cancelling Owner, in which case the newly-reserved days shall be not be considered used by the cancelling Owner; or (ii) the Manager determines, in its sole discretion, that applying the normal cancellation period would be unreasonable or unfair. The provisions of the preceding sentence shall not apply when an Owner who cancels his/her reservation simultaneously reserves a Usage Block of exactly the same length that became available due to a cancellation by another Owner.
- (4) The last day of a Usage Block cannot be a Saturday, the day immediately before any US legal Monday holiday, or the day immediately before July 4, Thanksgiving, Christmas Eve, Christmas Day, New Years Eve, or New Years Day.
- (5) Each Owner acknowledges and understands that, as a consequence of the occasional removal of the Property from service for maintenance and repair, he/she may not be able to reserve 45 days of usage during a particular one-year period, and that such inability shall not entitle the Owner to receive any compensation from the Association, the Manager, or any other Owner.

**D. Advance-Planned Reservation Limits and Rules.** Advance-Planned Reservations must be made at least 10 days before the first Usage Day of the reservation. For example, an Advance-Planned Reservation that begins on February 15 could be made on February 5, but could not be made on February 6. Each Ownership Interest may hold up to two Advance-Planned Reservations at any particular time; an Ownership Interest that holds two Advance-Planned Reservations cannot make another one until he/she uses one of the Advance-Planned Reservations he/she already holds.

**E. Short-Notice Reservation Limits and Rules.** Short-Notice Reservations can made be between nine days and one day before the first Usage Day reserved. An Ownership Interest can make a Short-Notice Reservation regardless of the number of Advance-Planned Reservations it holds.

**F. Special Reservation Rules for Association Startup.** The provisions of this Subsection F shall supersede any conflicting provisions of the preceding Subsections. When the Manager establishes the date when the Property will first be ready for Owner use, the Manager shall contact the Owner Representative for each Ownership Interest in the order that the buyer of the Ownership Interest provided his/her first purchase money deposit. Each Ownership Interest shall then be entitled to make one Advance-Planned Reservation. After each Ownership Interest has made its first Advance-Planned Reservation, Owners may begin to make additional Advance-Planned Reservations and Short-Notice Reservations as described above.

**G. Reservation Procedures.** To the extent reasonably possible, the Manager shall establish and maintain an online usage reservation portal to implement and administer the Association’s reservation system. Where an aspect of the system cannot be effectively accomplished through an automated portal, or where the portal fails, the Manager shall create an alternative procedure. Notwithstanding anything to the contrary in this Agreement, the Manager shall have the discretion and authority to create reasonable procedures and policies to implement the usage system described in this Agreement, and it is acknowledged and agreed by all Owners that such procedures may differ in certain respects from those described in the Agreement. Any such variation is permissible provided it does not undermine the fundamental aspects of the usage rights granted by this Agreement, or operate to create a systematic unfairness that favors the rights of certain Owners over the rights of others.

**H. Mandatory Cleaning and Inspection.** The Manager shall arrange for a professional service to clean and inspect the Property after each Usage Block, and to prepare the Property for use by the next guest. Such preparation shall include the move-out, move-in, and set-up of each Owner’s personal property stored at the Property. The fee for the mandatory inspection/cleaning/setup may vary

depending on the duration of Usage Block it follows, time of year, and other factors. The fee schedule shall be established by the Manager, and may be adjusted from time to time, provided that no fee adjustment shall take effect less than 30 days prior to the Effective Date of a Notice to all Owners stating the adjusted fee. Such fee shall be paid by the Owner who reserves the Usage Block immediately preceding the inspection/cleaning/setup. If an Owner fails to pay such fee immediately when billed, the Manager shall make such payment on behalf of the Owner, and then re-bill such Owner for the amount of the fee plus an additional 15% for administrative overhead. If an Owner fails to pay such re-billing in full, and without offset or deduction of any kind, within 30 days, a Reimbursement Assessment shall be imposed in the amount of the obligation.

- I. Check-In and Check-Out.** The Manager shall establish systems and procedures for Owners and guests accessing the Property at the beginning of Usage Blocks and leaving the Property at the end of Usage Blocks. Such systems and procedures shall be binding on all Owner and guests in all circumstances, and no Owner or guest shall have the right to access the Property at the beginning of a stay, or leave it at the end of the stay, in a manner that violates or deviates from the Manager-established policies.
- J. Additional Services.** The Manager may choose to offer additional service to Owners and guests such as personal shopping and provisioning of the Property prior to and during a Usage Block, mid-stay housekeeping, dry cleaning and laundry services, event scheduling, etc. The Manager shall establish the charges for these services and shall provide a schedule of the available services and costs to each Owner upon request.
- K. Unreserved Time Periods.** Except as provided in Section 3.5, no usage of the Property is allowed during any period when the Property has not been reserved as described in the preceding Subsections.

**3.2 NUISANCE.** Smoking of all substances, and including electronic smoking, is strictly prohibited in all indoor areas of the Property. The maximum number of persons allowed to sleep overnight on the Property shall be equal to twice the number of rooms outfitted with beds or convertible sofas. Dogs and cats are permitted on the Property; all other pets are prohibited. The Manager shall have discretion to implement restrictions and requirements pertaining to pets, such as pet-prohibited areas, furniture covering requirements, cleaning surcharges, etc. No one shall use any part of the Property in a way that is noxious, illegal, annoying or offensive to a person of reasonable and normal sensitivity. No activity may be carried on that adversely affects insurance coverage or rates on the Property. No one shall do or permit anything to be done which is in violation of a Governmental Regulation, or which will or may decrease the attractiveness, desirability or value of the Property as a whole. No one under the age of 21 shall be permitted at the Property unless he/she is accompanied by another person who is 21 or older.

**3.3 STORAGE.** The Association will provide a storage facility in which each Owner may store personal items between visits to the Property. Such storage facility shall be reasonable in size and may be on-site or off-site. No Ownership Interest may occupy more than its equal one eighth share of such available storage area. No one shall be permitted to enter the Property to obtain access to stored items any time other than while he/she is entitled to possession of the Property under this Agreement. Neither the Association, nor the Manager, nor any agents or employee of either, shall be responsible for the loss or damage of any stored item, and each Party hereby waives any right he/she may have to seek recovery for such loss or damage regardless of the circumstances. An Owner or guest may bring any item of personal property to the Property provided he/she removes it from the Property when he/she leaves or, in the case of an Owner, stores it in Owner storage facility. Except as otherwise provided in this Section, Any item left in the Property may be removed or disposed of by (or at the request of) the Manager or any Owner without Notice or responsibility, and any associated cost shall be paid by the Owner whose Invitee left the item.

**3.4 ALTERATIONS.** Without limiting the generality of Section 3.3, it is expressly provided that no Party may leave on the Property after his/her departure, or other items of any kind unless he/she has either placed the item in the Owner storage facility or arranged for the Manager to do so. No Party or guest may rearrange the layout of furniture and other personal property within the Property; if this rule is violated, the Owner whose Invitee failed to leave the Property in its approved layout shall pay a fee to the Association which is reasonably related to the cost of restoring the layout, plus the cost of repair or replacement resulting from the original rearrangement or the subsequent layout restoration. No Party or guest shall be permitted to remove from the Property, temporarily or permanently, any item of personal property, fixture, or appliance, which was present on the Property when it was first made available for use by the Owners, or was purchased by or on behalf of the Association.

### **3.5 INABILITY TO USE PROPERTY DUE TO EMERGENCY REPAIR.**

- A. General Provisions.** When, in the opinion of the Manager, the Property should be taken out of service for repair, the Manager may make the Property unavailable for usage. To the extent reasonably possible, the Manager shall schedule the work for periods that have not been reserved by an Owner under Section 3.1, in which case the Manager shall prevent any Owner from reserving such period. When, in the opinion of the Manager, the Property should be taken out of service during a period that has already been reserved by an Owner, the Manager shall provide Notice to such Owner that the Property will not be available for use. In such instances: (i) the Association shall reimburse the Owner for all out-of-pocket expenses actually incurred by the Owner and his/her Invitees before the Effective Date of the Notice, but shall not reimburse the Owner for any other costs such as substitute accommodations or other alternative travel; and (ii) the reserved time that the Owner was unable to use shall not count against the Owner's annual usage allotment under Subsection 3.1C(1). Each Owner acknowledges that circumstances beyond the control of the Association and the Manager may result in the Owner being deprived of usage to which he/she is otherwise entitled, and consequently receiving less usage than other Owners while still having to pay the same share of expenses. However, each Owner

understands and agrees that he/she will not be entitled to any Assessment reduction, usage credit, payment or other compensation for the lost usage.

- B. Special Provisions Applicable to Owner-Caused Damage.** Notwithstanding anything to the contrary in this Agreement, each Owner shall be fully responsible for the cost of repair or replacement of any damage or loss to the Property or to Association Personal Property that arises as a result of an act or omission by the Owner's Invitee. This shall be true regardless of the relationship (or lack thereof) between such person and the responsible Owner, whether a security deposit has been collected, and whether the responsible Owner is able to recover the loss from such person. In addition, when, the Association is required to reimburse an Owner for out-of-pocket expenses under the preceding Subsection, the responsible Owner shall pay the full cost of such reimbursement.

### 3.6 WRONGFUL POSSESSION AND INTERFERENCE.

- A. Removal of Wrongfully Possessing Party.** For the purposes of this Subsection, the term "Wrongfully Possessing Party" shall mean any Party who is present on the Property at a time when he/she is not authorized. Any Wrongfully Possessing Party shall be subject to immediate removal, eviction or ejection, and shall be deemed to have waived any notice required by law with respect to any such action. In the event that applicable law imposes mandatory, non-waivable requirements or prerequisites to recovery of possession, such requirements or prerequisites shall be deemed to be binding on the Association and incorporated by this reference, and shall be deemed to supersede any conflicting provision of this Subsection. Nevertheless, any of the above-listed remedies that can be used under applicable law, either through a waiver of rights by a Party (which shall automatically be deemed to occur by virtue of such Party having acquired an interest in the Property subject to this Agreement), or through the satisfaction of additional requirements or prerequisites imposed by law, or both, shall be used.
- B. Consequences of Wrongful Possession or Interference.** For the purposes of this Subsection, the term "Wrongfully Possessing Owner" shall mean any Owner whose Invitee is present on the Property at a time when the Owner is not entitled to possession. A Wrongfully Possessing Owner shall pay to the Association, immediately upon demand: (i) all costs and reasonable attorney fees incurred in connection with removal, eviction or ejection of the person(s) wrongfully in possession of the Property; and (ii) fair market vacation rental value of the Property for each day, including the day of surrender, during which the Wrongfully Possessing Owner has effectively prevented use and occupancy by other Owners and their guests. The amount of the fair market vacation rental value shall be determined by the Manager, whose decision shall be final and binding. When the period during which the Property is wrongfully possessed had been reserved by an Owner under Section 3.1, the Association shall pay to such Owner the amount, if any, that the Association successfully collects from the Wrongfully Possessing Owner for each unusable night of the Owner's reservation, net of any collection costs. Any amount collected by the Association under this Subsection that is not so distributed shall be retained by the Association and used to pay operating expenses.

## ARTICLE 4--EXPENSE OBLIGATIONS, ACCOUNTS, AND RECORDS

**4.1 MANDATORY EXPENDITURES.** Each of the costs described below shall be deemed Mandatory Expenditures and shall be allocated equally among the eight Ownership Interests.

- A. Taxes.** Taxes, assessments and fees imposed based upon ownership and/or control of the Property by any governmental authority, and taxes and fees imposed upon the Association, by any governmental agency;
- B. Insurance.** Premiums for insurance as required by Section 4.5;
- C. Necessary Repairs.** Except as otherwise provided in Subsection 3.5B, the cost of all labor and material required to: (i) maintain the Property, and Association Personal Property, in a condition consistent with the standard described in Subsection 2.1B; (ii) correct conditions which immediately endanger the integrity of Property, or the safety or health of the occupants, guests or public; or (iii) comply with any law, rule or regulation adopted by a government agency or owners association with jurisdiction over the Property;
- D. Utilities.** Utility charges for energy, water, sewer, refuse removal, media, communications, and similar services to the Property, subject to adjustment and reconciliation as described in Section 4.3;
- E. Services and Staffing.** Payment of the Manager (including all charges and reimbursements owed under any agreement between the Association and the Manager), and outside professional and service providers reasonably necessary to the operation of the Property and the conduct of Association, excluding payment for cleaning and inspection of the Property as required under Subsection 3.1H; and
- F. Other Expenses.** Other expenses associated with operating the Association and the Property in a manner consistent with the intent and spirit of this Agreement.

Beginning on the date the Property first becomes available for Owner use, the Association shall pay all Mandatory Expenditures. Notwithstanding anything to the contrary in this Agreement, Kaverna shall be responsible to pay all costs associated with the operation of the Property before such date.

**4.2 REPAIR/REPLACEMENT RESERVE.** The Association shall at all times maintain a reasonable reserve (the “Repair/Replacement Reserve”) for anticipated periodic Necessary Repairs to the Property and the Association Personal Property. Contributions to the Repair/Replacement Reserve shall be Mandatory Expenditures allocated equally among the eight Ownership Interests.

**4.3 UTILITY COSTS.** For the purposes of this Section, “Variable Utility Cost” shall mean any charge for energy, water, sewer, scavenger, and similar services to the Property that are determined based on consumption. The estimated amount of Variable Utility Costs for each calendar year shall be included in the Operating Budget and Regular Assessment, allocated equally among the eight Ownership Interests. However, within a reasonable period after the conclusion of each calendar year, the Manager shall determine (i) the total of Variable Utility Costs for such calendar year, and (ii) the number of days during the calendar year that the Property was occupied by each Owner (including such Owner’s Invitees). The Manager shall then reallocate the Variable Utility Costs based upon the relative usage by each Owner and determine the amount (if any) by which each Owner has paid more or less for Variable Utility Costs than he/she should have paid based upon such reallocation. The Manager shall then levy an appropriate Reimbursement Assessment against any Owner who paid too little and, once all such Reimbursement Assessments have been collected, issue a refund or credit to any Owner who paid too much.

**4.4 DISCRETIONARY REPAIRS AND IMPROVEMENTS.** “Discretionary Repairs and Improvements” shall include all maintenance, repairs and improvements that do not fall within the parameters of Subsection 4.1D. The Manager may authorize and undertake minor Discretionary Repairs and Improvements without Owner approval; however, as described in Section 5.5, major Discretionary Repairs and Improvements require Owner approval.

**4.5 INSURANCE.** The Association shall at all times maintain the following insurance coverage: (i) a policy of fire and casualty insurance covering the Property, and for the Association Personal Property, providing coverage for such other risks as are commonly covered with respect to properties similar to the Property in construction, location and use, in an amount equal to the full replacement value of the Property and the estimated value of the Association Personal Property; and (ii) a policy of general liability insurance that include liabilities arising from usage of the Property by all Invitees, with limits of liability not less than the equivalent US\$1,000,000). The Manager shall also have complete discretion to determine whether an insurance claim for any particular loss is submitted, and no Owner shall be fully or partially relieved of any liability or responsibility imposed by this Agreement based on the fact that the Manager chose not to submit such a claim.

**4.6 OPERATING BUDGET; REGULAR AND SPECIAL ASSESSMENTS.**

- A.** For each calendar year, the Manager shall create an “Operating Budget” based upon anticipated Mandatory Expenditures including accumulation of a reasonable Repair/Replacement Reserve. All expenses in the Operating Budget shall be allocated equally among the eight Ownership Interests, and each Ownership Interest’s share of the Operating Budget shall be referred to as its “Regular Assessment”. The Operating Budget and Regular Assessment for the year that the Property is first available for Owner use shall be pro-rated based upon the portion of such year remaining between the date the Property first becomes available for Owner use and the immediately following December 31; the Manager shall distribute a copy of such Operating Budget, including the amount and due date(s) of each Ownership Interest’s Regular Assessment, as a Notice at least 15 days before the due date of the first Regular Assessment. The Manager shall distribute a copy of the Operating Budget for subsequent years, including the amount and due date(s) of each Ownership Interest’s Regular Assessment, as a Notice no later than December 1 of the prior calendar year.
- B.** The Manager may revise the Operating Budget and Regular Assessment if, in the Manager’s opinion, the estimates provided in the then-effective Operating Budget are proving to be inaccurate, in which case the Manager shall distribute a copy of such revised Operating Budget, including the amount and due date(s) of each Ownership Interest’s adjusted Regular Assessment, as a Notice at least 15 days before the due date of the first adjusted Regular Assessment. Alternatively, when the Manager believes that estimated payments by Owners will be insufficient to pay estimated Mandatory Expenditures or other authorized expenditures, the Manager may levy a Special Assessment to cover the anticipated shortfall. Each cost included in the Special Assessment shall be allocated equally among the eight Ownership Interests. The Manager may make the Special Assessment due in one installment, or in multiple installments, but in either case must provide Notice to each Owner at least 30 days before the earliest due date.
- C.** The Owners shall have no power to modify or challenge any Operating Budget, Regular Assessment, or Special Assessment, established by the Manager. Rather, when Owners are dissatisfied with the Manager’s decisions or policies regarding such matters, their recourse shall be to replace the Manager as permitted under Section 5.2. The Owners understand and acknowledge that replacement of Kaverna as Manager will terminate the agreement under which Kaverna guarantees payment of Assessments.
- D.** On the due date fixed by the Manager for the payment of a Regular or Special Assessment, each of the eight Ownership Interests shall be required to pay the Regular or Special Assessment. Kaverna shall pay such Assessments on behalf of any Ownership Interest that has not yet been purchased for the first time. When Kaverna sells such an Ownership Interest, it may recoup some or all of any such Assessment from the purchaser. There shall never be an instance under which a Regular or Special Assessment is levied upon, or due from, fewer than all eight Ownership Interests.

**4.7 REIMBURSEMENT ASSESSMENTS.** When this Agreement or the Rules authorize the imposition of a fine, fee or charge on an Owner in connection with a service consumed by the Owner, damage or loss caused by the Owner, or wrongful possession or usage interference as described in Section 3.6, the Manager may levy a Reimbursement Assessment. The Manager shall provide Notice to the affected Owner stating the amount due from that Owner and the due date, which shall be no sooner than 15 calendar days after the Effective Date of the Notice.

**4.8 PAYMENT OF ASSESSMENTS.** Each Owner shall pay every Assessment (Regular, Special, and Reimbursement) levied against his/her Ownership Interest, together with any other amounts owed to the Association, in full and on time, without any deduction or offset. The Manager, acting on behalf of the Association, may refuse to recognize the transfer of any Ownership Interest that owes money to the Association. Regardless of whether the Manager chooses to exercise such authority, the transferee of an Ownership Interest, or of any portion of an Ownership Interest, shall automatically become fully responsible for payment of the entirety of any amounts owed to the Association by such Ownership Interest, regardless of whether the transferee acquires the interest through purchase, gift, inheritances, marital settlement, or other means. The Manager shall cooperate with inquiries intended to allow a prospective transferee to learn the outstanding obligations of an Ownership Interest.

**4.9 ASSESSMENT GUARANTEE.** As described in the initial Management Agreement between the Association and Kaverna, when an Owner fails to fully pay an Assessment within 30 days of its due date, Kaverna will pay the Assessment to the Association on the Owner's behalf in exchange for the assignment of the Association's collection, enforcement and sale rights. This guarantee shall automatically terminate if the Association replaces Kaverna as Manager or otherwise violates its obligations to Kaverna.

**4.10 ACCOUNT ADMINISTRATION.** The Manager shall maintain one or more depository accounts (collectively "Association Accounts") on behalf of the Association. Association Accounts may be established in the name of the Association and/or the name of the Manager but, in either case, shall be segregated from funds belonging to other associations, the Manager, or Kaverna. The Manager may make disbursements from Association Accounts for expenditures consistent with the operation and purposes of the Association as described in this Agreement without the signature or approval of any Owner. No Owner or Party shall be a signatory to any Association Account, have the right to access funds in any Association Account, or have the right to block any withdrawal or distribution from any Association Account. Without limiting the generality of the preceding sentence, it is expressly provided for emphasis that **NO OWNER SHALL BE ENTITLED TO WITHDRAW ANY FUNDS FROM ANY ASSOCIATION ACCOUNT IN CONNECTION WITH A TRANSFER OF AN OWNERSHIP INTEREST; RATHER, A TRANSFERRING OWNER WHO WANTS TO BE REIMBURSED FOR HIS/HER CONTRIBUTIONS SHALL BE RESPONSIBLE TO COLLECT SUCH REIMBURSEMENT FROM SUCH OWNER'S TRANSFEREE.**

**4.11 FINANCIAL REPORTING.** Within 120 calendar days after the close of each calendar year, the Manager shall prepare and distribute to each Owner an annual report for the previous year, including a year-end balance sheet and a cash flow statement.

**4.12 BOOKS AND RECORDS.** The Manager shall maintain in his/her possession each of the following: (i) a current list of the full name and last known business or residence address of each Party set forth in alphabetical order; (ii) the signed original version of each Ownership Certificate unless a loan made by a Lender is secured by the Ownership Interest, in which case the original Ownership Certificate shall be held by the Lender; (iii) a copy of the formation documents and Operating Agreement of the Association, including all amendments of either; (iv) copies of the annual reports described in Section 4.11 for the three most recent calendar years; (v) the Association's books and records as they relate to the internal affairs of the Association for at least the current and past three calendar years; and (vi) all Party Certifications. Upon the request of any Owner, the person holding these records shall allow such Owner to inspect and copy any of them. Any request, inspection or copying by an Owner under this Section may be made by a Party or by a Party's agent or attorney.

## ARTICLE 5--MANAGEMENT

### 5.1 POWER AND AUTHORITY OF MANAGER.

- A.** Except as explicitly otherwise provided in this Agreement, all of the activities of the Association shall be conducted, and all powers exercised, by and under the direction of the Manager. No Owner vote or approval is required for any Association decision or action unless this Agreement or applicable law expressly require an Owner vote or approval.
- B.** Without limiting the generality of the preceding sentence, it is expressly provided for emphasis that the Manager and its affiliates or delegees shall be the only persons authorized to: (i) legally bind the Association to contracts; (ii) represent the Association in any negotiation or legal proceeding; (iii) receive bills and notices on behalf of the Association; (iv) access and use Association funds; and (v) undertake collection of funds owed to the Association by any person, including Obligations, and exercise all rights and remedies of the Association, including lien and sale rights relating to the Owner's Ownership Interest, as more fully described in Section 8.5.
- C.** Notwithstanding anything to the contrary in this Agreement, the Manager shall also have the power to amend this Agreement, without obtaining the consent or approval of any Owner to: (i) attempt to ensure that the Ownership Interests are not deemed regulated investment securities; (ii) satisfy requirements of any lender providing acquisition financing to the Association or to an Owner; or (iii) remedy clerical mistakes, omissions or ambiguities, provided such changes do not effectively undermine any substantive provision of the Agreement.
- D.** Notwithstanding anything to the contrary in this Agreement, the Manager shall also have the power to amend this Agreement in a manner that would change the way usage of the Property is allocated and reserved, but only if the change would not cause any Ownership Interest to be treated differently from the others. Any such amendment shall become effective on the date selected by the Manager, provided such date shall be no sooner than 120 days after a Notice of the amendment, stating its effective date and

the details of the usage change, is provided to all Owners. If the Owners replace the Manager under Section 5.2 prior to the proposed effective date of the usage change, then the usage change shall not take effect.

- E. In the event of a public or private sale of an Ownership Interest following Default, the Manager shall have the power to purchase the Ownership Interest for its own account by making a credit bid in the amount of the Owner's delinquencies, and then to resell such interest for its own account at a price of its choosing subject to the provisions of this Agreement.
- F. The Manager may also force and/or undertake a sale of the Property under certain limited circumstances as more fully described in Section 8.7.
- G. Any third party may rely on a certificate of the Manager as conclusive evidence that the Manager's execution of any instrument has been duly authorized by the Association, and that such instrument constitutes the legally binding obligation of the Association. No Person dealing with the Association will be required to investigate the authority of the Manager or secure the approval or confirmation by any Owner of any act of the Manager in connection with the business of the Association.

**5.2 REPLACEMENT OF MANAGER.** The Association may replace the Manager provided it satisfies each of the following requirements: (i) there is a person willing to agree in writing to assume all of the responsibilities imposed upon the Manager by this Agreement for a term of at least one year; (ii) the Owner Representatives for at least six Ownership Interests approve both the replacement Manager and the written contract under which such Manager will serve; (iii) each lender holding financing secured by either a lien on the Property or a lien on an Ownership Interest agrees in writing to approve the replacement Manager, and to release the previous Manager from any obligation that it then has to the lender; (iv) the Owner Representatives for at least six Ownership Interests sign a document that, on behalf of the Association, fully and forever releases the Manager from all management and guarantee obligations that it has under this Agreement or under any related document; and (v) the Owner Representatives for at least six Ownership Interests sign a written Notice declaring that all preconditions imposed by this Section have been satisfied, and provide such Notice to the Manager not less than 90 days before the date on which the Manager replacement will take effect.

**5.3 DELEGATION OF MANAGER DUTIES AND POWERS.** Notwithstanding anything to the contrary in this Agreement, the Manager shall have the absolute right to delegate any of its powers and duties under this Agreement to other persons (including entities), any of whom may be affiliated with the Manager, and who may serve as professionals, independent contractors and/or employees, provided that the Manager retains the power to hire and fire each such person. Although no such delegation shall absolve the Manager from any obligation imposed upon the Manager by this Agreement or any other agreement between the Association and the Manager, the Manager shall not become responsible for any loss, damage or liability resulting from negligence or intentional misconduct by any such delegee.

**5.4 MANAGER COMPENSATION.** The Association shall compensate the Manager in accordance with the Management Agreement. All payments required under such agreement are Mandatory Expenditures. Without limiting the generality of the preceding sentences, it is expressly provided that payments to persons (including entities) to whom the Manager has delegated duties, including affiliates of the Manager, and professionals, independent contractors, and employees of the Manager or any delegee, are also Mandatory Expenditures.

**5.5 ACTIONS REQUIRING OWNER VOTE.** One of the primary purposes of the Association's organizational structure is to shift the responsibility for managing and operating the Association and the Property from the Owners to a Manager meeting Kaverna's high standards of experience and professionalism. To ensure that this purpose is accomplished throughout the existence of the Association, and thereby protect those Owners who have acquired their Ownership Interests believing that the Property would be professionally operated according to Kaverna's consistently high standards, this Agreement is designed to prevent any Owner individually, or any subgroup of Owners collectively, from interfering with the Manager's operation or control of the Association or the Property. Parties who are uncomfortable with relinquishing control and delegating a high level of autonomy to the Manager are advised not to acquire an interest in the Association or, if they should receive an interest through gift or inheritance, to sell such interest immediately. Those few matters over which Owners are entitled to exercise control are listed below; no matter not listed below shall be within the power of the Owners.

- A. The Owners may replace the Manager provided they first satisfy each of the requirements imposed by Section 5.2.
- B. The Owners may change the Peak Usage Periods and/or the annual per-Owner limit on Peak Usage Days (both as defined in Subsection 3.1C(1)) with approval by the Owner Representatives for all eight Ownership Interests.
- C. Discretionary Repairs and Improvements (as defined in Section 4.4) costing more than the equivalent of US\$5,000 must be approved by the Owner Representatives for at least five Ownership Interests. Discretionary Repairs and Improvements costing more than 1% of the combined total purchase prices paid by all then-current Owners must be approved by the Owner Representatives for all eight Ownership Interests.
- D. Except as otherwise provided in Section 7.1, a sale of the Property must be approved by the Owner Representatives for all eight Ownership Interests.
- E. Any loan secured by the Property must be approved by the Owner Representatives for all eight Ownership Interests.
- F. As described in Subsection 5.1C and 5.1D, the Manager has limited power to amend this Agreement without Owner consent or approval. Other amendments require Owner approval as follows.

- (1) Except as provided in Subsection 5.1D, changing the method of allocating Property usage rights to Owners in a manner that would fundamentally diminish the usage rights afforded each Ownership Interest, or treat any Ownership Interest different from others, must be approved by the Owner Representatives for all eight Ownership Interests. Any other change to the provisions of Section 3.1 must be approved by the Owner Representatives for at least five Ownership Interests.
- (2) Changing the method of allocating any expense among the Owners must be approved by the Owner Representatives for all eight Ownership Interests.
- (3) Changing any provision of this Agreement in a way that would effectively diminish the power and authority of the Manager must be approved by the Owner Representatives for all eight Ownership Interests.
- (4) Changing any provision of this Agreement in a way that would effectively change the number of Ownership Interests required to approve or disapprove an action must be approved by the number of Owner Representatives that are needed to approve or disapprove the action.
- (5) Except as otherwise provided above, this Agreement may be amended with the approval the approval of Owner Representatives for five Ownership Interests plus the approval of the Manager.

**5.6 PROCEDURE FOR OWNER VOTE.** All Owner decisions shall be made by written ballot. Should any Owner Representative, or the Manager, wish to solicit a vote on a matter over which Owners are entitled to exercise control, the Owner Representative or Manager shall prepare a written ballot stating clearly and unambiguously the matter to be voted upon, allowing each Owner Representative to indicate whether he/she is voting yes or no on the matter, and providing a deadline for return of votes that is no sooner than 30 days after the Effective Date of the Notice transmitting the ballot. When the ballot is prepared by an Owner Representative, he/she shall provide the ballot as a Notice to the Manager and, if the ballot complies with the requirements of this Section and Section 5.5, the Manager shall promptly circulate the ballot as a Notice to each Owner Representative. When the Manager wishes to solicit an Owner vote on its own initiative, the Manager shall similarly circulate the ballot as a Notice to each Owner Representative. Owner Representatives shall return their marked ballots as a Notice to the Manager, who shall provide a Notice to each Owner describing the result of the vote as soon as reasonably possible after the ballot return deadline.

**5.7 NO COMPENSATION FOR SERVICES.** Under no circumstances shall a Party be entitled to any reimbursement from the Association or from another Party for any expenditure of time or money related to the Property or the Association unless such expenditure has been specifically authorized by this Agreement or explicitly approved by the Association as provided in this Agreement.

**5.8 NO WORK BY OWNERS.** No Owner or Party may perform repairs or alterations of any kind at the Property, including “minor” repairs, without the explicit advance approval of the Manager.

**5.9 OWNER COMMUNICATION.** All Parties agree that, in general, communication between Owners and Parties shall be handled by the Manager. Specifically, when an Owner Representative wishes to communicate orally or in writing with another Owner, such Owner Representative shall provide a request to the Manager, and the Manager shall then facilitate the communication in the manner that the Manager deems appropriate. When any Party (other than an Owner Representative) wishes to communicate orally or in writing with another Party that is not part of the same Group, such Party shall relay his/her communication request through his/her Owner Representative, who shall then proceed as described in the preceding sentence. The provisions of this Section shall not apply to communications relating to Manager replacement under Section 5.2.

## **ARTICLE 6—TRANSFERS OF OWNERSHIP INTERESTS**

### **6.1 TRANSFER RESTRICTIONS AND REQUIREMENTS.**

- A. Since membership in the Association involves both an ongoing financial commitment and a shared use of the Property, the Parties have agreed to impose certain controls over the transfer of Ownership Interests and the admission of Owners as described in this and the following Sections. Accordingly, no Party shall transfer any portion of an Ownership Interest except as provided in this Agreement. Any other purported transfer is void and will not be recognized by the Association.
- B. Because the agreed structure for the allocation of usage rights to the Property is a fundamental element of this Agreement, and because such structure assumes a particular division of usage rights, the Parties have agreed to prohibit any fragmentation of Ownership Interests that would create a situation under which the Association would have more than the eight Ownership Interests authorized by this Agreement. If a portion of an Ownership Interest is transferred (either intentionally or by reason of death, divorce, incapacity, or other cause), regardless of any written or oral arrangement that may exist among some or all of the persons holding any rights to the Ownership Interest, all such persons shall be treated as a Group as described in Section 2.3.

**6.2 MARKET SALE RESTRICTIONS.** No Owner may advertise an Ownership Interest for sale until he/she has held such Ownership Interest for at least 12 continuous months. An Owner who wishes to advertise an Ownership Interest for sale (a “Reselling Owner”) must comply with the requirements of this Section. Before accepting any purchase offer, the Reselling Owner shall provide to the Manager who shall, in turn, provide to Kaverna, and to each Owner Representative, a “Sale Notice” that describes the terms of the offer and is attached to a copy of the offer. Kaverna and each Owner, shall have the right to purchase on the terms and conditions stated in the Sale Notice. Kaverna,

and any Owner Representative, may exercise this purchase right by providing Notice to the Manager of the intent to purchase (a “Notice of Intent”) within five calendar days of the Effective Date of the Sale Notice. If Kaverna provides a Notice of Intent, it shall be the purchaser. Otherwise, if more than one Owner Representative provides a Notice of Intent, the Reselling Owner shall determine the purchaser. Any Notice of Intent shall create a legally binding obligation to complete the purchase on the terms and conditions stated in the Sale Notice within 60 days of the Effective Date of the Sale Notice. If no Owner Representative timely provides a Notice of Intent, the Reselling Owner may generally proceed with the sale without giving any further Notices or purchase rights; provided, however, that if there is a renegotiation that results in a price reduction of 5% or more, the Reselling Owner may accept such reduction only subject to the purchase rights of Kaverna and the other Owners, and must then restart the procedure described above beginning with a new Sale Notice. A sale or other transfer that has not resulted (directly or indirectly) from advertising or promotion shall not be subject to the requirements of this Section.

### **6.3 TRANSFER APPROVAL AND SIGNATURE REQUIREMENT.**

- A.** The provisions of this Subsection are intended to protect the Association, the Manager, and the Parties, from liability that might arise if a criminal became a Party, or if a person acquired an interest using funds ill-gotten or concealed funds, or if an Ownership Interest were acquired by someone who is unlikely to be a reliable financial partner. Before completing any voluntary transfer of all or any portion of an Ownership Interest, the Owner Representative for such Owner must provide to the Manager all information that the Manager reasonably requests concerning the proposed transferee, including identity, legal residence, source of funds (if any) to be used for the interest being acquired, income, and financial resources. Within seven calendar days of receipt of all requested information, the Manager shall provide Notice to the Owner Representative of the approval or disapproval of the Transfer and, in the case of disapproval, of the basis for such disapproval.
- B.** Each transferee of all or any portion of an Ownership Interest must sign an “Assumption and Release of Obligation” either in the form attached as Exhibit C, or in such other form as has been approved by the Manager, one or more Party Certification(s) as required by this Agreement, and any other document that the Manager requires to be signed by new Owners as of the date that the transfer occurs. It shall be the responsibility of the transferor to ensure that the signature requirements of this Subsection are satisfied. Each transferor shall be liable for all losses, damages, costs and expenses, including attorney fees, resulting from such transferor’s failure to ensure that his/her transferee has executed all documents required by this Subsection either prior to, or contemporaneously with, the transfer. This Subsection shall not be deemed to impose any responsibility or liability on a person whose interest has been transferred as a result of such person’s own death or judicially declared incapacity, but shall be deemed to impose responsibility and liability on any successor to such person, including any trustee, receiver, executor, conservator, or similar person.
- C.** A transfer made in violation of Subsections A or B shall not be recognized as valid by the Association, meaning: (i) the intended transferee shall have no rights under this Agreement, and no rights relating to the Property or the Association; and (ii) the Manager and the Association shall consider the intending transferor to still hold each of the purportedly transferred rights and obligation.

**6.4 CAPITAL GAINS AND TRANSFER TAXES.** When all or any interest in an Ownership Interest is transferred, regardless of whether the transfer is voluntary or involuntary, the Owner of the Ownership Interest shall be required to pay, at the time of the transfer, any and all taxes and fees due as a result of the transfer. Without limiting the generality of the preceding sentence, it is expressly provided that the requirements imposed by it shall apply in the case of a sale, a gift, an inheritance, and a forced transfer of any type following a default under this Agreement or under any loan secured by an Ownership Interest. The Owner of the Ownership Interest fully or partially transferred shall be liable for all losses, damages, costs and expenses, including attorney fees, incurred by the Association or any Owner, resulting from the failure to pay all such taxes and fees. In the case of a transfer resulting from the death of a Party, the liability imposed by this Section shall be imposed on the transferee. The responsibilities assigned by this Section to a transferor may not be delegated or assigned to an employee or agent in a manner that would relieve such transferor of liability under this Section. A transferor and a transferee may negotiate an arrangement under which some or all of the costs of a transfer will be paid by the transferee, provided that the transferor shall remain responsible for enforcing this arrangement in the event the transferee does not perform. The Manager, acting on behalf of the Association, may refuse to recognize the transfer of any Ownership Interest unless the Manager receives documentary evidence that all taxes and fees have been paid.

## **ARTICLE 7—SALE OF ENTIRE PROPERTY AND DISSOLUTION**

### **7.1 FORCED SALE OF THE PROPERTY.**

#### **A. Pre-Conditions For Forced Sale.**

- (1)** A sale of the entire Property as described in this Section 7.1 may be triggered by the Manager at any time, if: (i) there are simultaneous Owner Defaults as described in Section 8.7, (a “Default-Triggered Sale”); or (ii) there has been sudden and unexpected physical damage to the Property for which the cost of restoration and/or repair would require a Special Assessment on each Ownership Interest exceeding 20% of the purchase price paid by the then-current Owner of the Ownership Interest (a “Damage-Triggered Sale”).
- (2)** In addition, a sale of the entire Property as described in this Section 7.1 may be triggered by the affirmative votes of Owner Representatives for five Ownership Interests (an “Owner-Triggered Sale”), but only if each of the following prerequisites are satisfied.

- (a) The vote relating to the potential Owner-Triggered Sale must occur (i) at least 60 days after the most recent previous vote on an Owner-Triggered Sale, and (ii) at least 36 months of after the most recent Market Sale of an Ownership Interest (as defined in Section 6.2);
- (b) The Owner Representative soliciting a vote on an Owner-Triggered Sale must meet each of the following requirements: (i) during the preceding six months, he/she cannot have solicited a vote for an Owner-Triggered Sale; (ii) during the immediately preceding 12 months, he/she must have made a bona fide effort to sell each of his/her Ownership Interests, with such effort to include active and continuous marketing to the general public and, if Manager is offering Marketing services, listing the interest(s) for sale through the Manager; and (iii) during the immediately preceding 12 months, and at the time the Owner-Triggered Sale vote is taken, he/she cannot hold an Advance-Planned Reservation (as defined in Subsection 3.1D) for a Usage Block that begins more than 30 days after the reservation is made.

#### **B. Initiating Forced Sale.**

- (1) The Manager shall commence a Default-Triggered Sale by providing to each Owner Representative a Notice of the Manager's intention to commence a forced sale, including with such Notice documentation establishing satisfaction of the preconditions described in Section 8.7.
- (2) The Manager shall commence a Damage-Triggered Sale by providing to each Owner Representative a Notice (the "Damage-Triggered Sale Notice") of the Manager's intention to commence a forced sale, including with such Notice the estimated cost of restoration and/or repair and the basis for such estimation. The Damage-Triggered Sale Notice shall state that the Owner Representative for any other Owner desiring to sell the Property must provide to the Manager a Notice of such Owner's desire within 15 days of the Effective Date of the Damage-Triggered Sale Notice. If the Owner Representative for any Owner timely provides such a Notice, such Owner shall then be deemed an "Exiting Owner" under Subsection E.
- (3) Upon receipt of ballots from Owner Representatives for five Ownership Interests, and confirmation that each of the prerequisites described in Subsection A(2) have been satisfied, the Manager shall commence an Owner-Triggered Sale by providing to each Owner Representative a Notice (the "Owner-Triggered Sale Notice"). Each Owner who cast a vote in favor of the Owner-Triggered Sale shall be deemed an "Exiting Owner" under Subsection E.

**C. Determining Property Value.** To determine the Fair Market Value of the Property, the Manager shall retain four licensed real estate agents meeting the following requirements: (i) having sold at least three homes similar to, and located within a 20-mile radius of, the Property within the immediately preceding three years; (ii) agreeing in writing to complete a comparative market analysis including supporting documentation within 10 calendar days of retention. Each real estate agent shall estimate the value of Property if sold in a single transaction. The valuations shall be based upon the conditions that exist at the time of the valuations. The Manager shall disregard the highest and lowest valuation, and the Fair Market Value shall be the average of the two remaining valuations. Upon determination of the Fair Market Value, the Manager shall provide to each Owner a "Notice of Valuation" stating such value and including the supporting data and calculations.

**D. Prevention of Default-Triggered.** The Owners may prevent a Default-Triggered Sale by fulfilling each of the following requirements: (i) for each Ownership Interest then in Default, securing a written commitment under which a person or persons agree to acquire the Ownership Interest and assume all of the obligations of the Ownership Interest under this Agreement; (ii) paying to the Manager all outstanding amounts advanced by the Manager, together with any accrued interest, together with reimbursement of all costs and fees incurred by the Manager in connection with fulfilling or exercising its obligations and rights under the Management Agreement; (iii) fully repaying any obligation for which the Manager is providing any payment or performance guarantee; and (iv) fully and forever releasing the Manager from all remaining obligations under this Agreement, the Management Agreement, and any other agreement under which Kaverna is obligated to provide services or payment or performance guarantees of any kind on behalf of the Association or any Owner. Owners may prevent the marketing of the Property under Subsection F by fulfilling each of the above requirements within 30 days following the Effective Date of the Notice of Valuation. After the commencement of marketing, Owners may prevent a Default-Triggered Sale by fulfilling each of the above requirements at any time before the Association becomes obligated to sell the Property under a contract between the Association and a third party.

**E. Prevention of Damage-Triggered Sale or Owner-Triggered Sale.** The Owners may prevent a Damage-Triggered or Owner-Triggered Sale by purchasing, or arranging for the purchase of, the Ownership Interests of each of the Exiting Owners. The "Buyout Price" for each Ownership Interest shall be that amount that the Exiting Owner would have received from a sale of the Property under Section 7.3 at the lesser of either the Fair Market Value established under Subsection C or the reduced offering price established under Subsection F. When calculating the amount that the Exiting Owner would have received, there shall be deducted any expenses that would have been paid in a liquidation, including estimated costs of sale of the Property, costs of paying all the known debts and liabilities of the Association, amounts owed to the Manager, and costs of dissolution. Owners may prevent the marketing of the Property under Subsection F by providing to each Exiting Owner, within 30 days following the Effective Date of the Notice of Valuation, an unconditional offer to purchase the Exiting Owner's Ownership Interest at the full Buyout Price, with full payment due, in cash, not later than 60 days from the Effective Date of the Notice of Valuation. After the commencement of marketing, Owners may prevent a Damage-Triggered or Owner-Triggered Sale by providing such an unconditional offer to each

Exiting Owner at any time before the Association becomes obligated to sell the Property under a contract between the Association and a third party.

**F. Marketing and Sale of the Property.** As soon as reasonably possible following the expiration of the marketing prevention periods described in Subsections D and E, the Manager shall list the Property for sale at its Fair Market Value with one of the real estate agents whose valuation was averaged by the Manager to determine Fair Market Value under Subsection C. If the Property is not subject to a ratified purchase contract on the 90<sup>th</sup> day that a particular offering price has been in effect, the offering price shall be reduced 5%. If the Property has not been sold at the conclusion of the term of the first listing agreement, the Manager shall re-list the Property with the other of the two real estate agents whose valuation was averaged by the Manager to determine Fair Market Value under Subsection C; and (ii) if the Property has not been sold at the conclusion of the term of the second listing agreement, the Association shall re-list the Property with an agent meeting the valuation requirements in Subsection C as selected by the Manager. The Manager shall accept any purchase offer that (i) is at or above the then-current offering price, (ii) yields all proceeds to seller in cash, and (iii) contains no contingencies or demands that are not in accordance with local custom. In the event multiple offers simultaneously meet this requirement, the Manager shall select the most advantageous offer in the Manager's sole and absolute discretion.

**G. Costs of Default-Triggered Sale and Related Disputes.** For the purposes of this Subsection, the term "Manager Costs" shall be deemed to refer to amounts paid by the Manager from its own funds (rather than Association funds). To the extent that the Manager has incurred Manager Costs related to enforcing its right to undertake a Default-Triggered Sale, or to conducting a Default-Triggered Sale, including costs and expenses arising from a dispute with one or more Owner, all such costs and expenses shall be deemed to be a debt of the Association to the Manager. Such debt shall accrue at the annual rate of 8%, or the maximum rate allowed by law, whichever is less. Notwithstanding anything to the contrary in this Agreement, such debt, including interest, shall be repaid to the Manager in full before any proceeds are distributed to any Owner under Section 7.3.

**7.2 DISSOLUTION.** The Association shall dissolve only upon either sale of the Property or the entry of a decree of judicial dissolution. No other event shall trigger dissolution. The Association shall give written notice of the commencement of the dissolution to each of its known creditors. After determining that all the known debts and liabilities of the Association have been paid or adequately provided for, the remaining assets shall be distributed to the Owners, allocated among them as described in Section 7.3.

**7.3 DISTRIBUTION OF PROCEEDS.** Except as otherwise specifically provided in this Agreement, no income or proceeds from the operation or sale of the Property shall be distributed to any Owner unless and until the Association has been dissolved under Section 7.2. Assets remaining at the conclusion of the dissolution process shall generally be allocated equally among the eight Ownership Interests. Absolutely no other basis for allocation shall be used or taken into account, including the amount an Owner paid for such Owner's Ownership Interest. Any proceeds allocated to a particular Ownership Interest under this Section shall be offset against any outstanding obligations of the Ownership Interest under this Agreement. Following such offset, the balance shall be distributed to such Owner or, in the event the Ownership Interest is the subject to indebtedness to a Lender, to such Owner and his/her Lender jointly.

## ARTICLE 8—ENFORCEMENT

**8.1 ADOPTION OF RULES.** The Manager may adopt any Rule related to the management and use of the Property and the implementation of this Agreement, provided that such Rule does not materially conflict with this Agreement or effectively and materially undermine or circumvent a right or responsibility created by this Agreement. A Rule may establish a fine or penalty for a violation of this Agreement or of a Rule. At least 30 calendar days before a Rule or Rule change takes effect, the Association shall provide Notice, along with a complete copy of the Rule or Rule change, to each Owner.

**8.2 ENFORCEMENT POWERS.** The Manager shall exercise prudent business judgment in determining whether, when and how to enforce this Agreement and the Rules. A failure by the Manager to enforce any provision of this Agreement or the Rules on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation. Although each Owner shall generally have a right of action against the Association for failure to comply with this Agreement, the Rules, or applicable law, no such action may be based upon the Manager's decision regarding whether, when and how to enforce this Agreement and the Rules. No Party or Owner shall have a right of action against another Party or Owner for failure to adhere to this Agreement or the Rules.

### 8.3 ENFORCEMENT PREREQUISITES.

**A.** When the Manager intends to take enforcement action against an Owner (the "Violating Owner"), the Manager shall provide to the Owner a "Notice of Possible Enforcement Action" that shall include: (i) a description of the alleged nonpayment or other violation; (ii) an itemized list of payments required, and other actions (if any) that the Violating Owner must take, that would "Cure" the alleged violation and avoid enforcement action; and (iii) a description of the proposed enforcement actions including, where applicable, a statement that the Violating Owner's Ownership Interest will be subject to public or private sale under the provisions of Subsection 8.5C. The Violating Owner must then demonstrate to the Manager, with verifiable written records, within 14 calendar days from the Effective Date of the Notice of Possible Reimbursement Assessment, that he/she has either: (i) performed each of the Cure actions described in the Notice of Possible Enforcement Action; or (ii) paid, under protest, the full outstanding balance of any Obligation and initiated the dispute resolution procedures described in Section 9.3. TO ENSURE THAT THE

ASSOCIATION ALWAYS HAS THE FUNDS IT NEEDS TO PAY ITS BILLS AND MAINTAIN THE PROPERTY, NO OWNER IS PERMITTED TO DELAY PAYMENT OF A DISPUTED OBLIGATION UNTIL AFTER THE DISPUTE IS RESOLVED; RATHER, AN OWNER WHO WISHES TO DISPUTE THE AMOUNT OR PROPRIETY OF AN OBLIGATION MAY ONLY DO SO AFTER PAYING THE FULL OUTSTANDING BALANCE. The Owner may then seek reimbursement of the disputed amount through the dispute resolution process.

- B. If the Violating Owner neither timely performs all Cure actions, nor timely initiates the Section 9.3 dispute resolution procedures, the Owner shall be deemed to be in Default beginning on the 14<sup>th</sup> calendar day after the Effective Date of the Notice of Possible Enforcement Action. The Manager may then pursue any or all of its Default remedies, and such Owner shall have neither the opportunity to Cure nor the opportunity to invoke the Section 9.3 dispute resolution procedures. In addition, beginning on the 15<sup>th</sup> day after the Effective Date of the Notice of Possible Enforcement Action, simple interest shall begin to accrue on the outstanding balance owed. The interest shall accrue at the annual rate of 8%, or the maximum rate allowed by law, whichever is less.
- C. Initiating the Section 9.3 dispute resolution procedures (after paying any disputed Obligation under protest) triggers a “Stay” of further enforcement actions pending the outcome of the dispute resolution process. If the Violating Owner commits an additional violation while a Stay is in place for the original violation, whether the subsequent violation involves the same or different acts or omissions: (i) the Manager may respond to the new violation as if no Stay were in effect; (ii) the Violating Owner shall receive a Stay with regard to the new violation only if the Violating Owner agrees to submit it to the already pending dispute resolution process; and (iii) the Stay of the new violation shall end simultaneously with the Stay of the original violation. All Stays automatically end if the Violating Owner ceases to actively pursue and/or participate in the dispute resolution process in a manner clearly indicating that the Violating Owner wishes to conclude the dispute resolution process as quickly as possible.
- D. No provision of this Section 8.3 shall affect or impair the ability of any Lender to take any enforcement actions with respect to its borrower under its loan documents.

**8.4 EFFECT OF PAYMENT UNDER ASSESSMENT GUARANTEE.** For the purposes of this Section, the term “Guarantor” shall mean any person (including an entity) who has agreed to guarantee the payment of Owner Assessments. The Guarantor may be Kaverna under the initial Management Agreement, a successor Manager, or any other person (including an entity). Notwithstanding anything to the contrary in this Agreement, when a Guarantor pays any portion of an Owner’s Assessment, or any interest that has accrued on such Assessment, such payment shall automatically cause a total and unconditional assignment by the Association to the Guarantor of each of the Association’s enforcement rights against the Owner, including the right to force a private sale as described in Subsection 8.5C. The automatic assignment shall become fully effective without the Manager or any Owner signing any other written document describing the assignment. The Owner on whose behalf the Assessment was paid shall continue to be deemed in Default even after the Guarantor has paid the Assessment, and interest shall continue to accrue (as described in Subsection 8.3B) to the same extent as it would if the Guarantor had not paid.

#### **8.5 DEFAULT.**

- A. **Special Definitions.** The following initially capitalized nouns have the meanings set forth below when used in this Section 8.5: (i) “Collateral” means, with respect to any Owner, all right, title and interest of such Owner in the Association; and (ii) “Defaulting Owner” means an Owner who is in Default.
- B. **Loss of Usage Rights.** Upon Default, the Defaulting Owner shall automatically lose all usage rights for the Property, meaning that such Owner shall have no right to make usage reservations and that all usage reservations then held by such Owner shall be deemed cancelled.
- C. **General Rights and Remedies.** Following Default, the Manager shall be immediately entitled to any remedy described in this Agreement or available at law or equity, serially or concurrently. The pursuit of any of these remedies is not a waiver of the right to subsequently elect any other remedy. The “Stay”, “Cure”, and “pay under protest” procedures described in Section 8.3 are intended to be the exclusive means for an Owner to contest or suspend an alleged nonpayment or other violation; if an Owner fails to avail itself of these procedures, such Owner shall not be entitled to dispute or contest the violation underlying the Default, or to suspend or challenge the imposition of the Default remedies.
- D. **UCC Sale Rights.** In addition to the other rights and remedies available to it under applicable law, the Manager may exercise in respect of the Defaulting Owner’s Collateral all the rights and remedies of a secured party on default under the applicable version of the Uniform Commercial Code. In addition, the Manager may, without Notice except as specified in this Subsection, sell the Defaulting Owner’s Collateral at public or private sale, at the Manager’s office or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Manager may deem commercially reasonable. Each Party agrees that, to the extent Notice of sale shall be required by law, 10 calendar days’ Notice to the Owner Representative for the Ownership Interest of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Manager shall not be obligated to sell any Collateral regardless of Notice of sale having been given. Unless prohibited from doing so by applicable law, the Manager shall have the power to purchase the Ownership Interest for its own account by making a credit bid in the amount of the Owner’s delinquencies, and then to resell such interest for its own account at a price of its choosing (subject to the provisions of this Agreement relating generally all sales of Ownership Interests). The Manager may adjourn any public or private sale by

announcement made at the originally fixed time and place, and such sale may, without further Notice, be made at the time and place to which it was so adjourned.

## 8.6 SECURITY INTEREST.

- A. Security Characterization.** Notwithstanding anything to the contrary in the formation documents of the Association, this Agreement, or any other document related to this Agreement, it is the express intention of the organizers of the Association, and of all Parties, that each Ownership Interest be deemed a “security” as that term is used in Article 8 of the Uniform Commercial Code (“Article 8”) for the purposes of applying Article 8, including but not limited to, the methods for perfecting a security interest and Lien upon an Ownership Interest. Notwithstanding the intention that each Ownership Interest be deemed a “security” under Article 8, the Association and all Parties intend and acknowledge that no interest in the Association shall be deemed a security for purposes of application of federal or state securities regulations because, among other reasons: (i) the Association is prohibited by this Agreement from engaging in rental of the Property or in any other business activities; (ii) the Association’s only revenue shall be the Assessments and fees paid by Owners; and (iii) each Party has agreed that he/she has not acquired his/her interest in the Association with the expectation of obtaining an investment return from the operation of the Association or from resale of the Property.
- B. Creation of Security Interest.** Each Owner hereby pledges and assigns to the Association and grants to the Association a security interest in and Lien upon all right, title, and interests of such Owner in and to the Owner’s Collateral, to secure the Obligations of such Owner to the Association. In addition, to the extent applicable law requires each Party within a Group to grant a security interest in its interest in an Ownership Interest in order to perfect the Association’s security interest in such Ownership Interest, each such Party hereby grants to the Association a security interest in and Lien upon all right, title and interest of such Party in and to the Party’s Collateral. Each Party hereby represents and warrants as follows.
- (1) All of the representations and warranties set forth in the Party’s Party Certification are true and correct.
  - (2) The Party intends and understands that this Agreement creates a valid and perfected security interest for the Association in the Collateral of the Owner(s) and Ownership Interest(s) in which such Party holds an interest, securing payment of such Owner’s Obligations to the Association. The Party intends and understands that the security interest for the Association in the Collateral associated with such Ownership Interest will be first in priority.
  - (3) As far as the Party is aware, no authorization, approval or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required either (i) for the grant by the Party of the first priority security interest granted hereby or for the execution, delivery or performance of this Agreement by that Party, or (ii) for the perfection of or the exercise by Association of its rights and remedies.
  - (4) From time to time, the Party will Promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Manager may request, in order to perfect and protect any security interest granted hereby or to enable Association to exercise and enforce its rights and remedies hereunder with respect to any Collateral. The Party hereby authorizes the Manager to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral.
  - (5) The Party shall not change the Party’s name, primary residence, or if the Party is an organization, its jurisdiction of organization or its principals, without providing to the Manager with 10 business days’ prior Notice thereof. If the Party does change any of the foregoing, the Party shall Promptly provide evidence of any such change to the Manager.
  - (6) The powers conferred on the Association under this Subsection B and Subsection 8.5C are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Association shall have no duty as to the Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to the Collateral.
  - (7) The granting of the Lien creates a continuing security interest in the Collateral and shall (i) be binding upon the Party, his/her successors and assigns, and (ii) inure to the benefit of the Association and its successors, transferees and assigns.

**8.7 PRE-CONDITIONS FOR DEFAULT-TRIGGERED SALE.** The Manager may initiate a Default-Triggered Sale if: (i) three or more Ownership Interests have simultaneously been in Default for a period of 90 days; or (ii) the Association, the Manager, Kaverna, or any other person (including an entity), has been simultaneously holding, for a period of 90 days, three or more Ownership Interests acquired using the Default enforcement provisions of this Agreement; or (iii) three or more Ownership Interests have been simultaneously held, for a period of 90 days, by a Lender or Lenders who acquired such Ownership Interests through the default provisions of loan documents.

**8.8 LENDER PROTECTION.** The terms and conditions of this Section 8.8 shall supersede any contrary provisions contained anywhere in this Agreement and the Rules to the extent that they conflict with the provisions of this Section. For the purposes of this Section, “Lender Enforcement Action” means any judicial or non-judicial process through which a Lender enforces its Lien on an Ownership Interest.

- A. Subordination.** The Association subordinates its Lien in each Ownership Interest to any valid and perfected Lien on such Ownership Interest in favor of a Lender. No action taken by the Association or the Manager to enforce an obligation imposed by

this Agreement, including public or private sale under Subsection 8.5C, shall diminish, undermine or in any way affect the rights of any Lender.

- B. Foreclosure Rights.** Each Lender shall have the right to pursue a Lender Enforcement Action provided that, as a condition of consummating any transfer pursuant to a Lender Enforcement Action, the transferee executes all documents that the Association requires to be signed by new Owners as of the date the transfer occurs. A transferee in a Lender Enforcement Action shall be entitled to all of the rights allocated by this Agreement to the Ownership Interest the transferee acquires, and such rights shall not be diminished by any prior or subsequent act or omission of the prior Owner. The transferee's title to the Ownership Interest shall be free of any Liens or claims of the Association that existed immediately prior to the transfer, and shall be obligated to pay only Assessments or other Obligations that become due and payable after the date of transfer. However, to the extent that the Lender that pursued the Lender Enforcement Action received proceeds from the transferee that exceed the amounts owed to such Lender (including attorney fees and other collection and enforcement costs), such Lender shall use such proceeds to satisfy any unpaid Obligations of the Ownership Interest, and shall not retain or distribute any portion of such excess proceeds unless and until all such Obligations have been satisfied.
- C. Lender Protections.** The Manager shall use reasonable commercial efforts to notify each Lender of: (i) failure by its borrower to make a required payment to the Association; (ii) termination of its borrower's rights to use or derive income from the Property; (iii) commencement by the Association of any legal action against its borrower to enforce any rights or remedies provided in this Agreement; (iv) the occurrence of any loss, casualty, condemnation, or governmental action that significantly decreases or impairs the value of the Property; and (v) any lapse or cancellation of any Association insurance policy. However, failure by the Manager to provide such notification shall not constitute a breach by the Association of this Agreement or diminish the rights of the Association under this Agreement or impede the Association from enforcing this Agreement. The prior written consent of all Lenders shall be required to amend any provision of this Section 8.8. Any Lender may inspect and copy the Owner list, books of accounts, financial statements, and minutes of meetings, for any purpose reasonably related to its interests as a Lender.
- D. Dispute Resolution.** A Lender shall not be subject to the mediation and arbitration provisions of this Agreement with respect to disputes arising as a result of any of the provisions that relate to the rights or obligations of such Lender under the Lender's loan documents or this Agreement.

## ARTICLE 9--GENERAL PROVISIONS

**9.1 NOTICES.** Except where expressly prohibited by law, whenever Notice is required to be given to an Owner, the Association, or the Manager, such Notice shall be deemed properly given if done so in accordance with the following provisions.

- A. Notice to Association.** Any Notice or other communication to the Association shall be given to the Manager.
- B. Notice to Manager.** Any Notice or other communication to the Manager shall be given via an email transmission to the email address most recently provided by the Manager to the sender.
- C. Notice to Owner.** Notices shall be considered properly given to an Owner when they are properly given to such Owner's Owner Representative.
- D. Notice to Owner Representative.** Notice to an Owner Representative may be given via email transmission to the email address most recently provided by the Owner Representative to the Manager. Each Party hereby agrees that, during periods while he/she is acting as an Owner Representative, Notices may be transmitted to him/her via email. It shall be the responsibility of each Owner Representative (i) to regularly monitor his/her email communication, and (ii) to provide Notice to the Manager when his/her email address changes. Under no circumstances shall the Association or the Manager be responsible for the consequences when an Owner Representative fails to receive a Notice because the intended recipient either (i) failed to check his/her email account at least once every seven calendar days, or (ii) has failed to timely provide Notice to the Manager of a change to his/her email address.
- E. Procedure When Law Deems Email Notice Inadequate.** Where Notice by email is expressly made inadequate by operation of law, or in other instances at the discretion of the sender, Notice to the Manager or an Owner Representative may be given via any reputable delivery service, with return receipt requested, sent to the mailing address last provided by the recipient to the sender.
- F. Effective Date of Notice.** The Effective Date of an email Notice shall be three calendar days after emailing, unless otherwise specifically provided or unless the context requires a different time limit to apply. The Effective Date of a Notice given under Subsection E shall be the earlier of the following: (i) the date delivery of the Notice is made as established in a return receipt provided by the delivery service; or (ii) seven days after the Notice is sent.

**9.2 JURISDICTION AND APPLICABLE LAW.** All Parties, the Association, and the Manager agree that this Agreement, and the relationship among the Parties relating to the Property and the Association, shall be entirely subject to, and governed by, the law of the State of Delaware. Except as otherwise provided in the Arbitration provisions of this Agreement, each Party, the Association, and the Manager, hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Delaware in any action on a claim arising out of, under or in connection with this Agreement, the Rules, or the Property. Each Party expressly waives any right he/she/it may have to any protection afforded by the law of the Dominican Republic; however, the Association may proceed under Dominican Republic law, if necessary, to evict

or eject a person from the Property, or to prevent a person from accessing the Property, if that person is using, or is likely to use, the Property in violation of this Agreement. Each Party further agrees that: (i) personal jurisdiction over such Party may be accomplished by service of process by registered or certified mail addressed to the Party at the address shown in the Party's Party Certification, or at such other address as such Party has specifically designated as his/her address for service of process in a Notice to the Manager Effective at least 10 calendar days before such process is actually mailed, and that when so made shall be as if served personally within the State of Delaware.

### 9.3 DISPUTE RESOLUTION.

- A. Agreement To Limit Dispute Resolution Options.** While the Parties recognize the need for a dispute resolution mechanism, they recognize that dispute resolution procedures are expensive and potentially disruptive to the shared use, operation and disposition of the Property. Accordingly, the Parties have agreed to certain measures to limit the circumstances under which the Association and the Parties can invoke dispute resolution, and the venues for dispute resolution procedures. In this regard, the Parties have agreed as follows. A Party may invoke binding arbitration only in the following situations: (i) under the circumstances, and within the time frames, described in Section 8.3; or (ii) to take action against the Manager and/or the Association for failure to comply with this Agreement, the Management Agreement, or applicable law. Except as otherwise provided in Subsection B, no Party shall initiate an action against another Party, and Owner, the Association, or the Manager, in a court of law or equity in any jurisdiction. No Owner or Party shall attempt to stop or prevent an Association or Manager enforcement action in a court of law or equity in any jurisdiction.
- B. Binding Arbitration.** Arbitration is a method of resolving a dispute by delegating decision-making authority to a neutral individual or panel. When arbitration is permitted or required under this Agreement, it shall be conducted by the American Arbitration Association ("AAA"), under its then-current Commercial Arbitration Rules, in Dover, Delaware. Arbitration shall be pursued to conclusion as quickly as reasonably possible, and judgment on an arbitration award may be entered in any court having jurisdiction. When a Party refuses to appear and/or participate in an arbitration proceeding, or otherwise obstructs the arbitration process, the Association, the Manager, or any other party may petition a court of competent jurisdiction for an order compelling good faith participation, and the court shall award all expenses, including attorney fees, incurred by a party so petitioning unless it finds that the party against whom the petition is filed acted with substantial justification or that other circumstances make the imposition of such expenses unjust. However, the preceding sentence shall not be interpreted to require the any party to make such a petition as a prerequisite to the imposition of a default judgment, or any other judgment, by an arbitrator. Nothing contained in this Subsection shall be construed to restrict or limit the right of a party to seek a fee and cost award pursuant to Section 9.5.

**9.4 INDEMNIFICATION.** Absent gross negligence, intentional misconduct or fraud, the Association shall indemnify the Manager for reasonable defense costs, including reasonable attorney fees, for any claim based upon a wrongful act or omission in the scope of its duties on behalf of the Association. The Association shall advance such costs in all instances (including where gross negligence, intentional misconduct or fraud are alleged), but shall be entitled to recover the entirety of such costs in instances where gross negligence, intentional misconduct or fraud are proven, even where other causes of action have been stated and regardless of the disposition of any such other cause of action. Nothing in this Section shall be interpreted to require that the Association indemnify its Manager for any liability and expenses other than defense costs under any circumstances; however, if the Association wishes to settle a claim against a Manager for which the Association is providing defense costs, and the accused person refuses to allow the settlement, the Association shall (i) cease to be responsible for any defense costs in connection with such claim, and (ii) be entitled to full reimbursement from such accused person for all amounts previously expended on the defense.

**9.5 ATTORNEY FEES.** Should any dispute related to this Agreement or the Property result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorney fees and expenses, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment and, in the case of a dispute relating to nonpayment of an Obligation, an award of prejudgment interest from the date of the nonpayment at the maximum rate allowed by law. For the purposes of this Section: (i) attorney fees shall include, without limitation, fees incurred in post-judgment motions, contempt proceedings, garnishment, levy, and debtor and third-party examinations, and discovery; and (ii) prevailing party shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise. Notwithstanding anything to the contrary in the preceding sentences, each Owner shall pay to the Manager, immediately upon demand, all costs and expenses, including reasonable fees and expenses of attorneys and other professionals, that the Manager incurs in connection with any and all of the following: (i) protecting or enforcing the Association's security interest in any of such Owner's Collateral; (ii) collecting the Obligations of such Owner; (iii) except as otherwise provided in Article 8, defending or in any way addressing claims made or litigation initiated against the Association that relate to the behavior such Owner's Invitees; and (iv) representing the Association in connection with any bankruptcy case or insolvency proceeding involving such Owner or such Owner's Collateral.

**9.6 OTHER GENERAL PROVISIONS.** Except as specifically provided in this Agreement, no Party shall have the right to assign any of such Party's rights or to delegate any of such Party's duties under this Agreement without the written consent of the Manager. Time is expressly declared to be of the essence in this Agreement. Any Association rights waiver shall exist only if explicitly stated in a written document signed by the Manager. No rights of the Association or the Manager shall be implicitly waived, and no waiver by the Association or the Manager of any breach of this Agreement or the Rules shall constitute a waiver of any subsequent breach of the same or different

provision of this Agreement or the Rules. This Agreement and the Management Agreement contain the entire agreement of the Parties relating to any matter regarding the Property and the Association as of the date the Property is acquired by the Association; any prior or contemporaneous written or oral representations, modifications or agreements regarding these matters, including but not limited to those contained in any purchase agreement or preliminary commitment related to the Property, shall be of no force and effect unless contained in a subsequently dated, written document expressly stating such representation, modification or agreement, signed by each party alleged to be bound. All pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. All headings are inserted only for convenience and ease of reference and are not to be considered in the interpretation of any provision. Numbered or lettered articles, sections and subsections refer to articles, sections and subsections of this Agreement unless otherwise expressly stated. In the event any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement or the Rules, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that the document was prepared by or at the request of a particular party. If any provision of this Agreement or the Rules, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement or the Rules, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**CERTIFICATE OF ADOPTION.** By signing below, the Manager certifies that this Operating Agreement has been adopted by the Association on the date adjacent to the Manager' signature. By signing the attached Owner Signature Pages, each Owner acknowledges that this Agreement has been adopted by the Association as its Operating Agreement, and certifies that he/she has read and understood this Agreement and agrees to be bound by each of its terms.

---

DATE

**OPERATING AGREEMENT  
FOR  
FOA NAME PLACEHOLDER OWNER GROUP LLC**

**OWNERSHIP SIGNATURE PAGE—OWNERSHIP INTEREST \_\_\_\_\_**

[USE SEPARATE SHEET FOR EACH OWNERSHIP INTEREST]

By signing below, the undersigned acknowledges that this Agreement has been adopted by the Association as its Operating Agreement, and certifies that he/she has read and understood this Agreement and agrees to be bound by each of its terms.

---

PRINTED NAME OF PERSON OR ENTITY: \_\_\_\_\_

SIGNATURE AND DATE: \_\_\_\_\_  
DATE

INITIALS: \_\_\_\_\_

---

PRINTED NAME OF PERSON OR ENTITY: \_\_\_\_\_

SIGNATURE AND DATE: \_\_\_\_\_  
DATE

INITIALS: \_\_\_\_\_

---

PRINTED NAME OF PERSON OR ENTITY: \_\_\_\_\_

SIGNATURE AND DATE: \_\_\_\_\_  
DATE

INITIALS: \_\_\_\_\_

---

OWNER REPRESENTATIVE FOR THIS OWNER: \_\_\_\_\_

OWNER REPRESENTATIVE EMAIL ADDRESS: \_\_\_\_\_

OWNER REPRESENTATIVE MAILING ADDRESS: \_\_\_\_\_

**OPERATING AGREEMENT  
FOR  
FOA NAME PLACEHOLDER OWNER GROUP LLC**

**EXHIBIT A—PARTY CERTIFICATION FORM**

This Party Certification (the “Certification”) is delivered by the undersigned to FOA NAME PLACEHOLDER OWNER GROUP LLC (the “Association”) in connection with, and as a condition to, Party’s purchase of an Ownership Interest in the Association or Party’s purchase of an interest in an Ownership Interest if Party is part of a Group that is an Owner. Party hereby represents, warrants, and certifies to the Association, and agrees as follows:

1. Party is a \_\_\_\_\_ (specify “individual” or type of entity such as “trust” or “limited liability company”)

2. If Party is an individual, provide:

Full Name	_____
Full Name of Spouse/DP	_____
Primary Residence	_____
	_____

Attach a true and correct copy of (i) such Party’s current driver’s license or passport, and (ii) a utility bill showing the same address for both service and billing.

Such Party shall not change its name or primary residence without providing the Association with 10 business days' prior written notice thereof. If such Party does change any of the foregoing, such Party shall Promptly provide evidence of any such change to the Association.

3. If Party is an entity, provide:

Full Entity Name	_____
Place of Formation	_____
Official Entity Address	_____
	_____
Full Name of Registered Agent or Responsible Individual	_____
Address of Person Above	_____
	_____

Such Party shall not change its name, organization, or its chief executive office, without providing the Association with 10 business days' prior written notice thereof. If such Party does change any of the foregoing, such Party shall Promptly provide evidence of any such change to the Association.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Printed Name of Signer

**OPERATING AGREEMENT  
FOR  
FOA NAME PLACEHOLDER OWNER GROUP LLC  
EXHIBIT B—FORM OF OWNERSHIP CERTIFICATE  
[NEXT PAGE]**

# FOA NAME PLACEHOLDER OWNER GROUP LLC

## OWNERSHIP CERTIFICATE

*This is to certify that \_\_\_\_\_ is / are the holder (S) of Ownership Interest \_\_\_\_\_ in the limited liability company named above (the "Association") organized under the laws of the State of Delaware, and is entitled to the full rights of such Ownership Interest as described in the Association's Operating Agreement.*

This Ownership Interest may be pledged as security for an obligation, but only in strict compliance with the requirements imposed by the Operating Agreement.

This Ownership Certificate and the Ownership Interest represented hereby are (i) issued and shall be held subject to the provisions of the Association's Operating Agreement, and (ii) transferable only in accordance with all of the terms and conditions of the Association's Operating Agreement.

*This Certificate shall be deemed a valid original if it bears the original signature of the Association Manager serving on the date of the signature is affixed.*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name of Signer*

**OPERATING AGREEMENT  
FOR  
FOA NAME PLACEHOLDER OWNER GROUP LLC**

**EXHIBIT C—RESALE ASSUMPTION AND RELEASE OF OBLIGATIONS**

[USE THIS FORM EACH TIME AN OWNERSHIP INTEREST IS RE-SOLD OR OTHERWISE TRANSFERRED]

This document (the “Assumption and Release of Obligation”) pertains to FOA NAME PLACEHOLDER OWNER GROUP LLC (the “Association”), for which there exists an Agreement entitled “OPERATING AGREEMENT FOR FOA NAME PLACEHOLDER OWNER GROUP LLC” dated \_\_\_\_\_ (the “Agreement”). An interest in the Association, which interest is identified in the Agreement as “Ownership Interest \_\_\_\_ (the “Transfer Share”) is being transferred by \_\_\_\_\_ (collectively the “Transferor”), to \_\_\_\_\_ (the “Transferee”).

1. By signing below, each person signing as Transferee signifies that: (i) he/she has read and fully understands all of the terms and conditions of the Agreement, and that he/she agrees to abide by every one of them; and (ii) with regard to the Transfer Share, he/she shall, together with each other person signing as Transferee, jointly and severally assume all of the duties and obligations and hereby releases Transferor from all such duties and obligations.
2. By signing below, Transferor signifies that it assigns to Transferee all of the rights and benefits associated with the Transfer Share, and fully and forever relinquishes all such rights and benefits.
3. By signing below, Transferee, Transferor, and the Manager certifies that there are currently no outstanding Assessments or other Obligations owed by the Transferor in connection with the Transfer Share.

TRANSFEEE:

\_\_\_\_\_ DATE \_\_\_\_\_ DATE

TRANSFEROR:

\_\_\_\_\_ DATE \_\_\_\_\_ DATE

MANAGER:

\_\_\_\_\_ DATE

**ATTACH OWNERSHIP SIGNATURE PAGE FOR TRANSFEROR  
ATTACH SEPARATE PARTY CERTIFICATE FOR EACH PERSON ACQUIRING AN INTEREST**