

No. 63711-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CRAIG BERNHART,

Appellant,

v.

MARIANN DANARD,

Respondent.

BRIEF OF RESPONDENT

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I. Introduction

This action arises from certain real estate business disputes between Appellant-Plaintiff Craig Bernhart (“Bernhart”) and Respondent-Defendant/Third-Party Plaintiff Mariann Danard (“Danard”). Following a bench trial in Snohomish County Superior Court (“the Trial Court”), Judge Michael Downes issued Findings of Fact and Conclusions of Law and a Judgment and Order of Dismissal (“Judgment”) was entered in Danard’s favor.

For the reasons that follow, the Trial Court’s findings are supported by substantial evidence and its legal conclusions correctly state and apply Washington law. The three assignments of error raised by Bernhart should be rejected and the Judgment should be affirmed.

II. Statement of the Case

The lawsuit began in February 2007 and was tried over the course of eight days in January 2009. Based upon the testimony of Bernhart, Danard, other witnesses, and dozens of exhibits, the Trial Court issued Findings of Fact and Conclusions of Law (CP 12-35) and entered Judgment (CP 6-11) in favor of Danard on May 29, 2009.

Bernhart’s assignments of error on appeal divide generally into three groups:

First, whether Cedar Professional Center, LLC, in which Bernhart and Danard are the sole members, is governed by the Limited Liability Company Agreement (drafted by Danard's attorney, William Foster)¹ executed December 4, 2002 ("the December 2002 Agreement). The Trial Court ruled that the December 2002 Agreement is effective and binding according to its terms and rejected Bernhart's call for reformation. Bernhart contends that changes made to a November 2002 draft document prepared by his attorney should have been affirmatively highlighted for him. The December 2002 Agreement and the November draft were admitted as Trial Exhibits ("Tr. Ex.") 13 and 12/12A, respectively. Excerpts of each are included in Appendix ("App.") 1 and App. 2, respectively. This topic is addressed in Bernhart's Assignment of Error No. 1 and Danard's Response to Assignment No. 1;

Second, whether Bernhart and Danard conducted various business activities through an informal "umbrella" partnership. The Trial Court ruled that no such partnership existed, in part due to evidence that Bernhart refused to share losses with Danard. Bernhart contends that the Trial Court gave insufficient weight to a handwritten memorandum (Tr. Ex. 1) Bernhart wrote and presented to Danard immediately after an

¹ Attorney Foster represented Danard at trial but withdrew in May 2010. Danard's counsel on appeal appeared in June 2010.

intimate encounter. A copy of Tr. Ex. 1 is included in App. 3. This topic is addressed in Bernhart's Assignment of Error No. 2 and Danard's Response to Assignment No. 2; and

Third, whether Danard breached duties in the management of Cedar Professional Center, LLC even though Bernhart, as a co-Member, has the same duties as Danard. The Trial Court rejected Bernhart's claims entirely. This subject is addressed in Bernhart's Assignment of Error No. 3 and Danard's Response to Assignment No. 3.

III. Argument

A. Standard of Review

On appeal from a bench trial, findings of fact are reviewed to determine whether they are supported by substantial evidence and, if so, whether the findings support the conclusions of law. Conclusions of law are reviewed de novo. Unchallenged findings of fact are verities on appeal. See J.E. Edmonson v. Popchoi, 155 Wn. App. 376, 382-83, 228 P.3d 780 (Div. I 2010). Substantial evidence is evidence sufficient to persuade a fair-minded person that the premise is true. If the standard is satisfied, an appellate court will not substitute its judgment for that of the trial court. See Sunnyside Valley Irr. Dist. V. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

B. Factual Background

The following summary is drawn from the Findings of Fact section of the Trial Court's Findings of Fact and Conclusions of Law (CP 12-35). Specific Findings are referenced by number as "FF #__."

Bernhart is a dentist by profession and has been involved in many and varied business dealing involving real estate construction and development. Bernhart considers himself a sophisticated real estate investor. Danard is a real estate broker with commercial real estate experience. Danard and Bernhart met in 1999 through their separate involvement in a Snohomish County condominium project known as Emerald Gardens. (CP 13; FF #3-4).

Bernhart and Danard maintained a personal relationship for approximately six years. During that period Bernhart also maintained a relationship with another woman with whom he lived and had two children. Bernhart conducted his business dealings in a manner designed to keep this woman unaware of property interests she might pursue in an action based upon their meretricious relationship. (CP 14; FF#5-6).

In May 2002, Bernhart was invested in a troubled King County real estate project in King County known alternatively as "Skyway" or Tuscany." The project lender, CityBank, commenced foreclosure after Bernhart became delinquent on a \$325,000 mortgage secured by the

property. The property was encumbered by other debts and tax liens totaling approximately \$100,000. At Bernhart's urging, Danard's company ("MDanard Group, Inc.") agreed to purchase the Skyway/Tuscany property for \$455,000. North County Bank agreed to a loan of \$409,000 provided Danard funded a \$95,000 construction account. The North County loan was obtained by and approved exclusively for Danard. (CP 14-16; FF #7-13).

On June 11, 2002, Bernhart deposited \$130,000 into Danard's account for the Skyway/Tuscany closing. Following a romantic encounter, Bernhart presented Danard with a handwritten memorandum stating:

Craig Bernhart deposited \$130,000 to account of Mariann Danard for closing of the Skyway property. The loan to be repaid immediately following closing and sale of Skyway to Mariann Danard which will be an LLC with Danard and Bernhart [as] members. Sale of the property shall be for \$650,000 with balance to Bernhart at sale of property when mutually agreed. Interest payments and all costs shall be equal. All profits shall be divided equally after expenses & costs.

(CP 16; FF 14-16; See App. 3).

Bernhart's sale of Skyway/Tuscany to Danard closed June 20, 2002. As a result of the transaction, Bernhart's CityBank loan was paid off and he received cash and other debt satisfaction totaling \$138,201. (CP 17-18; FF #17-18).

In addition to Skyway/Tuscany, Bernhart benefited from Danard's personal resources and ability to obtain commercial financing over the course of their relationship. As examples, in October 2002, Danard paid \$53,000 to the Internal Revenue Service on Bernhart's behalf. In April 2001, Danard loaned Bernhart \$82,000 of which Bernhart repaid \$59,000. Throughout this time, Danard neither intended nor acted as if she and Bernhart were joined in a partnership. Indeed, no LLC was ever formed for Skyway/Tuscany (or any Danard development project) which included Bernhart as a member. (CP 18-19; FF #19-21).

From July 2002 through April 2004, Bernhart and Danard each deposited \$1,500 into the Skyway/Tuscany account. Danard believed Bernhart's deposits occurred because he owed her money. Deeds of trust in favor of Bernhart family members were recorded against the Skyway/Tuscany property from time to time although they reflected relatively little, if any, actual debt. Bernhart later caused these deeds of trust to be released without any known repayment of underlying loans. (CP 20-21; FF# 26-28). Other loans made by Danard to Bernhart were documented by promissory notes prepared by Bernhart. These notes are unpaid. (CP 23; FF #33-34).

The parties' interests in Cedar Professional Center, LLC, arose from the near failure of the Emerald Gardens project mentioned earlier.

Bernhart's investment in Emerald Gardens had been financed by Coventry Mortgage. As security for that loan, Bernhart pledged his interest in the Cedar Professional Center building (in which is dental practice was located). When Bernhart defaulted on the Emerald Gardens loan, Coventry began foreclosure proceedings on Cedar Professional Center. Shortly before the foreclosure sale, Bernhart obtained a "first right of refusal" should Coventry receive an offer on Cedar Professional Center. Coventry's successor did receive an offer and Bernhart was so notified. Bernhart then approached Danard for assistance in exercising the first right of refusal. Danard, in turn, sought a loan from Horizon Bank. In discussions with Horizon Bank, Bernhart disclosed that his credit was poor. Consequently, Horizon Bank approved the loan based solely on Danard's credit and upon the condition that Cedar Professional Center be purchased through an entity in which Danard had the controlling interest. This condition was known to Bernhart. (CP 23-26; FF#35 -42).

After meeting with Horizon Bank, Bernhart and Danard met Bernhart's attorney, Edward Weigelt ("Weigelt") in November 2002, to discuss the formation of a limited liability company ("LLC") to own and manage Cedar Professional Center. Discussions focused upon Danard's contribution of \$250,000. Bernhart proposed to contribute nothing other than his "right of refusal" which he valued at \$150,000. It was also

discussed that Bernhart may contribute an additional \$100,000 in capital. Weigelt prepared a draft agreement (“the November draft”) and marked it “rough draft not proofed yet for comments only.” (CP 26-27; FF# 43 -44).

Danard advised Weigelt and Bernhart that she planned to take the November draft (See App.-2) to her own attorney, William Foster, for review. Danard did not believe the terms stated in the Weigelt draft were fair. Specifically, she objected to Bernhart receiving any ownership interest based on his contribution of the “right of first refusal” in light of her cash contribution and personal obligation for repayment of the Horizon Bank loan. Based on Danard’s concerns, attorney Foster drafted a new operating agreement that differed substantively and stylistically from Weigelt’s November draft. One revision changed Bernhart’s contribution from simply the “right of first refusal” to a contribution of capital via a \$100,000 promissory note and security agreement (which Foster also prepared). Neither Danard nor Foster spoke to Weigelt or Bernhart about Danard’s objections and revisions. Foster’s office staff thereafter contacted Bernhart to inform him that the LLC documents were ready for execution. On or about December 2, 2002, Bernhart signed the revised agreement, promissory note, and security agreement at Foster’s office. Bernhart did not read the documents before signing although he had ample opportunity to do so. No representations were made to

Bernhart concerning the contents of the documents. Neither the promissory note nor the security agreement was contemplated in the November draft. (CP 27-30; FF# 45-53).

C. *The Trial Court correctly found that that the ownership and operation of Cedar Professional Center, LLC, is controlled by the December 2002 Agreement. (Response to Assign. of Error no. 1)*

Bernhart's first assignment of error deals broadly with the December 2002 Agreement and the legal effect accorded to it by the Trial Court. Bernhart does not challenge any Finding of Fact with respect to this topic but instead challenges nine Conclusions of Law (Nos. 2, 6, 7, 8, 9, 10, 11, 14, and 15) by which the Trial Court found that:

- Danard committed no fraud (No. 2);
- Danard breached no fiduciary or good faith duty (Nos. 6-7);
- Danard breached no provision of WAC 308-124D-150 (No.8);
- Danard breached no contract to manage the LLC (No. 9);
- Bernhart is not entitled to reformation (No. 10);
- the 2002 agreement is valid and enforceable (No. 11);
- Danard is the prevailing party and thus entitled to reasonable

attorney fees under the December 2002 agreement (No. 14); and

◦Danard's attorney was not obligated to disclose to or communicate with Bernhart regarding changes in the LLC agreements. (No. 15).

Bernhart's concern is that the December 2002 Agreement established an ownership allocation in Cedar Professional Center, LLC different from the concept set forth in the November draft and the change was not called to his attention before signing.² In particular, the December 2002 Agreement states in §6.1 that Danard will contribute capital of \$250,000 and Bernhart will contribute \$100,000 through a promissory note (for an ownership allocation of 71% and 29%, respectively). In contrast, the November draft prepared by Weigelt, Bernhart's attorney, included no provision for an initial contribution of cash by Bernhart. It contemplated Bernhart's contribution of the "first right of refusal" (which Bernhart valued at \$150,000) with an option to contribute \$100,000 to bring his ownership stake to 50%. (App. 1 and 2).

In support of his argument that the revisions should have been highlighted in some way, Bernhart relies upon Bohn v. Cody, 119 Wn.2d 357, 832 P.2d 71 (1992) and Hurlburt v. Gordon, 64 Wn. App. 386, 824 P.2d 1238 (1992). Neither case helps him.

In Bohn, the Court held that an attorney can owe a duty of care to a non-client in certain circumstances. 119 Wn.2d at 364-66. However, there can be no duty to a non-client absent a threshold determination that the attorney's services were intended to benefit the plaintiff and a

² See Statement of Issues Nos. 1-3 (Bernhart Br., pg. 8-9).

balancing of public policy considerations. Trask v. Butler, 123 Wn.2d 835, 843, 872 P.2d 1080 (1994).

In this case, Danard's attorney could not possibly be held to have provided benefit to Bernhart. Danard's attorney had had no substantive contact whatsoever with Bernhart concerning the LLC formation. Bernhart testified as follows (RP 249-50):

Q Did you and I ever meet on the Cedar Professional Center purchase?

A I don't think so.

Q Did you and I ever talk on Cedar Professional?

A I don't recall.

Q As a matter of fact, Doctor Bernhart, you sat down with [attorney] Ed Weigelt in his office, and Mariann Danard, and talked about the terms of the acquisition of Cedar; did you not?

A I did.

.....

Q From late November of '02 through closing in February '03, did you and I have any meetings regarding Cedar Professional Center?

A No.

Q Did we have any discussions regarding Cedar Professional Center?

A No. You and I directly, no.

There is no evidence, much less a finding, that Danard's attorney prepared the December 2002 Agreement and associated documents to

benefit Bernhart in any respect. Bernhart was represented by Weigelt (RP 313). In fact, the Trial Court found that [b]ased on Danard's objections ..., Foster completely rewrote the agreement **on Danard's behalf.**" (CP 28,lns. 1-2) (emphasis added). This unchallenged Finding must be taken as true on appeal. See J.E. Edmonson, *supra*.

In effect, the parties had no meeting of the minds based on the November draft prepared by Bernhart's attorney. Bernhart could not reasonably have assumed that Danard would not have revisions following review by her own attorney. Indeed, at the meeting among attorney Weigelt, Bernhart, and Danard which led to the November draft, Bernhart did most of the talking. (RP 516; 640). Danard, on the other hand, does not make quick decisions but instead prefers to think over ideas and proposals. (RP 446-47).

Bernhart also cites *Hurlburt*, *supra*, in which the Court found that an attorney providing escrow services met his duty of neutrality and disclosure by providing draft documents to opposing counsel. In contrast, Bernhart contends, attorney Foster had no discussions with attorney Weigelt about changes in structure and content to LLC agreement.

Bernhart's argument is based on the false premise that Danard's attorney provided escrow services. He did not; attorney Foster acted solely for Danard. As the Trial Court found:

A copy of this draft operation [sic] agreement was provided to Danard by Wiegelt. Danard told Bernhart and Weigelt that she would be taking the draft to her attorney, William B. Foster, for his review. ***The parties knew that Foster's review of the agreement was to be more than merely proofreading of the agreement. The Plaintiff, Defendant, and Weigelt understood that Foster would be reviewing the agreement as independent counsel for Danard.*** Based upon this knowledge, any person should have anticipated that as a result of Foster's review, there may be revisions to that agreement which would be more significant than just the correction of errors in the draft.

(CP 27; Ins. 8-17)(emphasis added).

This unchallenged Finding of Fact demonstrates that Danard's attorney did not provide an escrow service, or any service, for Bernhart's benefit. Unlike the attorney in *Hurlbert*, there is no basis to find that attorney Foster provided a service intended to benefit Bernhart.

The duty that Bernhart fails to address is his own duty to read what he signs. Under long-standing Washington law, "a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents." See Nat'l Bank of Wash. v. Equity Invest., 81 Wn.2d 886, 912, 506 P.2d 20 (1973); Del Rosario v. Del Rosario, 152 Wn.2d 375, 385, 97 P.3d 11 (2004)("Washington adheres to the general contract principle that parties have a duty to read the contracts they sign."); Nishikawa v. U.S. Eagle High, LLC, 138 Wn. App. 841, 852, 158 P.3d 1265 (2007) rev. den. 163 Wn.2d 1020 (2008).

Bernhart is a well-educated medical professional with substantial experience in real estate construction and development and heavy equipment leasing. He is a “sophisticated” investor who knows the importance of reading real estate-related documents. (CP 13, lns. 16-22).

Bernhart testified:

Q So it would be a fair statement, would it not, Doctor Bernhart, that you're not an unsophisticated real estate investor, are you?

A No.

Q As a matter of fact, you yourself would consider yourself to be a sophisticated real estate investor?

A As a matter of fact, I do.

Q Okay. Isn't it true, Doctor Bernhart, that you recognize the importance of reading real estate documents that you're asked to sign?

A Yes.

(RP 184-85).

Based on this and other evidence the Trial Court found that Bernhart “had an ample opportunity to read and review the documents” and “[n]o person made any representation ... as to the content of the agreements. Bernhart simply chose to execute the agreements without reading them first.” (CP 29, lns. 5-10).

This is not a case of an inexperienced person confronted with complex documents crafted by a more sophisticated party. Bernhart was

fully capable of looking out for his own interests. He had full and fair opportunity to read the December 2002 Agreement before signing and he chose not to do it. Had he done so, Bernhart to visually perceive differences between the November draft and the December 2002 Agreement. They differ in format and length. (RP 254). Moreover, when he signed the December 2002 Agreement, Bernhart also signed a promissory note for his \$100,000 capital contribution and a security agreement. Neither instrument was discussed with attorney Weigelt in the November meeting or mentioned in the November draft. (RP 261-64) .

Bernhart testified:

Q But you did sign both the promissory note and commercial security agreement, correct?

A Yes.

Q Now when Mr. Weigelt provided you with copies of the LLC organizational document, there was no commercial security agreement in there, was there?

A No.

Q So the promissory note and the commercial security agreement are entirely new documents, correct?

A Yes.

Q Yet notwithstanding that fact, you don't read them?

A I didn't read them.

(RP 261-64).

From Danard's standpoint, any agreement regarding the ownership and management of Cedar Professional Center would be on the terms set forth in the December 2002 Agreement or there would be no agreement at all. (CP 30). Driven by his interest in avoiding foreclosure, Bernhart made a conscious decision not to read the terms proposed by Danard. Having made that choice, he cannot look to Washington law for rescue.

D. The Trial Court correctly found there is no partnership between Bernhart and Denard. (Response to Assignment of Error no. 2)

Bernhart's second assignment of error addresses the Trial Court's conclusion that no general partnership arose from the parties' independent involvement in Skyway/Tuscany and various other real estate projects. Bernhart focuses on the Trial Court's conclusion that the parties did not agree to share losses in addition to profits.³ This conclusion is well-supported by unchallenged Findings of Fact and by substantial evidence.

The Trial Court ruled that an essential element of a partnership is the sharing of losses in addition to profits. (CP 22, lns. 23-26). This is an accurate statement of Washington law.⁴ Bernhart failed to prove that he

³ See Statement of Issues nos. 4 and 5. (Bernhart Br., pg. 9).

⁴ See Revised Uniform Partnership Act, RCW 25.05.150(2); Cf. Gildon v. Simon Prop., 158 Wn.2d 483, 500, 145 P.3d 1196 (2006)(“the joining of efforts to share in profits and losses” is a principal focus partnership law.)

and Danard had a practice or agreement to share losses. In fact, the Trial Court found to the contrary (CP 22-23):

“32. As noted above, [Bernhart] has failed to carry his burden to prove that a partnership existed. The facts which [Bernhart] relies upon are grounded in deceit and blatant attempts to hide the truth. This Court is not at all persuaded that his current version is the truth. One of the essential elements of a partnership is an agreement to share losses in addition to profits. *There was no agreement amongst the parties share losses. Sometime in 2006 Bernhart asked Danard to put something in writing as to who owned what in case something happened to Danard. In response to this request, Danard specifically asked Bernhart if he was willing to share in any losses that might result. Bernhart responded by saying that he was not willing to share in losses.* There was, therefore, no agreement between the parties to share losses in addition to profits.

This Finding of Fact is not been challenged by Bernhart. Accordingly, is it treated as a verity on appeal. See J.E. Edmonson, supra, 155 Wn. App. at 382-83.

Bernhart relies heavily on Tr. Ex. 1 (App. 3) as evidence that could have led the Trial Court to find a partnership. The Trial Court took a different view, however, noting that this informal memorandum prepared was presented to Danard “in the afterglow of a physical romantic encounter at her home.” (CP 16). As fact finder, the Trial Court was entitled to give the memorandum the weight it deemed appropriate. In light of all the other evidence, the Trial Court obviously was not

persuaded that the memorandum proved the existence of a partnership for Skyway/Tuscany or any other project or property. (CP 7-8, 18-21).

Bernhart dismisses Danard's testimony that she did not believe a partnership existed as subjective and "after the fact." (Bernhart's Br., pg. 33). Yet Bernhart does not dispute the Trial Court's finding that "Danard did not act as if there was a partnership." (CP 18, lns. 25-26). There is nothing "after the fact" about Danard's contemporaneous actions in furtherance of her independent interests. At trial, Bernhart conceded with respect to Skyway/Tuscany that Danard alone obtained the financing from North County Bank, personally guaranteed the loan, and received the statutory warranty deed. (RP 200-46). Bernhart also conceded that he is not a member of various other LLCs owned by Danard for development projects that independently involve him to some extent or in some capacity. (RP 216-17). This is substantial evidence from which the Trial Court could, and did, conclude that Danard did not act as if she and Bernhart were partners.

Under Washington law, the burden of proving a partnership rests upon the party alleging its existence. To prove a partnership, the evidence must be stronger as between the parties themselves than when a third person asserts its existence. See Bengston v. Shain, 42 Wn.2d 404, 409, 255 P.2d 892 (1953). Simply put, Bernhart failed to prove the existence of

a partnership. The Trial Court's Conclusion of Law (CP 31) that no partnership exists is supported by substantial evidence and unchallenged Findings of Fact and is in accordance with Washington law.

E. The Trial Court correctly found that Danard breached no duties regarding the management of Cedar Professional Center, LLC. (Response to Assignment of Error no. 3)

Bernhart's third and final assignment of error addresses the Trial Court's ruling that Danard breached no duties in managing Cedar Professional Center, LLC. Specifically, Bernhart challenges the Trial Court's Conclusions of Law that Danard breached no fiduciary or good faith duty (Nos. 6-7), breached no contract to manage the LLC (No. 9), and that Bernhart is not entitled to reformation (No. 10). Bernhart also challenges related conclusions within the Judgment. (Bernhart's Br., pg. 7-8). According to Bernhart, these Conclusions of Law are erroneous because Danard failed "to produce financial reports, periodic accountings, federal income tax returns, bank records, and related financial records" as a manager of the LLC.⁵

Bernhart's argument that Danard has not fulfilled management duties arising from the December 2002 Agreement is disingenuous. At trial, the argument was made for Bernhart (admittedly in a different context) that the December 2002 Agreement places management

responsibility on the “Members.” (RP 589-92) This is true.⁶ But Bernhart is as much a Member as Danard even if his ownership share is smaller. Accordingly, the duties Bernhart accuses Danard of failing to meet fall just as much upon him.

In any event, RCW 25.15.155(1)(emphasis added) states:

Unless otherwise provided in the limited liability company agreement:

(1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes ***gross negligence, intentional misconduct, or a knowing violation of law.***

Bernhart cites no evidence, much less evidence sufficient to meet this heightened standard. Similarly, Bernhart cites no evidence of damage as a result of Danard’s management of the LLC’s affairs.

Bernhart seems to argue that accounting and operational issues should not have been decided by the Trial Court. Danard disagrees. All issues raised below were effectively tried by consent. To the extent issues

⁵ See Statement of Issues, no. 6 (Bernhart’s Br., pg. 9).

⁶ “The day to day business and affairs of the Company shall be managed by the Members...” (Tr. Ex. 13, pg. 11).

“Management of the business affairs of the LLC shall be vested in the Members.” (Tr. Ex. 13, pg. 7).

remain unresolved, Bernhart must pursue them through arbitration.

Section 12.15 of the Agreement states in part:

Arbitration. Any dispute arising under or in connection with this Agreement will be settled by arbitration as set forth in this Section 12.15. No legal right of action may arise out of any such dispute until arbitration has been completed. Each party, however, will have full access to the courts to compel compliance with these arbitration provisions, to enforce an arbitration award or to seek injunctive relief, wither or not arbitration is available or under way.

(Tr. Ex. 13; App. 1).

For all or any of these reasons, the Trial Court correctly ruled that Danard breached no duty in managing Cedar Professional Center, LLC, dismissed Bernhart's claims, and held that the December 2002 Agreement is not subject to reformation.

F. Attorney Fees

Pursuant to RAP 18.1, Danard seeks recovery of her costs and reasonable attorney fees incurred on appeal. RCW 4.84.330 provides that if a contract authorizes the recovery of attorney fees in an action to enforce the agreement, such fees shall be awarded to the prevailing party.

Here, § 12.10 of the 2002 Agreement states:

Attorney Fees. If any litigation or other disputed resolution proceeding is commenced between parties to this Agreement to enforce or determine the rights or responsibilities of such parties, the prevailing party or parties in any such proceeding will be entitled to receive, in

addition to such other relief as may be granted, its reasonable attorney fees, expenses, and costs incurred preparing for and participating such proceeding.

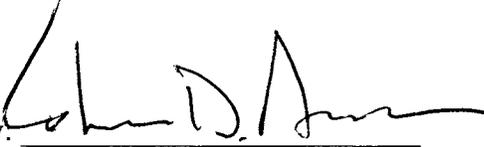
(Tr. Ex. 13; App. 1). The Trial Court awarded Danard her reasonable attorney fees as the prevailing party on Bernhart's claim for reformation of the December 2002 Agreement. (CP 10, 33). Assuming Danard remains the prevailing party, she should also recover reasonable fees on appeal.

IV. Conclusion

The Findings of Fact entered by the Trial Court were largely unchallenged by Bernhart. As such, they must be accepted as verities on appeal. The Conclusions of Law are well-supported by the Findings of Fact, and by substantial evidence, and are consistent with Washington law in all respects. For these reasons, Danard asks that the Judgment be affirmed and that she be awarded her reasonable attorney fees and costs incurred on appeal.

Respectfully submitted this 30th day of July, 2010.

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Appendix 1

**CEDAR PROFESSIONAL CENTER, LLC
LIMITED LIABILITY
COMPANY AGREEMENT**

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**LIMITED LIABILITY COMPANY AGREEMENT
OF
CEDAR PROFESSIONAL CENTER, LLC**

THIS AGREEMENT is entered into as of this 4th day of December, 2002, by MARIANN DANARD and DR. CRAIG BERNHART.

Recitals

A. By their mutual consent, the Members formed a limited liability company ("LLC") under the laws of the State of Washington on December 4, 2002, for the purpose of the ownership of real property, and any other business or activity that is necessary or incidental to the LLC's primary purpose;

B. It has been, and remains, the intention of the Members that the business should be carried on in the form of a limited liability company duly organized under the laws of the State of Washington; and

C. The Members wish to set forth in writing the terms and conditions on which the LLC has been formed and on which its business is to be conducted.

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

**ARTICLE 1
Definitions**

As used in this Agreement, the following defined terms shall have the meanings specified below:

Section 1.1. "Act" means the Washington Limited Liability Company Act, RCW 25.15 et. seq. as amended.

Section 1.2. "Adjusted Tax Basis" means, with respect to any LLC asset at a particular date (a) the cost or other basis of such asset for federal income tax purposes, reduced by (b) accumulated Tax Depreciation with respect to such asset as of that date.

Section 1.3. "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a Member, each officer and director of a Member, and each other person having decision making authority for a Member. For purposes of this definition, the term "control" shall mean ownership of greater than fifty percent (50%) of the equity ownership and voting control of an entity.

Section 1.4. "Agreement" means this Limited Liability Company Agreement, as initially executed, or as amended from time to time, as the context may require.

Section 1.5. "Bankruptcy" shall mean, with respect to any Member, the filing of a voluntary or involuntary petition in bankruptcy by or against a Member pursuant the Chapters 7 or 11 of the United States Bankruptcy Code, unless such petition is denied or dismissed within thirty (30) days after filing in the case of a voluntary petition, or within ninety (90) days after filing in the case of an involuntary petition; the entry of an order of relief in bankruptcy of a Member; the assignment by a Member of its Percentage Interest for the benefit of creditors; the appointment of a receiver of trustee for a Member's property; and the attachment of a Member's Percentage Interest which is not released within thirty (30) days; or the undertaking by any Member of any course of action amounting to the commencement of liquidation or dissolution proceedings.

Section 1.6. "Book Depreciation" means, with respect to any LLC asset, the depreciation computed for financial accounting purposes using the Book Value of the asset and either (i) the same/method and useful life used by the parties for computing Tax Depreciation, or (ii) any other method or useful life elected by the LLC for financial accounting purposes.

Section 1.7. "Book gain or Book Loss" means the amount of gain or loss realized by the LLC for book or financial accounting purposes on the disposition of a LLC asset, which shall equal the positive or negative difference between the amount realized by the LLC as a result of the disposition and the Book Value of the asset at the time of disposition.

Section 1.8. "Book Item" means, with respect to any LLC asset, Book Depreciation, amortization, Book Gain or Loss, or other similar item computed in accordance with the method used by the LLC for accounting purposes.

Section 1.9. "Book Value" means, with respect to any LLC asset at a particular date (a) the Initial Book Value of the asset, increased by (b) any improvements or additions to such assets, and reduced by (c) the accumulated Book Depreciation with respect to the asset as of such date.

Section 1.10. "Capital Account" means the account established and maintained for each Member on the books of the LLC pursuant to Section 6.6.

Section 1.11. "Capital Contribution" means the total amount of money and the fair market value of property (net of liabilities secured by such property that the LLC is considered to assume or take subject to under Code Section 752) actually contributed to the LLC by each Member pursuant to the terms of this Agreement. Any reference to the Capital contribution of a Member shall include the Capital Contribution made by a predecessor holder of the interest of the Member.

Section 1.12. "Capital Transaction" means (i) the sale, exchange or other disposition, including casualty or condemnation, of a substantial portion of the LLC's assets, or (ii) the refinancing of indebtedness encumbering a substantial portion of the LLC's assets.

Section 1.13. "Closing" means the formation of the LLC pursuant to this Agreement.

Section 1.14. "Code" means the Internal Revenue Code of 1986, as amended.

Section 1.15. "Contributing Member" means a Member who (i) has contributed property to the LLC, or (ii) is deemed to have contributed property to the LLC because it was a Member immediately before a revaluation of the LLC assets as provided in Section 6.7.

Section 1.16. "Initial Book Value" means (i) with respect either to any LLC asset contributed to the LLC by a Member, or to any asset revalued for book purposes pursuant to Section 6.7, the fair market value of the asset determined as of the date of contribution or revaluation, as the case may be, or (ii) with respect to any other LLC asset, the cost of the asset to the LLC.

Section 1.17. "Interim Capital Transaction" means any Capital Transaction other than a Terminating Capital Transaction.

Section 1.18. "Invested Capital" means, for any Member at any time, the Member's aggregate Capital Contributions, reduced by the proceeds of any Capital Transaction distributed to the Member.

Section 1.19. "LLC" means the CEDAR PROFESSIONAL CENTER, LLC, formed and operated under the terms and conditions of this Agreement.

Section 1.20. "Major Decision" means a decision by the LLC to

(a) Make any capital expenditure in any single transaction in excess of Five Thousand and no/100 Dollars (\$5,000.00);

(b) Incur or refinance any debt in excess of Five Thousand and no/100 Dollars (\$5,000.00);

(c) Admit one or more additional or substitute Members;

(d) Transfer substantially all of the assets of the LLC;

(e) Merge the LLC into any other entity;

(f) Dissolve the LLC; or

(g) Cause the LLC to seek protection from creditors under federal or state bankruptcy or insolvency laws.

Section 1.21. "Member" means each person who executes a counterpart of this Agreement and makes its Capital Contribution.

Section 1.22. "Member's Share of Minimum Gain" has the same meaning as the term "Partner Nonrecourse Debt Minimum Gain" in Section 1.704-2(i) of the Regulations.

Section 1.23. "Minimum Gain" has the meaning set forth in Sections 1.704-2(b) to 1.704-2(d) of the Regulations.

Section 1.24. "Net Cash Flow" means, in any fiscal period, (i) all cash (and items immediately convertible to cash without substantial discount) received by the LLC as Revenue from Operations; reduced by (ii) all cash expenses incurred by the LLC in connection with the operation of its business, including, but not limited to, fees and other expenses payable by the LLC to a person or entity, and interest payable on indebtedness of the LLC, if any; and reduced further by (iii) required payments of principal and interest on any LLC indebtedness, amounts set aside as reserves or contingency funds, and the cost of any capital improvements to the Property.

Section 1.25. "Optional Loan" means any loan made by a Member to the LLC pursuant to Section 6.5(a).

Section 1.26. "Percentage Interest" means a Member's percentage interest in the LLC, which, unless modified by an amendment to this Agreement, shall be as set forth in paragraph 6.1 of this Agreement.

Section 1.27. "Regulations" means the Treasury Regulations promulgated under the Code by the Secretary of the Treasury.

Section 1.28. "Revenue from Operations" means revenues received by the LLC in the furtherance of its primary purpose which is to invest in, acquired, hold, construct, maintain, improve, develop, manage, lease, sell, exchange, and otherwise own and deal with for profit real and personal property, or the provision of services in the ordinary course of the LLC's business. The term does not include the proceeds from a Capital Transaction, Capital Contributions, loan proceeds, repayments of loans previously made by the LLC, amounts received as security deposits, or any other amounts received other than as a result of the operation of the storage facility owned by the LLC, or the provision of services in the ordinary course of the LLC's business.

Section 1.29. "Secretary of State" means the secretary of state of the State of Washington.

Section 1.30. "Special Basis Adjustment" means, with respect to any LLC asset, the increase or decrease in the Adjusted Tax Basis of the asset permitted by Sections 743, 732(d), or 734 of the Code.

Section 1.31. "State" means the State of Washington.

Section 1.32. "Tax Depreciation" means, with respect to any LLC asset, depreciation or cost recovery deductions computed for federal income tax purposes pursuant to the applicable provisions of the Code, under such elections as to method and useful life or recovery period as may be determined by the LLC.

Section 1.33. "Tax Gain or Loss" means the amount of gain or loss recognized for federal income tax purposes on the disposition of a LLC asset.

Section 1.34. "Tax Item" means, with respect to any LLC asset, Tax Depreciation, amortization, Tax Gain or Loss, or other similar item as computed for federal income tax purposes.

Section 1.35. "Terminating Capital Transaction" means the sale or other disposition of substantially all of the assets of the LLC, resulting in the termination and winding up of the LLC.

Section 1.36. "Unrealized Appreciation" or "Unrealized Depreciation" means, with respect to any asset contributed to the LLC, or any asset revalued in accordance with Section 6.7, the positive or negative difference, if any, between the Initial Book Value and Adjusted Tax Basis of such asset, determined as of the time of contribution or revaluation, as the case may be.

ARTICLE 2 Organization

Section 2.1. Formation. This LLC was formed under and pursuant to the Act by filing, on December 4, 2002, the Certificate of Formation. Consistent with the Act and the Certificate of Formation, the LLC will be operated pursuant to the terms and conditions contained in this Agreement.

Section 2.2. Name. The name of the LLC will be the "CEDAR PROFESSIONAL CENTER, LLC". The Members may change the name of the LLC at any time, provided all provisions of the Act are satisfied.

Section 2.3. Fictitious Name Statements. The Members will execute, and cause to be filed in the appropriate offices, any fictitious-name or doing-business statements or registrations that may be required by the laws of any state, and any other certificates or documents that Members deem necessary or appropriate to comply with the requirements

for qualification and operation of a limited liability company under the laws of the State or of any locality or other jurisdiction in which the LLC does business or owns property.

Section 2.4. Term. The LLC will continue for a term of thirty (30) years, until December 4, 2032, unless the LLC is terminated earlier pursuant to the provisions of Section 11.1. The term may be extended for an additional ten (10) years upon the approval of the members owning a majority of the percentage interest in the LLC.

Section 2.5. Registered Office and Registered Agent. The Company's initial registered office shall be at 4300 - 198th Street S.W., Lynnwood, Washington, 98036, and the name of its initial registered agent at such address shall be William B. Foster. The registered office and registered agent may be changed by the Members from time to time by filing an amendment to the Certificate of Formation.

ARTICLE 3 Purposes and Powers of the LLC

Section 3.1. Purposes. The primary purpose of the LLC is to invest in, acquired, hold, construct, maintain, improve, develop, manage, lease, sell, exchange, and otherwise own and deal with for profit real and personal property. In addition, the LLC may engage in any other business or activity that is necessary or incidental to the LLC's primary purpose.

Section 3.2. Authority of the LLC. In order to carry out any of its purposes, the LLC is authorized to take any lawful action consistent with any such purpose that a partnership is permitted to take under the laws of the State.

Section 3.3. Title to LLC Property. All property owned by the LLC, whether real or personal, tangible or intangible, will be deemed to be owned by the LLC as an entity, and no Member, individually, will have any ownership of such property. The LLC may hold any of its assets in its own name or in the name of one or more individuals, partnerships, trusts or other entities, as nominee for the LLC.

Section 3.4. Powers. Subject to the provisions of this Agreement, the Company shall have the following powers:

(a) To conduct and operate the business of the Company and to execute documents and instruments relating to the Company business, including but not limited to notes, mortgages, deeds of trust, leases, management and brokerage agreements, contracts and other documents.

(b) To procure and maintain insurance covering the various risks to which the Company or its operations may be subject.

(c) To open bank accounts in the name of the Company, designate

the authorized signatures therefore and make deposits and withdrawals form Company accounts on the signatures of one or more designated individuals.

(d) To pay expenses incurred in performing the business and purposes of the Company.

(e) To do all things necessary, incidental or convenient to the exercise of the foregoing powers and to the accomplishment of the foregoing purposes.

ARTICLE 4 Members

Section 4.1. Members. The names and addresses of the Members are:

Mariann Danard, 111 S.E. Everett Mall Way, Suite C200, Everett, Washington, 98208

Dr. Craig Bernhart, 22725 - 44th Avenue S.W., Mountlake Terrace, Washington, 98043

Section 4.2. Authority of Members. Management of the business affairs of the LLC shall be vested in the Members.

Section 4.3. Annual Meeting. The annual meeting of the Members of the LLC for the transaction of such business as may properly come before the meeting shall be held within the first six (6) months of each year, the specific time and place to be set by the Members.

Section 4.4. Special Meetings. Special meetings of the Members for any purpose or purposes may be called at any time by one or more Members holding a majority of the total Percentage Interests, or by the Managing Member. The meeting shall be held at the principal offices of the LLC or such other location as the Members shall mutually agree upon.

Section 4.5. Notice of Meetings. Except as otherwise provided below, the Chairman or Member calling a special meeting shall give not less than ten (10) nor more than sixty (60) days before the date of any meeting of Members, written notice stating the place, day, and time of the meeting to each Member. If a special meeting is called by any Member or Members, then the written notice shall describe with reasonable clarity the purpose or purposes for which the meeting is called and specifying the general nature of the business proposed to be transacted.

Section 4.6. Waiver of Notice. A Member may waive notice of any meeting at any time, either before or after such meeting. Except as provided below, the waiver must be in writing, be signed by the Member entitled to the notice, and be delivered to the LLC

for inclusion in the minutes or filing with the corporate records. A Member's attendance at a meeting in person or by proxy waives objection to lack of notice or defective notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting on the ground that the meeting is not lawfully called or convened. In the case of a special meeting, or an annual meeting at which fundamental corporate changes are considered, a Member waives objection to consideration of a particular matter that is not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

Section 4.7. Quorum: Vote Requirement. A quorum shall exist at any meeting of Members if Members holding in excess of fifty percent (50%) of the votes are represented in person or by proxy. Once a Member is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, the Member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

Section 4.8. Proxies. At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member. Such proxy shall be filed with the Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 4.9. Adjourned Meetings. An adjournment or adjournments of any Member's meeting, whether by reason of the failure of a quorum to attend or otherwise, may be taken to such date, time, and place as the chairman of the meeting may determine without new notice being given if the date, time, and place are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the LLC may transact any business which might have been transacted at the original meeting.

Section 4.10. Action by Members Without a Meeting. Any action which may be or which is required by law to be taken at any meeting of Members may be taken, without a meeting or notice of a meeting, if one or more consents in writing, setting forth the action so taken, are signed by all of the Members or, in the place of any one or more of such Members, by a person holding a valid proxy to vote with respect to the subject matter thereof, and are delivered to the LLC for inclusion in the minutes or filing with the LLC records. Action taken by unanimous written consent is effective when all consents are in possession of the LLC, unless the consent specifies a later effective date. Such consent shall have the same force and effect as a meeting vote of Members and may be described as such in any articles or other document filed with the Secretary of State of the State of Washington.

Section 4.11. Telephonic Meetings. Members may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

Section 4.12. Limitation of Liability. Except as otherwise provided herein or by law, the debts, obligations, and liabilities of the LLC, whether arising in contract, tort or otherwise shall be solely the debts, obligations, and liabilities of the LLC. No Member shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member of the LLC.

Section 4.13. Indemnification. A Member shall not be liable, responsible or accountable in damages or otherwise to the Company or other Members for any act or omission by the Member performed in good faith pursuant to the authority granted to such Member by this Agreement or in accordance with its provisions and in a manner reasonably believed by such Member to be within the scope of the authority granted to such Member and in the best interest of the LLC, provided that such act or omission did not constitute fraud, misconduct, bad faith or gross negligence.

The LLC shall indemnify and hold harmless the Members against any liability, loss, damage, cost or expense incurred by it on behalf of the LLC or in furtherance of the LLC's interest without relieving any such Member of liability for fraud, misconduct, bad faith or gross negligence. Any indemnification required to be made by the LLC shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court settlement, contract or otherwise. In addition, the LLC may advance funds to a person or Member claiming indemnification under this Section for legal expenses and other costs incurred as a result of a legal action brought against such person or Member only if (i) the legal action relates to the performance of duties or services by the person on behalf of the LLC, (ii) the legal action is initiated by a party other than an Member, and (iii) such person undertakes to repay the advanced funds to the LLC if it is determined that such person is not entitled to indemnification pursuant to the terms of this Agreement.

Section 4.14. Admission of Additional Members. A person may be added as a Member upon satisfaction of such terms and conditions approved by the Members. Notwithstanding the foregoing, a person shall not become an additional Member unless and until such person becomes a party to this Agreement by signing this Agreement and executing such documents and instruments as the Managers may reasonably request as additional, necessary or appropriate to confirm such person as a Member in the LLC.

Section 4.15. Accounting. No additional Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the LLC. The LLC may, at the time an additional Member is admitted, close the LLC books (as though the LLC's tax year had ended) or make pro rata allocations of loss, income and expense deductions to an additional Member for that portion of the LLC's tax year in which such Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

Section 4.16. Dissociation of a Member. A Member shall cease to be a Member upon the happening of any of the following events:

- (a) the Member voluntarily withdraws from the LLC, or assigns its interest in the LLC to another person in accordance with the terms of this Agreement;
- (b) the Member is removed from the LLC in accordance with the Act or the terms of this Agreement;
- (c) upon the Bankruptcy of a Member;
- (d) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;
- (e) in the case of a Member who is acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (f) in the case of a Member that is a separate entity other than a corporation, the dissolution and commencement of winding up the separate entity;
- (g) in the case of a Member that is a corporation, the filing of articles of dissolution or its equivalent, for the corporation or the revocation of its charter;
- (h) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the LLC.

Section 4.17 Withdrawal. A Member may withdraw voluntarily from the LLC upon not less than six month's prior written notice to the other Members. Such withdrawal shall be effective upon the date specified in the notice or the date notice is received by the other Members, whichever is later.

Section 4.18 Rights Upon Dissociation. In the event any Member ceased to be a Member prior to the expiration of the term of the LLC, the following shall apply.

- (a) The person shall be treated as a mere creditor of the LLC from the date of withdrawal from the LLC until such time as the person has received all distributions to which the person is or may be due under this Agreement.
- (b) If the dissociation of a Member causes the dissolution of the LLC and the business and affairs of the LLC are wound up under Article 11, the person shall be entitled to participate in the winding up of the LLC to the same extent as any Member as provided in this agreement except that any distributions to which the person would have been entitled, shall be reduced by the damages sustained by the LLC as a result of the dissolution and winding up.

ARTICLE 5 Management

Section 5.1 Management. The day to day business and affairs of the Company shall be managed by the Members. Except as otherwise expressly provided in this Agreement, the Members shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. If there are more than two Members, Company decisions shall be made by a majority vote. Without limiting the generality of the foregoing, the Members shall have the unilateral power and authority, on behalf of the Company:

- (a) To negotiate and execute leases regarding the Property, or property which the Company manages or maintains.
- (b) To collect rents and deposit the same in bank accounts.
- (c) To undertake maintenance or repair of the Property.
- (d) To purchase such insurance as deemed appropriate to protect the Property and the Members.
- (e) To employ or otherwise engage the services of all persons or firms, professional or otherwise, deemed advisable to carry out the purposes of the Company.
- (f) To prepare and adopt an annual budget.
- (g) To act as tax matters Member.
- (h) To borrow money on behalf of the Company.
- (i) To execute or create any mortgage, deed of trust, or other security assignment or interest encumbering any of the Property.
- (j) To extend any credit or loans or the agreement to become the surety, guarantor or endorser for any person or entity.
- (k) To list, offer for sale or accept any offer to purchase any of the Property and to sign all documents necessary to acquire or dispose of the Property.
- (l) The execution of any contract, or payment of any expenditure, relating to the business of the Company.
- (m) To determine the amount of any distributions to Members, pursuant

to Section 10.1, whether in cash or in kind.

- (n) To approve a plan of merger to which the Company is a party.
- (o) To set aside or allocate funds as reserves.

Section 5.2 Compensation. The Members shall be entitled to compensation from the Company for management services in an amount and manner as approved by an affirmative vote of fifty-one percent (51%) of the Membership Interests. In addition, the Member shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by the Member in connection with the Company's business.

Section 5.3 Duty of Loyalty. Each Member shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to the LLC, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the LLC may enter and the LLC and each Member waive the right or claim to participate therein. Notwithstanding the foregoing, Members shall account to the LLC and hold, as trustee for it, any property, profit, or benefit derived by the Member without the consent of the Members, in the formation, conduct and winding up of the LLC business or from a use or appropriation by the Member of any assets of the LLC, including information developed exclusively for the LLC and opportunities expressly offered to the LLC.

Section 5.4 Removal or Resignation. At a meeting called expressly for that purpose, a Manager may be removed at any time, with or without cause, by the affirmative vote of eighty-one percent (81%) of the Membership Interest. The removal or resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member. Prior to the Manager's removal, any successor Manager shall indemnify and hold harmless a removed Manager from any and all debt and personal liability incurred in the course of his or her duties without regard to any liability the Manager would have solely as a Member, and shall obtain formal releases from any Company creditor who has received personal guarantees from the Manager.

ARTICLE 6 Contributions to the LLC

Section 6.1 Capital Contributions of the Members. Each Member has contributed, or will contribute, to the capital of the LLC cash or other property in the following amounts, to-wit:

Mariann Danard	\$250,000.00
Dr. Craig Bernhart	\$100,000.00

Section 6.2 No Withdrawals of Capital. A Member will have no right to

withdraw any part of its Capital Contributions or Capital Account, or to receive any distribution from the LLC, except in accordance with the provisions of this Agreement.

Section 6.3 No Interest on Capital. A Member will not be entitled to receive interest on any portion of its Capital Contributions or Capital Account. A Member will, however, be entitled to receive interest on any Loans it makes to the LLC pursuant to Section 6.5.

Section 6.4 Additional Contributions. No Member may contribute additional funds to the LLC, and no Member shall be obligated to contribute such funds, unless all Members agree on the terms upon, and proportions in which, such funds will be contributed.

Section 6.5 Loans by Members.

(a) Optional Loans. A Member may, but will not be required to, advance additional monies to the LLC as a loan upon such terms as the lending Member and the LLC may agree.

(b) Treatment of Loans. No loan will result in an increase in the Percentage Interest of the lending Member. The amount of any such loan will not be credited to the lending Member's Capital Account. Any loan will be an obligation of the LLC to the lending Member, with interest, and will be repaid to the lending Member before any amount may be distributed to any Member with respect to its Percentage Interest. Interest on such loans will be payable without regard to the profits or losses of the LLC and will be treated as a transaction with a Member other than in its capacity as a Member of the LLC pursuant to Section 707(a) of the Code. All such loans will be repayable solely from the LLC's assets and represented by promissory notes executed by the LLC.

Section 6.6 Capital Accounts.

(a) Accounts. The LLC will establish on its books a Capital Account for each Member. Capital Accounts will be determined and maintained in accordance with the provisions of this Agreement and the requirements of Section 1.704-1(b)(2)(iv) of the Regulations, which are incorporated by this reference. Should there be any inconsistency between the provisions for Capital Account maintenance contained in this Agreement and the more detailed provisions of the Regulations, the provisions of the Regulations will prevail.

(b) Basic Capital Account Adjustments. A Member's Capital Account (1) shall be increased by (A) the Member's Capital Contributions (including the fair market value of any property contributed to the LLC) net of liabilities assumed by the LLC and liabilities to which the contributed property is subject, and (B) subject to subsection (d) below, the Member's distributive share of LLC income and gains (or items thereof),

including income or gains exempt from tax; and (2) shall be reduced by (A) all distributions to the Member of cash or property (computed at the fair market value of any distributed property and net of liabilities assumed by the Member and liabilities to which the distributed property is subject), and (B) subject to subsection (d) below, the Member's distributive share of LLC expenses, losses and deductions (or items thereof), including the Member's share of expenses which are not deductible in computing taxable income; and (3) shall be further adjusted in certain circumstances as provided in subsections (c), (d) and (e) below, or as otherwise may be necessary to satisfy the requirements of Section 1.704-1(b)(2)(iv) of the Regulations.

(c) Special Adjustments Upon Liquidation. If LLC assets are distributed in kind to one or more Members as a result of the liquidation and winding up of the LLC or the termination of a Member's interest in the LLC, the Member's Capital Accounts will be adjusted to reflect the manner in which the unrealized gain or loss, or any other item of income or deduction inherent in the distributed property (that has not been reflected in the Capital Accounts previously) would be allocated between the Members if the LLC sold the distributed property for its fair market value on the date of distribution.

(d) Adjustments to Capital Accounts where Book Value differs from Adjusted Tax Basis. As provided in subsection 6.6 (b), a Member's Capital Account will be increased by the fair market value of any property the Member has contributed to the LLC. Additionally, under certain circumstances described in subsection 6.6(f), the LLC may elect to restate the Book Values of LLC assets to reflect the current fair market values of such assets. In either case, an asset's Book Value may differ from its Adjusted Tax Basis, and the Capital Accounts of the Members will have been adjusted at the time of the contribution or revaluation to reflect the Book Values of LLC assets, rather than Adjusted Tax Basis. In those circumstances, in order to account for the differences between Book Values and Adjusted Tax Basis, the Members' Capital Accounts will be adjusted in accordance with paragraph (b)(2)(iv)(g) of Section 1.704-1 of the Regulations for subsequent allocations to the Members of Book Items of depreciation, depletion, amortization, and gain or loss, with respect to the contributed or revalued property. In all other cases, the Capital Account adjustments required by subsection (b) will be made with reference to Tax Items. For these purposes, Book Items of depreciation and amortization with respect to LLC property may be computed in accordance with any reasonable method selected by the LLC, so long as (1) if the Book Value of LLC property exceeds its Adjusted Tax Basis, Book Depreciation and Book Items of amortization will be no less than the corresponding Tax Depreciation and Tax Items of amortization; (2) if the Adjusted Tax Basis of LLC property exceeds its Book Value, Book Depreciation and Book Items of amortization will be no greater than the corresponding Tax Depreciation and Tax Items of amortization; and (3) if the Book Value and Book Items of amortization will be equal to the corresponding Tax Items.

(e) Treatment of Special Basis Adjustments. Adjustments made to the Adjusted Tax Basis of LLC property under Section 743 of the Code, if the LLC has a Section 754 election in effect, or under Section 732(d) of the Code, if the LLC does not

have a Section 754 election in effect, will not be reflected in the Capital Account of the transferee Member. Depreciation, amortization, and gain or loss with respect to such property for purposes of adjusting Capital Accounts in accordance with subsection (b), will be computed by disregarding the effect of such Special Basis Adjustments. The preceding sentence will not apply to the extent that the basis adjustment is allocated to the common basis of LLC property under paragraph (b)(1) of Section 1.734-2 of the Regulations. In that case, the Special Basis Adjustment will give rise to adjustments to the Capital Accounts of the Members in accordance with their interests in the LLC. If the LLC has a Section 754 election in effect that gives rise to an adjustment in the Adjusted Tax Basis of LLC property under Section 734, a Member who receives a distribution from the LLC will have a corresponding adjustment made to its Capital Account."

Section 6.7 Election to Restate Book Values of LLC Assets.

(a) The LLC may elect to increase or decrease the Capital Accounts of the Members to reflect a revaluation of LLC property on the LLC's books for the reasons provided in subsection (b) below, so long as (1) the adjustments are based on the fair market value of LLC property on the date of adjustment; (2) the adjustments reflect the manner in which unrealized income, gain, loss, or deduction inherent in such property (that has not been reflected in the Capital Accounts previously) would be allocated between the Members if there were a taxable disposition of the property for its fair market value on that date; (3) the Members' Capital Accounts are adjusted as required under Section 1.704-1 of the Regulations for allocations to them of Book Depreciation, amortization, and Book Gain or Loss with respect to such property, and (4) the Members' distributive shares of Tax Depreciation, amortization, and Tax Gain or Loss with respect to such property is determined in accordance with paragraph (b)(2) of Section 7.1 so as to take into account the variation between the Adjusted Tax Basis and Book Value of LLC property in the manner provided under Section 704(c) of the Code.

(b) The LLC may elect to revalue the LLC property and the Members' Capital Accounts (1) in connection with a contribution of money or other property to the LLC by a new or existing Member as consideration for an interest in the LLC, or (2) in connection with a distribution of money or other property by the LLC to a retiring or continuing Member as consideration for an interest in the LLC or (3) under generally accepted industry accounting practices, if substantially all of the LLC property consists of cash equivalents and stock, securities, commodities, options warrants, futures, or similar instruments that are readily tradeable on an established securities market.

ARTICLE 7

Allocation of Profits and Losses; Distributions

Section 7.1 Allocation of Profits, Losses and Certain Tax Items.

(a) Determination of Profits and Losses. Except as otherwise stated, for purposes of this Agreement, LLC "profits", "gains", and "losses" will include both Book

Items (for purposes of certain Capital Account adjustments to be based on Book Items as required under the provisions of Section 1.704-1 of the Regulations) and Tax Items (for purposes of determining the Members' distributive shares of taxable income, gain, or loss pursuant to Section 704 of the Code and the Regulations) without regard to any Special Basis Adjustments. Except where Tax Items differ from Book Items as required under Section 1.704-1 of the Regulations, all Tax Items and Book Items of profit, gain, or loss will be allocated in the same proportions.

(b) Allocation of Current Profits and Losses.

(1) Generally. Except as otherwise provided in the Section 7.1, all profits and losses from LLC operations and all other items of deduction, credit, preference and the like (both Book Items and Tax Items) will be allocated between the Members in proportion to their respective Percentage Interests.

(2) Special Allocation of Tax Depreciation for Contributed or Revalued Property. If the Initial Book Value of an asset of the LLC differs from its Adjusted Tax Basis, either because it was contributed to the LLC at a time when its fair market value differed from its Adjusted Tax Basis, or because the LLC has elected to restate its Book Value as permitted by Section 6.7, the Tax Items of income, gain, loss and deduction will be allocated first between the Members so as to account for the variation between the Adjusted Tax Basis and the Initial Book Value of the asset at the time of contribution or revaluation, in accordance with Section 704(c) of the Code and paragraph (b)(2)(iv)(b) of Section 1.704-1 of the Regulations. Corresponding Book Items will nonetheless be allocated in accordance with paragraph (1) above.

(3) Qualified Income Offset. If a Member unexpectedly receives:

A. A Capital Account adjustment pursuant to Section 1.704-1(b)(2)(iv)(k) of the Regulations for depletion allowances with respect to oil and gas properties of the LLC (if any);

B. An allocation of LLC deduction or loss pursuant to Section 704(e)(2) or Section 706(d) of the Code, or Section 1.751-1(b)(2)(ii) of the Regulations; or

C. A distribution from the LLC that, as of the end of the taxable year in question, exceeds offsetting increases to such Member's Capital Account occurring during or prior to the LLC taxable year in question,

Then that Member will be allocated items of LLC taxable income and gain (consisting of a pro rata portion of each item of LLC income, including gross income, for the year) in an amount and manner sufficient to eliminate as quickly as possible any portion of a deficit balance in the Member's Capital Account caused or increased by the unexpected adjustment, allocation or distribution. For purposes of the qualified income

offset described in this paragraph (3), the LLC will ignore any portion of the deficit balance that the Member is obligated to restore under other provisions of this Agreement. For purposes of applying the provisions of this paragraph (3), a Member's Capital Account will be reduced for the items described under paragraphs (4), (5) and (6) of Section 1-704-1(b)(2)(ii)(d) of the Regulations. The provisions of this paragraph (3) will be construed consistently and in accordance with Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(4) Minimum Gain Chargeback. If there is a net decrease in Minimum Gain during a LLC taxable year, then before any other allocation is made of LLC items for the year, all Members having a deficit Capital Account balance at the end of the year (excluding from each such Member's deficit Capital Account balance the Member's allocated share of Minimum Gain after the net decrease) will be allocated items of income and gain for the year (and, if necessary, subsequent taxable years) in the amount and in the proportions needed to eliminate the deficit Capital Account balances (so adjusted) as quickly as possible. The provisions of this paragraph (4) will be construed consistently and in accordance with Section 1.704-2(f) of the Regulations.

(c) Allocation of income, Gain or Loss Resulting from a Capital Transaction. All income, gain or loss recognized by the LLC as the result of an Interim Capital Transaction will be allocated between the Members in the same manner as is provided for the allocation of current profits and losses set forth in subsection (b). Income, gain or loss recognized by the LLC as the results of a Terminating Capital Transaction, after making the allocations of current profits and losses as provided in subsection (b), will be allocated in the following manner:

(1) Gain. Except for the special allocation of Tax Gain with respect to contributed or revalued assets provided in paragraph (3) of this subsection (c), Book Gain and Tax Gain will be allocated as follows:

A. First, any income or gain, up to the Minimum Gain will be allocated to all Members with deficit Capital Account balances resulting in whole or in part from allocations of loss or deduction (or items thereof) attributable to nonrecourse debt secured by LLC property, to each such Member in the proportion that its deficit Capital Account balances, until all income or gain is allocated or the aggregate deficit in the Capital Accounts of all such Members is reduced to a sum no greater than the Minimum Gain, if any, whichever occurs first;

B. Next, any remaining income or gain be allocated to the Members who have negative Capital Account balances, to each in the proportion that its negative balance bears to the aggregate sum of all negative balances, until all income or gain is allocated or all negative Capital Account balances are eliminated, whichever occurs first;

C. Next, any remaining income or gain will be allocated to the Members whose remaining Invested Capital exceeds their Capital Account balances,

to each such Member in the proportion that the excess of its Invested Capital over its Capital Account bears to the aggregate of such excesses for all Members, until all remaining income or gain is allocated or the Capital Account balance of each Member equals or exceeds its remaining Invested Capital, whichever occurs first;

D. Finally, any remaining income or gain will be allocated to the Members in proportion to their Percentage Interests.

(2) Loss. Except for the special allocation of Tax Loss with respect to contributed or revalued assets provided in paragraph (3) of this subsection (c), Book Loss and Tax Loss will be allocated as follows:

A. First, to each Member having a positive Capital Account balance in the proportion that its positive balance bears to the aggregate sum of the positive Capital Account balances of all Members, until all loss is allocated, or all positive Capital Account balances are reduced to zero, whichever occurs first;

B. Any remaining Loss will be allocated to the Members, to each in proportion to its Percentage Interest.

(3) Allocation of Tax Gains or Loss with Respect to Contributed or Revalued Assets. If a Capital Transaction involves LLC assets having either Unrealized Appreciation or Unrealized Depreciation, the resulting Book Gain or Loss will be allocated as provided generally in paragraphs (1) and (2) of this subsection (c). However, Tax Gain or Loss recognized by the LLC in any such Capital Transaction will be allocated as follows:

A. Gain. If gain results from a Capital Transaction involving an asset with respect to which there is Unrealized Appreciation, then Tax Gain will first be allocated entirely to the Contributing Members in the manner contemplated by Section 704(c) of the Code and the corresponding Regulations, until an amount of Tax Gain has been allocated which is equal to the amount of the Unrealized Appreciation or until all Tax Gain is allocated, whichever occurs first. The Capital Account of a Contributing Member will not be adjusted with respect to the amount of Tax Gain so allocated. Any Tax Gain in excess of the amount of the Unrealized Appreciation, and any Tax Gain resulting from a Capital Transaction involving an asset with respect to which there is Unrealized Depreciation will be allocated in the same manner as Book Gain with respect to such asset is allocated pursuant to paragraph (1) of this subsection (c).

B. Loss. If loss results from a Capital Transaction involving an asset with respect to which there is Unrealized Depreciation, then Tax Loss will first be allocated entirely to the Contributing Members in the manner contemplated by Section 704(c) of the Code and the corresponding Regulations, until an amount of Tax Loss has been allocated which is equal to the amount of the Unrealized Depreciation or until all Tax Loss is allocated, whichever occurs first. The Capital Accounts of the Contributing Members will not be adjusted with respect to the amount of Tax Loss so allocated. Any

Tax Loss in excess of the amount of Unrealized Depreciation, and any Tax Loss resulting from a Capital Transaction involving an asset with respect to which there is Unrealized Appreciation will be allocated in the same manner as Book Loss is allocated pursuant to paragraph (2) of this subsection (c).

(d) Certain Allocation Rules.

(1) Any income recognized pursuant to Section 1245 or 1250 of the Code, and any investment credit recapture recognized pursuant to Section 47 of the Code, or successor provisions then in effect, will be allocated to the Members in the same proportions that the Tax Depreciation deductions and investment credits giving rise to such income or recapture were allocated to such Members and their respective predecessors in interest, if any.

(2) For the year during which an additional Member is admitted to the LLC, the additional Member will be allocated a share of the profits and losses which is calculated using either of the following methods, in the discretion of the LLC;

A. ratably on a daily basis with respect to the period that the additional Member is a Member of the LLC; or

B. by dividing the LLC fiscal year into two or more segments and allocating profits and losses in each segment among the persons who were Members during that segment.

Any allocation under this paragraph (2) must be consistent with the methods authorized by Section 706 of the Code and the corresponding Regulations. If neither of the methods described above is consistent with the methods authorized by Section 706 of the Code and the corresponding Regulations, the LLC may allocate profits and losses to the additional Member in any manner that is consistent with such methods.

(3) In any year in which a Member sells, assigns or transfers all or any portion of its Percentage Interest to any person who, during such year, is admitted as a substitute Member, the share of all profits and losses with respect to the transferred Percentage Interest will be divided between the assignor and the assignee on the basis of the number of days in the year before, and the number of days on and after, the execution by the assignee of this Agreement. The assignor and the assignee may, by agreement, make special provisions for the allocation of items of profit, gain, loss, deduction or credit as may from time to time be permitted under the Code and for the distributions under this Article V, but such provisions for allocations and distributions will bind the LLC only after it has received notice from the assignor and assignee.

Section 7.2 Distributions.

(a) Net Cash Flow. Within thirty (30) days following the end of each

calendar quarter, the LLC will distribute all Net Cash Flow available for distribution as follows:

(1) First, to pay the interest due on any loans made by any of the Members to the LLC pursuant to Section 6.5;

(2) Next, to repay the principal of any such loans unless otherwise agreed by the Members; and

(3) Then, to each Member pro rata in accordance with its Percentage Interest.

(b) Distribution of Proceeds of a Capital Transaction. Sale or Refinancing Proceeds resulting from a Capital Transaction will be applied and distributed as provided in paragraphs (1) and (2) of this subsection 7.2(b).

(1) Interim Capital Transaction. Sale or Refinancing Proceeds resulting from an Interim Capital Transaction will be applied and distributed:

A. First, to repay all debts and liabilities of the LLC then due other than loans made by Members to the LLC pursuant to Section 6.5;

B. Next, to pay any interest due on loans previously made by Members to the LLC pursuant to Section 6.5;

C. Next, to repay the principal of such loans unless otherwise agreed by the Members;

D. Next, to set up any reserves which the LLC reasonably deems necessary for contingent, unmatured and unforeseen liabilities or obligations of the LLC; and

E. Finally, the balance, if any, to each Member, pro rata in accordance with its Percentage Interest.

(2) Terminating Capital Transaction. After making the allocations of gain or loss required by Section 7.1 and the adjustments to the Members' Capital Accounts required by Section 1.704-1 of the Regulations, Sale or Refinancing Proceeds resulting from a Terminating Capital Transaction will be applied and distributed by the end of the taxable year in which the LLC is liquidated, or if later, within ninety (90) days of liquidation, as follows:

A. First, to repay all outstanding debts and liabilities of the LLC other than loans made by Members to the LLC pursuant to Section 6.5;

B. Next, to pay the interest due on any loans made by the Members to the LLC pursuant to Section 6.5;

C. Next, to repay the principal of such loans unless otherwise agreed by the Members;

D. Next, to set up any reserves which the LLC reasonably deems necessary for contingent, unmatured and unforeseen liabilities or obligations of the LLC;

E. Next, to the Members having positive Capital Account balances, to each such Member is the proportion that is positive Capital Account balance bears to the positive Capital Account balances of all such Members until all such Proceeds have been distributed or all Members' Capital Account balances have been reduced to zero, whichever occurs first; and

F. Finally, remaining Proceeds will be distributed among the Members, to each pro rata in proportion to its Percentage Interest.

Any remaining reserves retained under subparagraph (D) shall be distributed to the Members, at such time as the LLC determines their retention is no longer necessary, in the same manner as they would have been distributed had they not been retained.

ARTICLE 8

Accounting: Books and Records

Section 8.1 Accounting. The LLC will keep its accounting records in accordance with sound accounting principles, consistently applied, and will report for federal income tax purposes on the cash or accrual basis, as determined by the Members. All decisions concerning accounting principles and elections, methods of depreciation or capital cost recover, and working capital requirements, whether for book or tax purposes (such decisions may be different for each such purpose), will be made by the Members. The Members will have full authority to pay or consent any tax or assessment, as they deems to be in the best interest of the LLC.

Section 8.2 Fiscal Year. The fiscal year of the LLC will on a calendar year.

Section 8.3 Books and Records. During the term of the LLC, the LLC will keep, or cause to be kept, records and books of account in which each transaction of the LLC will be entered fully and accurately. The books and records will be kept in accordance with sound accounting principles, consistently applied, and will (i) include separate Capital Accounts for each Member, and (ii) account separately for Book Items and Tax Items for purposes of making the Capital Account adjustments required by Section 1.704-1 of the Regulations. The LLC will maintain the books and records of the LLC, a true and correct copy of the Certificate of Formation, this Agreement and amendments thereto, a current

and past list of names and addresses of the Members, copies of all federal, state and local tax returns and reports and financial statements of the LLC for at least the three (3) most recent fiscal years, and any other records it deems appropriate or are required pursuant to the Act or by the Members. All books and records of the LLC will be available for reasonable inspection and examination by the Members or their duly authorized representatives during ordinary business hours.

Section 8.4 Periodic Statements. The LLC will have prepared, at least annually, at LLC expense, an annual report which will include (i) a balance sheet, (ii) a statement of the LLC's income and expense, (iii) a statement of changes in Members' equity, (iv) a statement of Capital Account balances, and (v) a statement of changes in cash flows. Each item contained in the annual report will be prepared in accordance with sound accounting principles consistently applied by the LLC. The LLC will distribute copies of the statements and report to each Member within one hundred twenty (120) days after the close of each taxable year of the LLC. The LLC also will prepare and distribute to each Member quarterly operating statements for the business of the LLC.

Section 8.5 Tax Returns: Income Tax Information.

(a) Tax Returns. The LLC will prepare, or cause to be prepared, all federal, state, and local income and other tax returns of the LLC. The LLC will cause the returns to be timely filed and will promptly furnish copies of the returns to any Member upon request.

(b) Reports. The LLC will prepare and distribute, or cause to be prepared and distributed, to each Member, within seventy-five (75) days after the close of each taxable year of the LLC, a report (including Form K-1) informing each Member of the LLC's taxable income or loss for the preceding taxable year; the amount of each class of income, profit, loss, or deduction which is relevant to the reporting of LLC items for federal income tax purposes; and the Member's distributive share of each class of income, gain, loss, or deduction.

Section 8.6 Bank Accounts. The LLC will maintain a separate bank account or accounts in the name of the LLC to be used for the purposes of the LLC. Funds deposited in the LLC's account or accounts may be withdrawn only by check or other order for payment of money signed by a Member or other authorized representative. The bank accounts for the LLC shall be maintained at the ****, Washington.

Section 8.7 Duties of Tax Matters Member. The Members shall elect a Member to be the "Tax Matters Partner" of the LLC, as that term is defined in Section 6231(a)(7) of the Code. As such, the Tax Matters Partner will keep all Members informed of all administrative and judicial proceedings for the adjustment of LLC tax items, as required by Section 6223(g) of the Code and the Regulations thereunder. The Tax Matters Partner will represent the LLC in all such proceedings; provided, however, that other Members may participate in such proceedings to the extent permitted by Sections 6221

through 6231 of the Code, and the corresponding Regulations. The LLC will pay all ordinary and necessary expenses incurred in connection with any such proceedings.

ARTICLE 9 Transfer of LLC Interests

Section 9.1 Prohibition on Transfer. Except as otherwise provided in this Article 9, a Member may not in any way transfer its interest in the LLC without the prior written consent of all Members, which consent may be withheld with or without cause. Any purported transfer not expressly permitted by and in compliance with the provisions of this Article 9 will be void and of no force or effect.

(a) Transfer Defined. As used in this Agreement, the term "transfer" shall include any sale, assignment, gift, pledge, or other disposition or encumbrance of all or a portion of a Member's interest in the LLC, including a "deemed transfer" as defined in subsection (b), whether voluntary or involuntary.

(b) Deemed Transfers. An act of Bankruptcy by a Member shall be deemed a "transfer" and shall be subject to the restrictions of this Agreement.

Section 9.2 Substitute Members. A transferee of a Member's Percentage Interest will not be admitted to the LLC as a substitute Member unless:

(a) The transfer complies with all requirements of this Article 9;

(b) The transferor gives the transferee the right to be substituted in its place; and

(c) The transferee has agreed in writing to be bound by all of the terms and conditions of this Agreement, and has paid all expenses of the LLC incurred in connection with the transfer.

Upon admission to the LLC as a substitute Member, a transferee shall succeed to all rights and obligations of its transferor under this Agreement.

ARTICLE 10 Special and Limited Power of Attorney

Section 10.1 Grant of Power. The LLC and the Members may grant the power and authority to act in the name and on behalf of the LLC to make, execute, acknowledge, file and record any and all documents necessary for the conducting of the business of the LLC during the dissolution, winding up and termination of the LLC as provided in Article 11 of this agreement.

Section 10.2 Type of Power. The special and limited power of attorney granted pursuant to this Article 10 is a special and limited power of attorney, is irrevocable, and is limited to those matters set forth in this Agreement.

ARTICLE 11 Dissolution, Winding Up and Termination

Section 11.1 Events Causing Dissolution. The LLC will be dissolved and its affairs will be wound up upon the happening of the first to occur of the following:

- (a) The expiration of the term specified in Section 2.4;
- (b) An event of dissociation of a Member as set forth in Section 4.16;
- (c) The election of any of the Members;
- (d) The sale or other disposition of all or substantially all of the assets of the LLC;
- (e) The entry of a decree of judicial dissolution;
- (f) Upon the expiration of two years after the effective date of administrative dissolution; or
- (g) Any other event or act causing dissolution of the LLC pursuant to the Act or this Agreement.

Section 11.2 Dissolution Upon Member's Election. In the event of the dissolution of the LLC upon the election of any of the members as provided herein, the parties shall proceed in the following manner:

(a) The member electing to dissolve the LLC (the "electing member") shall notify the remaining members (the "non-electing members") of the electing member's decision to dissolve the LLC.

(b) The non-electing members shall have the right to acquire the interest of the electing member. In the event the electing member and non-electing members are unable to agree upon the terms under which the non-electing members shall acquire the interest of the electing member, the value of the electing member shall be determined by an arbitration pursuant to Section 12.15 of this Agreement. The value of the electing member's interest shall be the fair market value of the assets of the LLC, including any undistributed profits, and determined in accordance with generally accepted accounting principles; *provided, however*, the interest of the electing member shall not be reduced by virtue of the fact that the electing member has a fractional interest in the LLC.

(c) Within thirty (30) days of the arbitrator's decision as to the value of the electing member's interest, the non-electing members shall notify the electing member of the non-electing member's intent to exercise the right to acquire the interest of the electing member. The failure of the non-electing members to notify the electing member in the manner provided herein shall be conclusively deemed a rejection of the right to acquire the interest of the electing member.

(d) The purchase of the electing member's interest shall be closed no later than sixty (60) days after notice is received from the non-electing members of their exercise of the right to acquire the interest of the electing member. The purchase price to be paid to the electing member shall be paid all cash at closing.

(e) In the event the non-electing member fails to exercise the right granted herein, or in the event the purchase does not close in the manner provided herein, then the right to acquire the interest of the electing member herein granted shall terminate, and the LLC shall be dissolved in the manner provided in this Section.

Section 11.3 Winding Up. Upon dissolution of the LLC for any reason, Mariann Danard will have the authority and responsibility to wind up the affairs of the LLC and to liquidate its assets.

(a) Conduct Pending Liquidation. The Members will continue to share income, gains, expenses, losses and all other items during the period of liquidation in the same proportion as before the dissolution. Mariann Danard will have the full right and unlimited discretion to determine the time, manner and terms of any sale or sales of LLC property pursuant to the liquidation. Pending the sales, Mariann Danard may continue to operate and otherwise deal with the assets of the LLC.

(b) Time for Liquidation. A reasonable time will be allowed for the orderly winding up the business of the LLC and the liquidation of its assets and the discharge of its liabilities to creditors so as to enable Mariann Danard to minimize the normal losses attendant upon a liquidation, having due regard to the activity and condition of the relevant markets for the LLC properties and general financial and economic conditions.

(c) Right of Member to Purchase. Any Member may be a purchaser of any properties of the LLC upon liquidation of the LLC's assets, including, without limitation, any liquidation conducted pursuant to a judicial dissolution or otherwise under judicial supervision; provided, however, that the purchase price and terms must be fair and reasonable to the LLC.

(d) Cooperation. In the course of any such winding up, any signature required of a Member (or the trustee, receiver, estate, personal representative, surviving spouse, or successor of a deceased, incapacitated, or insolvent Member) for the transfer of title to any property, real or personal, which has previously been owned by the LLC, will

not be unreasonably withheld. If any Member, representative, surviving spouse or successor unreasonably withholds its signature, then Mariann Danard may sign the Member's name.

(e) Method of Liquidation. Mariann Danard may liquidate the LLC by either or both of the following methods:

(1) Selling the LLC's assets and distributing the net proceeds from the sale, after the payment of LLC liabilities or reservation of amounts therefor, to each Member in satisfaction of the Member's interest in the LLC in accordance with Section 7.2(b)(2);

(2) Distributing the LLC's assets to the Members in kind, each Member accepting in undivided interest in the LLC's assets, subject to its liabilities, in satisfaction of its interest in the LLC in accordance with Section 7.2(b)(2).

Upon completion of the liquidation, the LLC will be deemed completely dissolved and terminated.

Section 11.4 Distribution of Proceeds of Liquidation.

(a) Priority of Distribution. The proceeds of any dissolution or liquidation will be applied and distributed in the order of priority (to the extent that such order of priority is consistent with the laws of the State) specified in Section 7.2(b)(2).

(b) In-Kind Distributions. If any assets are to be distributed in kind, rather than in cash, they will be distributed on the basis of their fair market values, and the Members' respective Capital Accounts will be adjusted for the gain or loss that would have been recognized by them in accordance with Section 1.704-1 of the Regulations had such assets actually been sold at fair market value as of the date of distribution. If the Members cannot agree on the fair market values of the LLC's assets for purposes of this subsection (b), the matter will be submitted to arbitration in accordance with Section 12.15.

Section 11.5 Statement to Members. The LLC shall furnish to each of the Members a statement, prepared at LLC expense, which sets forth the assets and liabilities of the LLC at the commencement of liquidation and an accounting with respect to the liquidation.

Section 11.6 Corporate Name. Upon the dissolution of the LLC Mariann Danard shall have the exclusive right to the use of the business name "Cedar Professional Center", "Cedar Professional Center, Inc.", "Cedar Professional Center, L.L.C." or similar name for a period of six months. If during the six month period Mariann Danard has not elected to use the above listed names then its rights under this paragraph shall lapse.

ARTICLE 12 Miscellaneous

Section 12.1 Notice. Any notice, offer, acceptance, demand, request, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given or made either (1) when delivered personally to the party to whom it is directed (or any officer or agent of such party), or (2) three (3) days after being deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, and properly addressed to the party to whom it is directed. A communication will be deemed to be properly addressed if sent to a party at the address provided in Exhibit A.

The LLC or any Member may at anytime during the term of this Agreement change the address to which notices and other communications directed to it must be sent by providing written notice of a new address within the United States to the other parties to this Agreement. Any such changed of address will be effective ten (10) days after such notice is given.

Section 12.2 Governing Law. This Agreement will be construed and the rights, duties and obligations of the parties will be determined in accordance with the laws of the State.

Section 12.3 Successors and Assigns. This Agreement will bind and benefit the parties and their respective heirs, executors, legal representatives and permitted successors and assigns. Nothing contained in this Section 12.3 will be construed to permit any assignment or conveyance of any interest in the LLC not otherwise expressly permitted elsewhere in this Agreement.

Section 12.4 Headings. Headings used in this Agreement have been included for convenience and ease of reference only and will not in any manner influence the construction or interpretation of any provision of this Agreement.

Section 12.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to its subject matter. There are no other prior or contemporaneous agreements, either written or oral, among the parties with respect to this subject. This Agreement may be amended only by a written document signed by all of the Members.

Section 12.6 Waiver. No right or obligation under this Agreement will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance in any other instance, in any other respect, or at any other time.

Section 12.7 Severability. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, in any provision of this Agreement, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances, or to any other extent, will not be impaired.

Section 12.8 Number and Gender. When required by the context, (a) the singular will include the plural and vice versa, (b) the masculine will include the feminine and neuter genders, and vice versa, and (c) the word "person" will include trust, corporation, firm, partnership or other form of association.

Section 12.9 References. Except as otherwise specifically indicated, all references in this Agreement to:

(a) Numbered or lettered articles, sections, subsections, paragraphs, subparagraphs, clauses and subclauses, refer to articles, sections, subsections, paragraphs, subparagraphs, clauses and subclauses of this Agreement;

(b) Exhibits refer to Exhibits attached to this Agreement; and

(c) This Agreement or any Exhibit include any subsequent amendments to the Agreement or Exhibit, as the case may be.

Section 12.10 Attorneys' Fees. If any litigation or other disputed resolution proceeding is commenced between parties to this Agreement to enforce or determine the rights or responsibilities of such parties, the prevailing party or parties in any such proceeding will be entitled to receive, in addition to such other relief as may be granted, its reasonable attorneys' fees, expenses and costs incurred preparing for and participating in such proceeding.

Section 12.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

Section 12.12 Waiver of Action for Partition. For the term of the LLC and for the period of the winding up of its business following dissolution, each party irrevocably waives any right it may have to maintain any action for partition with respect to any of the LLC's assets.

Section 12.13 Further Assurances. Each party agrees to take such further actions to make, execute and deliver such further written instruments, as may be reasonably required from time to time to carry out the terms, provisions, intentions and purposes of this Agreement.

Section 12.14 Competing Interest. Each Member understands that other

Members and their Affiliates may engage in other business activities which may compete directly or indirectly with the business activities of the LLC. Each Member hereby consents to such other business activities and agrees that it acquires no interest therein by virtue of the existence of this LLC.

Section 12.15 Arbitration. Any dispute arising under or in connection with this Agreement will be settled by arbitration as set forth in this Section 12.15. No legal right of action may arise out of any such dispute until arbitration has been completed. Each party, however, will have full access to the courts to compel compliance with these arbitration provisions, to enforce an arbitration award or to seek injunctive relief, whether or not arbitration is available or under way. The arbitration will take place as follows:

(a) Notice. The party demanding arbitration must give the other party a written notice. The written notice must contain, in addition to the demand for arbitration, a clear statement of the issue or issues to be resolved by arbitration, an appropriate reference to the provision of the Agreement which is involved, the relief the party requests through arbitration, and the name and address of the arbitrator selected by the demanding party.

(b) Response. The party receiving the notice of the demand for arbitration must provide a written response to the demand within fifteen (15) days following receipt of the notice. The response must contain a clear statement of the respondent's position concerning the issue or issues in dispute and the name and address of the arbitrator it selects and one of the arbitrators to hear the dispute. If the party receiving the notice of demand for arbitration fails to designate its arbitrator within the time allowed, the demanding party may apply to the presiding department of Snohomish County Superior Court to designate the second arbitrator.

(c) Third Arbitrator. Within seven (7) days following the selection of the second arbitrator, the two arbitrators selected in accordance with subsections (a) and (b) will select a third arbitrator. If they fail to do so within that time period, either party may apply to the Superior Court for Snohomish County, State of Washington, to appoint a third arbitrator.

(d) Arbitration Meeting. The arbitrators will meet in Lynnwood, Washington within twenty (20) days after the selection of the third arbitrator and will allow each party an opportunity to submit oral and written evidence and argument concerning the issue in dispute. The three arbitrators may resolve only the question or questions submitted to the arbitration and must include as part of their consideration a full review of the Agreement and all material incorporated in the Agreement by reference.

(e) Decision. The decision of a majority of the arbitrators will be final and will bind the parties.

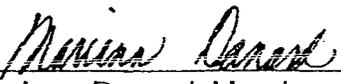
(f) Consent to Change. By consent of all parties to any dispute under

this Agreement, the method of selection of arbitrators, or even the arbitrators selected, may be changed at any time.

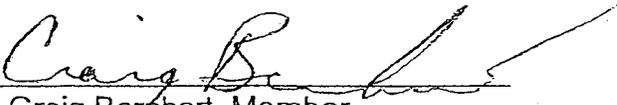
(g) Payment of Costs. Subject to the provisions of Section 14.10, in any arbitration, each party will pay its own costs, witness fees, and attorneys' fees and the fees charged by the arbitrator it selects. The fees charged by the third arbitrator and the costs of the proceeding shall be borne equally.

(h) State Law. Except to the extent inconsistent with the terms of this Agreement, the terms and provisions of Chapter 7.04 RCW are incorporated in and made a part of this Agreement.

IN WITNESS OF THEIR AGREEMENT, the parties have executed this Agreement of Limited Liability Company as of the year and day first above written.



Mariann Danard, Member



Dr. Craig Bernhart, Member

Appendix 2

Saved: WP 10
Saved Disc: WP 6.0 A:Cedar.llc
Rough Draft For Discussion Only: Not Proofed.
Revised: 12/3/02
Comments: Members need to discuss Buy Out Terms.
Need Receipts for Contributions.
Short Version applicable

CEDAR PROFESSIONAL CENTER, LLC MEMBER'S OPERATING AGREEMENT

This Agreement is made this ___ day of December 2002 by and between MARY ANN DANARD and CRAIG BERNHART, who are the members of Cedar Professional Center, LLC, a limited liability company organized under the laws of the State of Washington, collectively "Members," and Cedar Professional Center, LLC, hereafter referred to as the "LLC." -

RECITALS

The purpose of this Agreement is to form a limited liability company to be owned by the Members for the ownership and development of commercial real property. The parties intend this Member's Agreement to govern all aspects of the relation between them as members and their relations with the LLC. This Agreement shall supersede any prior oral or written agreements, promises, or covenants relating to the LLC, its properties, the member's obligations, and member's rights, including their obligations to make capital contributions.

The parties intend that their respective ownership interests in the partnership be held by them personally and that such cannot be transferred, voluntarily or involuntary, except as authorized herein. A member's interest may be held by a corporation, family limited partnership or trust for their benefit, provided that the ownership of their member interest in such form does not change the pass through nature of the LLC's federal income tax profit or loss. Notwithstanding how each party holds his ownership interest, the rights of management of the partnership shall be exercised only by the parties to this Agreement and may not be transferred nor delegated without the express written consent of all parties to this Agreement.

AGREEMENT

For the mutual promises and covenants herein, and other good and sufficient consideration, the parties agree as follows:

ARTICLE I.
Definitions

As used in this Agreement, the following defined terms shall have the meanings specified below:

"Contributing Member" means a Member who: (i) has contributed property to the Membership or (ii) is deemed to have contributed property to the LLC because services provided or to be provided by him in consideration of an LLC interest or share.

"Initial Book Value" means (i) with respect either to any asset contributed to the LLC by a Member means the fair market value of the asset determined as of the date of contribution, (ii) with respect to any other asset, the cost of the asset to the LLC.

"Invested Capital" means, for any Member at any time, the Member's aggregate Capital Contributions, reduced by the proceeds of any Capital Transaction distributed to the Member.

"Major Decision" means a decision by the LLC to:

- (a) Make any capital expenditure in any single transaction in excess of \$2,500.00.
- (b) Incur or refinance any debt in excess of \$2,500.00.
- (c) Admit one or more additional or substitute Members;
- (d) Transfer substantially all of the assets of the LLC;
- (e) Merge the LLC into any other entity;
- (f) Dissolve the LLC.

"Member" means each person whose admission is unanimously approved by the Members, subject to his first executing a counterpart of this Agreement and making his Capital Contribution as required by the conditions of his admission.

"Net Cash Flow" means, in any fiscal period, (i) all cash (and items immediately convertible to cash without substantial discount) received by the LLC as Revenue from Operations; reduced by (ii) all cash expenses incurred by the LLC in connection with the operation of its business, including, but not limited to, fees and other expenses payable by the LLC to a person or entity, and interest payable on indebtedness of the LLC, if any; and reduced further by (iii) required payments of principal and interest on any LLC indebtedness, amounts set aside as reserves or contingency funds, and the cost of any capital improvements to the Property.

"Percentage Interest" means a Member's percentage interest in the LLC, which,

unless modified by an amendment to this Agreement, shall be as set forth in paragraph 6.1 of this Agreement.

ARTICLE II. Organization and Covenants

Section 2.1 Formation. This LLC was formed on _____. The LLC will be operated pursuant to the terms and conditions contained in this Agreement. The LLC shall be a single purpose LLC and limited to the ownership, development, improvement and sale of the real property.

Section 2.2 Name. The name of the LLC will be the Cedar Professional Center, LLC, a general Washington LLC.

Section 2.4 Term. The term of the LLC shall be for until November 20, 2032, however, the term may be extended for an additional 10 years with the unanimous consent of the Members. Upon the sale of the LLC's real property which was acquired by the LLC at or about the time of its formation, the members owning more than 40% of the Percentage Interests of the LLC may require the dissolution of the LLC within 1 year from the sale of its real property, unless such sale involved a 1031 Tax Deferred Exchange requiring the LLC to own the newly acquired property for more than 1 year.

Section 2.5 Negative Covenants. The following provision shall supersede any inconsistent provision or interpretation of any provision of this Agreement, any prior Agreement, or oral agreement made hereafter. The following provisions may not be modified by the parties orally or by their conduct. The LLC and each Member will not, without the express written consent of all Members:

- a. Enter into any agreement including any agreements to borrow money or obligate the LLC for more than \$2,500.00.
- b. Materially change or alter its business from the lease and development of real property.
- c. Make loans to any person, firm or entity.
- d. Change, alter or modify the terms of the Certificate of Formation, this Member's Agreement, operating agreement, or loan agreements.
- e. Enter into any agreement involving the sale or lease of the LLC's real property.
- f. Acquire any pecuniary, financial, or ownership interest in any other business, entity, corporation.

g. Declare or pay any cash distribution, or loan any money to any Member, or acquire or purchase a Member's interest.

h. Make any Major Decision.

i. Transfer any Interest in violation of the transfer restrictions herein.

j.

2.6 Positive Covenants.

a. **Death-Buy Out.** Upon the death on any Member, the LLC shall purchase from the deceased Member's personal representative, heir, or successor, including a trust or Limited Partnership established of the Member's or his heirs benefit, the Member's Interest at the price established by the Members at the annual meeting, and on the terms stated in Article IX.

b. **Title of Member's Interest.** If a Member is married, the Member's Percentage Interest shall be owned by them as their sole and separate property, and/or in the name of a Limited Partnership of which they are the general partner and own more than 1/2 of the outstanding partnership interests, or a trust for the Member's or his spouse or his children's benefit.

c. **Divorce -Buy Out.** In the event a Member is or becomes married and becomes divorced, the Decree of Dissolution shall convey the Member's Percentage Interest to the Member as his sole and separate property and free from any claim, right, title and/ or interest of his former spouse or their marital community. If both husband and wife are Members, then their respective Percentage Interests shall be conveyed to the Member designated herein, or if not designated, to one spouse, free and clear of any claim, right, title or interest of the other and/or their marital community. In the event this covenant is breached, then the LLC shall purchase Members' interest at the price established by the Members at the annual meeting in accordance with Article IX, and on the same the terms stated in Article IX for the a contested buy-out.

d. **Consensual Buy Out.** In the event any Member desires to withdraw from the LLC he shall offer to sell his Percentage Interests to the LLC and then offer it to the other Members, pro rata. The LLC first, and then the other Members, shall have the option to buy out the withdrawing Member's Percentage Interest at the price and on payment terms offered by the withdrawing Member.

e. **Voluntary Termination of the LLC-Blind Option.** A Member may require the dissolution of the LLC. The Member desiring to terminate the LLC in this manner

shall state the price of this Percentage Interest. The other Members shall have the option to purchase the Percentage Interest at the price offered, or require the offering Member to buy their Percentage Interests at the same price. The payment terms of a voluntary buy-out shall be the terms offered by the Member desiring to terminate the LLC, and if no terms are stated, then the payment terms shall be on the same terms as for a contested buy out as set forth in Article IX.

f. Bankruptcy or Involuntary Transfer of Interest. A Member's bankruptcy which results in an involuntary transfer of his interest, or other involuntary transfer, excluding a transfer by operation of law upon a Member's death, shall be option events authorizing the LLC, and then the other Members, the right to purchase the transferring Member's interests at the price and on the payment terms stated in and in accordance with Article IX.

ARTICLE III. Purposes of the LLC

Section 3.1 Purposes. The primary purpose of the LLC is to engage in development of real property. In addition, the LLC may engage in any other business or activity that is necessary or incidental to the LLC's primary purpose.

Section 3.2 Authority of the LLC. In order to carry out any of its purposes, the LLC is authorized to take any lawful action consistent with any such purpose that a LLC is permitted to take under the laws of the State.

Section 3.3 Title to LLC Property. All property owned by the LLC, whether real or personal, tangible or intangible, will be deemed to be owned by the LLC as an entity, and no Member, individually, will have any ownership of such property. The LLC may hold any of its assets in its own name or in the name of one or more individuals, LLCs, trusts or other entities, as nominee for the LLC.

ARTICLE IV. Members

Section 4.1 Members. The names and addresses of the Members are: Mary Ann Danard and Craig Bernhart. No person or entity may become a member of the LLC without the prior written unanimous consent and authorization of all of the Members unless authorized herein. A Member may withhold consent of the admission of new member for any or no reason.

Section 4.2 Authority of Members. Management of the business affairs of the LLC shall be vested in the Members. The Members may delegate some or all of the day to day management of the LLC to one or more members.

Section 4.3 Annual Meeting. The annual meeting of the Members of the LLC for the transaction of such business as may properly come before the meeting shall be held each year in November at a place and time to be set by the Members.

Section 4.4 Special Meetings. Special meetings of the Members for any purpose or purposes may be called at any time by one or more Members.

Section 4.5 Regular Monthly Meetings. Not less than once per month the Members shall meet to review the business activities of the LLC and transact such business which requires the unanimous consent of the Members. Said meetings shall take place on the first Tuesday of each month unless otherwise agreed by the parties.

Section 4.6 Action by Members Without a Meeting. Any action which may be or which is required by law to be taken at any meeting of Members may be taken, without a meeting or notice of a meeting, if one or more consents in writing, setting forth the action so taken, are signed by all of the Members or, in the place of any one or more of such Members, by a person holding a valid proxy to vote with respect to the subject matter thereof, and are delivered to the LLC for inclusion in the minutes or filing with the LLC records. Action taken by unanimous written consent is effective when all consents are in possession of the LLC, unless the consent specifies a later effective date. Such consent shall have the same force and effect as a meeting vote of Members and may be described as such in any articles or other document filed with the Secretary of State of the State of Washington.

Section 4.7 Telephonic Meetings. Members may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

Section 4.8 Limitation of Liability. Except as otherwise provided herein or by law, the debts, obligations, and liabilities of the LLC, whether arising in contract, tort or otherwise shall be solely the debts, obligations, and liabilities of the LLC. No Member shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member of the LLC.

Section 4.9 Indemnification. A Member shall not be liable, responsible or accountable in damages or otherwise to the Company or other Members for any act or omission by the Member performed in good faith pursuant to the authority granted to such Member by this Agreement or in accordance with its provisions and in a manner reasonably believed by such Member to be within the scope of the authority granted to such Member and in the best interest of the LLC, provided that such act or omission did not constitute fraud, misconduct, bad faith or gross negligence.

The LLC shall indemnify and hold harmless the Members against any liability, loss,

damage, cost or expense incurred by it on behalf of the LLC or in furtherance of the LLC's interest without relieving any such Member of liability for fraud, misconduct, bad faith or gross negligence. Any indemnification required to be made by the LLC shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court settlement, contract or otherwise.

Section 4.10 Admission of Additional Members. A person may be added as a Member only upon satisfaction of such terms and conditions approved by the Members and their unanimous consent. Notwithstanding the foregoing, a person shall not become a Member unless and until such person becomes a party to this Agreement by signing this Agreement and executing such documents and instruments as the Members may reasonably request as additional, necessary or appropriate to confirm such person as a Member in the LLC.

Section 4.11 Accounting. No additional Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the LLC. The LLC may, at the time an additional Member is admitted, close the LLC books (as though the LLC's tax year had ended) or make pro rata allocations of loss, income and expense deductions to an additional Member for that portion of the LLC's tax year in which such Member.

Section 4.12 Dissociation of a Member. A Member shall cease to be a Member upon the happening of any of the following events:

- (a) the Member voluntarily withdraws from the LLC in writing, or assigns his membership interest in the LLC to another person in violation of the terms of this Agreement, or assigns his membership interest in the LLC to another person in accordance with the terms of this Agreement and such assignment is unanimously approved by the Members or authorized herein;
- (b) the Member is removed from the LLC in accordance with the Act or the terms of this Agreement;
- (c.) upon the Bankruptcy of a Member;
- (d) the death of a Member who is a natural person.

Section 4.13.1 Withdrawal. A Member may withdraw voluntarily from the LLC upon not less than six month's prior written notice to the other Members. Such withdrawal shall be effective upon the date specified in the notice or the date notice is received by the other Members, whichever is later.

Section 4.16.2 Rights Upon Dissociation. In the event any Member ceased to be a Member prior to the expiration of the term of the LLC, the following shall apply.

(a) The person shall be treated as a mere creditor of the LLC from the date of withdrawal from the LLC until such time as the person has received all distributions to which the person is or may be due under this Agreement.

(b) If the dissociation of a Member causes the dissolution of the LLC and the business and affairs of the LLC are wound up under Article XI, the person shall be entitled to participate in the winding up of the LLC to the same extent as any Member as provided in this Agreement.

ARTICLE V. Management

Section 5.1 Management by Members. The business activities of the LLC shall be managed by the Members.

Section 5.2 Duty of Loyalty. Each Member shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to the LLC, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the LLC may enter and the LLC and each Member waive the right or claim to participate therein.

Section 5.3 Duty To Account. Members shall account to the LLC and hold, as trustee for it, any of the LLC's property, profit, or benefit received or derived by the Member including but not limited to property, profit, or benefit from the formation, conduct and winding up of the LLC business or from a use or appropriation by the Member of any assets of the LLC, including information developed exclusively for the LLC and opportunities expressly offered to the LLC. The Member shall promptly account for any property, profit or benefits he received or derived. The Member shall have a fiduciary duty to account for such property, profit and benefits.

Section 5.4 Standard of Accountability. Each Member's duties to account for the LLC's property, profit or benefits which a Member personally receives or derives shall be a fiduciary duty owed to both the LLC and the Members. Each Member shall have an affirmative duty to inform all other Members of any and all material matters relating to the management and operations and business of the LLC, and such duties shall be fulfilled without the need for any demand or request from the other Members. Upon request each Member shall provide to the other Members any and all information that they know or are aware of which is or may be relevant to the LLC's property, business, affairs, opportunities, transactions, books, records, or other matters.

Section 5.5 Restriction Handling of Property/Funds. No Member may withdraw or cause to be transferred any property or funds of the LLC without the express written prior consent of all Members. No Member may issue or cause to be issued any check, nor withdraw any funds from any LLC bank account without the express written consent

of all Members. No Member shall sign a check payable to himself, nor instruct another authorized signer on an account to issue a check payable to himself. Any funds paid to or transferred to a Member in violation of this restriction shall be repayable to the LLC upon demand with interest at the rate of 24%.

ARTICLE VI.
Contributions to the LLC

Section 6.1 Capital Contributions of the Members. Each Member has contributed, or will contribute, to the capital of the LLC cash or other property in the following amounts, to-wit:

Mary Ann Danard: The sum of \$250,000.00.

Craig Bernhart: Assignment of Commercial and Investment Real Estate Contract relating to the purchase of the commercial real property described herein, the value of which the parties agree to be \$150,000.00.

Upon receipt of these funds or property, the Members shall have the following Percentage Interests in the LLC:

Mary Ann Danard: 77.5%
Craig Bernhart: 22.5%

Bernhart shall have the option to increase his Percentage Interest to 50% of the total Percentage Interests upon a contribution of \$100,000.00 to the LLC and/or the execution of a long term lease of the LLC's real property.

Section 6.2 No Withdrawals of Capital. A Member will have no right to withdraw any part of its Capital Contributions or Capital Account, or to receive any distribution from the LLC, except in accordance with the provisions of this Agreement.

Section 6.3 No Interest on Capital or Retained Capita. The parties intend that the Member's capital contributions, and withdrawal of their income shares, be the same. (As such the parties' respective capital accounts should be the same.) A Member will not be entitled to receive interest on any portion of his Capital Contributions or Capital Account unless the capital contributions of the Members is unequal, in which instance, interest shall accrue only on the difference in their capital accounts. A Member will be entitled to receive interest on any Loans he makes to the LLC pursuant to Section 6.5.

Section 6.4 Additional Contributions. No Member may contribute additional funds to the LLC, and no Member shall be obligated to contribute such funds, unless all Members agree on the terms upon, and proportions in which, such funds will be contributed.

Section 6.5 Undisbursed Income and Loans by Members. A Member's profit or income share which is not disbursed to the Member and which is retained by the LLC shall be added to his capital account. In the event there are unequal capital account contributions arising from undistributed or Undisbursed income then interest shall be assessed on the difference between the amounts retained from each Member at the rate of six percent (6%) per annum, simple interest commencing on December 31 of the year the difference arose. For accounting purposes, the undistributed income share may be added to the Member's Capital Account, or booked as a "Member Loan." Undisbursed income may be retained by the LLC and shall become due and payable to the Members upon written demand provided the LLC has sufficient cash resources to pay, and if no demand is made or the LLC does not have the means to pay it or it fails to pay it, then such sums, plus, if applicable, interest, shall be paid upon dissolution and winding up of the LLC. Undisbursed income retained by the LLC shall not increase the Member's Percentage Increase.

For example, assuming the LLC has \$100,000.00 net profit then the sum of \$77,500.00 is disburseable to Mary Ann and \$22,500.00 to Craig. If \$55,000.00 is distributed to Mary Ann and no money is distributed to Craig, then both of their capital accounts would increase by \$22,500.00. Since the capital account of each Member increased by the same, neither would be entitled to interest. If the sum distributed to Mary Ann is \$50,000.00, then she has \$27,500.00 in undistributed income compared to Craig's \$22,500.00. This former sum less the amount not distributed to Craig results in a the difference of \$5,000.00, which sum would accrue interest until paid.

(a) **Optional Loans.** A Member may, but will not be required to, advance additional monies to the LLC as a loan upon such terms as the lending Member and the LLC may agree.

(b) **Treatment of Loans.** No loan will result in an increase in the Percentage Interest of the lending Member. The amount of any such loan will not be credited to the lending Member's Capital Account. Any loan will be an obligation of the LLC to the lending Member, with interest, and will be repaid to the lending Member before any amount may be distributed to any Member with respect to its Percentage Interest. Interest on such loans will be payable without regard to the profits or losses of the LLC.

Section 6.6 Capital Accounts.

(a) **Accounts.** The LLC will establish on its books a Capital Account for each Member. Capital Accounts will be determined and maintained in accordance with the provisions of this Agreement and the requirements of tax laws. Section 1.704-1(b)(2)(iv) of the Regulations, which are incorporated by this reference.

(b) Basic Capital Account Adjustments. A Member's Capital Account (1) shall be increased by (A) the Member's Capital Contributions (including the fair market value of any property contributed to the LLC) net of liabilities assumed by the LLC and liabilities to which the contributed property is subject, and (B) subject to subsection (d) below, the Member's distributive share of LLC income and gains (or items thereof), including income or gains exempt from tax; and (2) shall be reduced by (A) all distributions to the Member of cash or property (computed at the fair market value of any distributed property and net of liabilities assumed by the Member and liabilities to which the distributed property is subject), and (B) subject to subsection (d) below, the Member's distributive share of LLC expenses, losses and deductions (or items thereof), including the Member's share of expenses which are not deductible in computing taxable income.

(c.) Special Adjustments Upon Liquidation. If LLC assets are distributed in kind to one or more Members as a result of the liquidation and winding up of the LLC or the termination of a Member's interest in the LLC, the Member's Capital Accounts will be adjusted to reflect the manner in which the unrealized gain or loss, or any other item of income or deduction inherent in the distributed property (that has not been reflected in the Capital Accounts previously) would be allocated between the Members if the LLC sold the distributed property for its fair market value on the date of distribution.

(d) Adjustments to Capital Accounts where Book Value differs from Adjusted Tax Basis. As provided in subsection (b), a Member's Capital Account will be increased by the fair market value of any property the Member has contributed to the LLC. Additionally, under certain circumstances described in subsection (f), the LLC may elect to restate the Book Values of LLC assets to reflect the

ARTICLE VII.

Allocation of Profits and Losses; Distributions

Section 7.1 Allocation of Profits, Losses and Certain Tax Items.

(a) Determination of Profits and Losses. Except as otherwise stated, for purposes of this Agreement, LLC "profits", "gains", and "losses" will include both Book Items and Tax Items. Except where Tax Items differ from Book Items as required by applicable tax laws, all Tax Items and Book Items of profit, gain, or loss will be allocated in the same proportions.

(b) Allocation of Current Profits and Losses. Except as otherwise provided in the Section 7.1, all profits and losses from LLC operations and all other items of deduction, credit, preference and the like (both Book Items and Tax Items) will be allocated between the Members in proportion to their respective Percentage Interests.

Section 7.2 Distributions.

(a) Net Cash Flow. Within thirty (30) days following the end of each calendar quarter, the LLC will distribute all Net Cash Flow available for distribution as follows:

(1) First, to pay the interest due on any loans made by any of the Members to the LLC pursuant to Section 6.5., and any prior under withdrawals or distribution of income.

(2) Next, to repay the principal of any such loans unless otherwise agreed by the Members; and

(3) Then, to each Member pro rata in accordance with his Percentage Interest.

(b) Distribution of Proceeds of a Capital Transaction. Sale or Refinancing Proceeds resulting from a Capital Transaction will be applied and distributed as provided in paragraphs (1) and (2) of this subsection 7.2(b).

(1) Interim-Capital Transaction. Sale or Refinancing Proceeds resulting from an Interim Capital Transaction will be applied and distributed:

(A) First, to repay all debts and liabilities of the LLC then due other than loans made by Members to the LLC pursuant to Section 6.5;

(B) Next, to pay any interest due on loans previously made by Members to the LLC pursuant to Section 6.5;

(C.) Next, to repay the principal of such loans unless otherwise agreed by the Members;

(D) Next, to set up any reserves which the LLC reasonably deems necessary for contingent, immature and unforeseen liabilities or obligations of the LLC; and

(E) Finally, the balance, if any, to each Member, pro rata in accordance with its Percentage Interest.

(2) Terminating Capital Transaction. After making the allocations of gain or loss required by Section 7.1 and the adjustments to the Members' Capital Accounts required by law the resulting from a Terminating Capital Transaction will be applied and distributed by the end of the taxable year in which the LLC is liquidated, or if later, within ninety (90) days of liquidation, as follows:

(A) First, to repay all outstanding debts and liabilities of the LLC other than

loans made by Members to the LLC pursuant to Section 6.5;

(B) Next, to pay the interest due on any loans made by the Members to the LLC pursuant to Section 6.5;

(C.) Next, to repay the principal of such loans unless otherwise agreed by the Members;

(D) Next, to set up any reserves which the LLC reasonably deems necessary for contingent, unmatured and unforeseen liabilities or obligations of the LLC;

(E) Next, to the Members having positive Capital Account balances, to each such Member is the proportion that is positive Capital Account balance bears to the positive Capital Account balances of all such Members until all such Proceeds have been distributed or all Members' Capital Account balances have been reduced to zero, whichever occurs first; and

(F) Finally, remaining Proceeds will be distributed among the Members, to each pro rata in proportion to its Percentage Interest.

Any remaining reserves retained under subparagraph (D) shall be distributed to the Members, at such time as the LLC determines their retention is no longer necessary, in the same manner as they would have been distributed had they not been retained.

ARTICLE XIII

Accounting: Books and Records

Section 8.1 Accounting. The LLC will keep its accounting records in accordance with sound accounting principles, consistently applied, and will report for federal income tax purposes on the cash or accrual basis, as determined by the Members. All decisions concerning accounting principles and elections, methods of depreciation or capital cost recover, and working capital requirements, whether for book or tax purposes (such decisions may be different for each such purpose), will be made by the Members. The Members will have full authority to pay or consent any tax or assessment, as they deems to be in the best interest of the LLC.

Section 8.2 Fiscal Year. The fiscal year of the LLC will be the calender year.

Section 8.3 Books and Records. During the term of the LLC, the operations administrator will keep, or cause to be kept, records and books of account in which each transaction of the LLC will be entered fully and accurately. The books and records will be kept in accordance with sound accounting principles, consistently applied, and will (i) include separate Capital Accounts for each Member, and (ii) account separately for Book

Items and Tax Items for purposes of making the Capital Account adjustments required by tax laws.

Section 8.4 Tax Returns: Income Tax Information. The LLC will prepare, or cause to be prepared, all federal, state, and local income and other tax returns of the LLC. The Members will cause the returns to be timely filed and will promptly furnish copies of the returns to any Member upon request.

Section 8.6 Bank Accounts. The LLC will maintain a separate bank account or accounts in the name of the LLC to be used for the purposes of the LLC. Funds deposited in the LLC's account or accounts may be withdrawn only by check or other order for payment of money signed by a Member or other authorized representative.

If the LLC maintains more than one bank account, then one account shall be designated and used as the "control account" (e.g. the checking account) and the others accounts shall be designated as "secondary accounts" (e.g. savings accounts, investment accounts, brokerage accounts.) Payment of all expenses, obligations, member distributions, member financial contributions, and all other financial transactions shall be paid from or deposited to the control account. Funds from the control account may be transferred to a secondary accounts, and funds from a secondary account may only be transferred to the control account and not to any Member.

Notwithstanding any other provision of this Member's Agreement or otherwise, no Member shall withdraw any funds from the LLC's bank accounts without the written consent of all Members, which consent may be deemed granted by the issuance of a check signed by the other Member(s). No Member may sign a check or cause a check to be made, payable to himself, or otherwise withdraw or transfer funds to himself. Any funds withdrawn by a Member in violation of this restriction shall be repayable to the LCC upon demand with interest from the date of the check/transfer or withdrawal until repaid at the rate of twenty-four percent (24%).

The LLC may maintain, as applicable, client, tenant, escrow or trust accounts (collectively "trust accounts"). No funds from any trust account may be paid to, withdrawn by, or transferred to a Member. Funds from a trust account may be transferred to the LLC's control account to pay a client or tenants obligations to the LLC but only if such transfer is authorized in writing or by law.

ARTICLE IX Transfer of LLC Interests and Buy Outs

Section 9.1 Prohibition on Transfer. The Member's rights and interest under this Agreement are personal to the Member, and shall be owned and held by him, as his sole and separate property.

Except as otherwise provided in this Article IX, a Member may not in any way transfer his interest in the LLC without the prior written consent of all Members, which consent may be withheld with or without cause. Without limitation this restriction applies to each Member and his heirs, executors, administrators, assigns or successors, (collectively "successors") and this restriction applies to the sale, or assignment of a Member's interest, and also applies to an involuntary transfer, such as by attachment, garnishment or execution. No Member or his successors may grant or create any security interest in, pledge, or otherwise transfer or encumber his interest in the LLC, including his Percentage Interests issued or to be issued, without the prior written consent of all other Members.

Any purported transfer not expressly permitted by and in compliance with the provisions of this Article IX will be void and of no force or effect. Any transfer, including the creation of a purported security interest, in violation of this Agreement shall be void.

As used in this Agreement, the term "transfer" shall include any sale, assignment, gift, pledge, or other disposition or encumbrance of all or a portion of a Member's interest in the LLC, whether voluntary or involuntary. An act of Bankruptcy by a Member shall be deemed a "transfer" and shall be subject to the restrictions of this Agreement.

Section 9.2 Authorized Transfers. Notwithstanding the Prohibition on Transfers stated above a Member may assign or transfer his interest to a Limited Partnership or Corporation in which the Member is the majority partner or shareholder owning not less than 50% of the partnership or shareholder interests, or to a Trust for the Member's and/or his spouse's and/or his children's benefit, and provided conditions set forth in Section 9.3 are fully satisfied.

Section 9.3 Substitute Members. A transferee of a Member's Percentage Interest will not be admitted to the LLC as a substitute Member unless:

- (a) The transfer complies with all requirements of this Article IX; and
- (b) The transferor gives the transferee the right to be substituted in his place; and
- (c.) The transferee has agreed in writing to be bound by all of the terms and conditions of this Agreement, and has paid all expenses of the LLC incurred in connection with the transfer; and
- (d) The transferee assumes all obligations of the LLC guaranteed by the transferor and the transferor is released by the obligee from any and all obligations under the transferor's guarantee.
- (e) The transferee pays the LLC the sum of \$2,500.00 for administrative

costs related to the proposed transfer including accounting and attorney fees. If the transfer is a transfer or assignment pursuant to Section 9.2 above, then the administrative fee shall be \$500.00.

(f) The LLC's accountant issues an opinion letter that the transfer of the Member's interest and the admission of the new Member will not change the LLC's federal income tax status or liability, nor affect the pass through nature of its profits and losses to its Members.

Upon admission to the LLC as a substitute Member, a transferee shall succeed to all rights and obligations of its transferor under this Agreement. A transferee shall be entitled to any distributions declared prior to the date of admission, and the transferor shall be entitled to any distributions declared after the date of admission.

Section 9.4 Buy Out Upon Death. Upon the death of a Member, the LLC shall purchase the deceased Member's Interest (including the interest of any trust or partnership formed by him for the purpose of holding his Interest) at the annual price established by the Members. The annual price shall be based on the fair market value any real property owned by the LLC plus the fair market value of any personal property, less actual liabilities. The buy out price shall be the net of the value of these assets less liabilities times the selling Member's Percentage Interest. The initial buy out price shall be based on the following valuations: FMV of the LLC's property, \$1,300,000.00, liabilities \$1,000,000.00. If the Members fail to establish a value of the assets or a buy out price at an annual or special meeting for that purpose, then the value and buy out price shall be the last value and price established by the Members less its current liabilities, but without any discount or other adjustment.

(a). Price Adjustment. Notwithstanding the above, the buy out price may be reasonably adjusted to reflect material changes in the LLC's financial affairs, liabilities or assets including the acquisition of new property/assets since the buy out price was last established. For the purpose of this provision a material change in the LLC's financial affairs shall mean changes in its financial condition which are reasonably deemed to change its net value (assets minus liabilities) by more than \$50,000.00.

(b) Price Adjustment When Annual Value Is Disputed. In the event a Member believes the value of the LLC or the LLC's assets established by the Members is not a reasonable value, then the Member, at the Member's expense, may have the value of the LLC's real property appraised by a well qualified licensed MIA appraiser, and the personal property appraised by a well qualified licensed appraiser familiar with the type of personal property owned by the LLC. If the appraised values differ from the value determined by the Members by more than 7%, then the buy out price shall be based on the average of the appraised value and the value determined by the

Members, less the current liabilities. If more than one Member had the LLC's property appraised, then the price shall be based on the average price of the appraised values from each of the Member's appraisals and the last fair market value determined by the Members at a meeting for that purpose.

(c.) **Payment of Purchase Price When There Is Insurance.** In the event the LLC obtained key man life insurance on the life of the deceased Member, then the buy out price shall be paid from the proceeds of life insurance on the deceased Member's life. If the LLC obtained and paid for key man life insurance but the named beneficiary of the policy is the Member's heirs or other beneficiaries, then the price of the Member's Interest which is to be paid by the LLC, shall be reduced by the amount of the life insurance proceeds paid to the heirs and beneficiaries. The deceased Member's beneficiaries may retain any life insurance proceeds in excess of the buy-out price.

(d) **Payment of Price When No or Inadequate Insurance.** If there is no life insurance insuring the life of the deceased Member or if the life insurance proceeds are not sufficient to pay the buy-out price, then the balance of the price shall be paid in 60 sixty equal installment payments, and the unpaid balance shall accrue interest at the rate of 8% per annum, simple interest, and secured by the deceased Member's interest and all other assets of the LLC.

Section 9.5 Buy Out Price Upon Involuntary Transfer. In the event of an involuntary transfer of a Member's Interest, other than death, the LLC shall have the option to purchase the transferring Member's Interest for the price established by the Members at their last meeting for that purpose, less a discount of 25%. The purchase price shall be paid in accordance with Section 9.6.

Section 9.6 Payment Terms Upon Involuntary Transfer. The following payment terms apply to a buy-out due to the involuntary transfer other than the death of a Member, or a blind option offer which does not state or specify payment terms.

- (a) Payment Term: 120 months.
- (b) Interest: five percent (5%).
- (c.) Security: None.

ARTICLE X

Special and Limited Power of Attorney

Section 10.1 Grant of Power. The Members may grant the power and authority to

act in the name and on behalf of the LLC to make, execute, acknowledge, file and record any and all documents necessary for the conducting of the business of the LLC during the dissolution, winding up and termination of the LLC as provided in Article XI of this agreement.

Section 10.2 Type of Power. The special and limited power of attorney granted to in this Article X is a special and limited power of attorney, is revocable by any Member at any time, and is limited to those matters set forth in this Agreement and the power of attorney which must be signed by each Member in order to be effective.

ARTICLE XI Dissolution, Winding Up and Termination

Section 11.1 Events Causing Dissolution. The LLC will be dissolved and its affairs will be wound up upon the happening of the first to occur of the following:

- (a) The expiration of the term specified in Section 2.4;
- (b) An event of dissociation of a Member as set forth in Section 4.13;
- (c.) The unanimous agreement of the Members;
- (d) The sale or other disposition of all or substantially all of the assets of the LLC;
- (e) The entry of a decree of judicial dissolution;

Section 11.2 Winding Up. Upon dissolution of the LLC for any reason, the Members may mutually appoint an agent to have the authority and responsibility to wind up the affairs of the LLC and to liquidate its assets.

(a) Conduct Pending Liquidation. The Members will continue to share income, gains, expenses, losses and all other items during the period of liquidation in the same proportion as before the dissolution.

(b) Time for Liquidation. A reasonable time will be allowed for the orderly winding up the business of the LLC and the liquidation of its assets and the discharge of its liabilities to creditors so as to minimize the normal losses attendant upon a liquidation, having due regard to the activity and condition of the relevant markets for the LLC properties and general financial and economic conditions.

(c.) Right of Member to Purchase. Any Member may be a purchaser of any properties of the LLC upon liquidation of the LLC's assets, including, without limitation, any liquidation conducted pursuant to a judicial dissolution or otherwise under judicial

supervision; provided, however, that the purchase price and terms must be fair and reasonable to the LLC.

(d) Cooperation. In the course of any such winding up, any signature required of a Member (or the trustee, receiver, estate, personal representative, surviving spouse, or successor of a deceased, incapacitated, or insolvent Member) for the transfer of title to any property, real or personal, which has previously been owned by the LLC, will not be unreasonably withheld.

ARTICLE XII Miscellaneous

Section 12.1 Notice. Any notice, offer, acceptance, demand, request, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given or made either (1) when delivered personally to the party to whom it is directed (or any officer or agent of such party), or (2) three (3) days after being deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, and properly addressed to the party to whom it is directed. A communication will be deemed to be properly addressed if sent to a party at the address provided in Exhibit A.

The LLC or any Member may at anytime during the term of this Agreement change the address to which notices and other communications directed to it must be sent by providing written notice of a new address within the United States to the other parties to this Agreement. Any such changed of address will be effective ten (10) days after such notice is given.

Section 12.2 Governing Law. This Agreement will be construed and the rights, duties and obligations of the parties will be determined in accordance with the laws of the State.

Section 12.3 Successors and Assigns. This Agreement will bind and benefit the parties an their respective heirs, executors, legal representatives and permitted successors and assigns. Nothing contained in this Section 12.3 will be construed to permit any assignment or conveyance of any interest in the LLC not otherwise expressly permitted elsewhere in this Agreement.

Section 12.4 Headings. Headings used in this Agreement have been included for convenience and ease of reference only and will not in any manner influence the construction or interpretation of any provision of this Agreement.

Section 12.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to its subject matter. There are no other prior or

contemporaneous agreements, either written or oral, among the parties with respect to this subject. This Agreement may be amended only by a written document signed by all of the Members.

Section 12.6 Waiver. No right or obligation under this Agreement will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance in any other instance, in any other respect, or at any other time.

Section 12.7 Severability. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, in any provision of this Agreement, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances, or to any other extent, will not be impaired.

Section 12.8 Number and Gender. When required by the context, (a) the singular will include the plural and vice versa, (b) the masculine will include the feminine and neuter genders, and vice versa, and © the word "person" will include trust, corporation, firm, LLC or other form of association.

Section 12.9 References. Except as otherwise specifically indicated, all references in this Agreement to:

(a) Numbered or lettered articles, sections, subsections, paragraphs, subparagraphs, clauses and subclauses, refer to articles, sections, subsections, paragraphs, subparagraphs, clauses and subclauses of this Agreement;

(b) Exhibits refer to Exhibits attached to this Agreement; and

Section 12.10 Attorneys' Fees. If any litigation or other disputed resolution proceeding is commenced between parties to this Agreement to enforce or determine the rights or responsibilities of such parties, the prevailing party or parties in any such proceeding will be entitled to receive, in addition to such other relief as may be granted, its reasonable attorneys' fees, expenses and costs incurred preparing for and participating in such proceeding.

Section 12.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

Section 12.12 Waiver of Action for Partition. For the term of the LLC and for the period of the winding up of its business following dissolution, each party irrevocably waives

any right it may have to maintain any action for partition with respect to any of the LLC's assets.

Section 12.13 Further Assurances. Each party agrees to take such further actions to make, execute and deliver such further written instruments, as may be reasonably required from time to time to carry out the terms, provisions, intentions and purposes of this Agreement.

Section 12.14 Competing Interest. Each Member understands that other Members and their Affiliates may engage in other business activities which may compete directly or indirectly with the business activities of the LLC.

Section 12.15 Arbitration. Any dispute arising under or in connection with this Agreement will be settled by arbitration as set forth in this Section 12.15. No legal right of action may arise out of any such dispute until arbitration has been completed. Each party, however, will have full access to the courts to compel compliance with these arbitration provisions, to enforce an arbitration award or to seek injunctive relief, whether or not arbitration is available or under way. The arbitration will take place as follows:

(a) Notice. The party demanding arbitration must give the other party a written notice. The written notice must contain, in addition to the demand for arbitration, a clear statement of the issue or issues to be resolved by arbitration, an appropriate reference to the provision of the Agreement which is involved, the relief the party requests through arbitration, and the name and address of the arbitrator selected by the demanding party.

(b) Response. The party receiving the notice of the demand for arbitration must provide a written response to the demand within fifteen (15) days following receipt of the notice. The response must contain a clear statement of the respondent's position concerning the issue or issues in dispute and the name and address of the arbitrator it selects and one of the arbitrators to hear the dispute. If the party receiving the notice of demand for arbitration fails to designate its arbitrator within the time allowed, the demanding party may apply to the presiding department of Snohomish County Superior Court to designate the second arbitrator.

© Third Arbitrator. Within seven (7) days following the selection of the second arbitrator, the two arbitrators selected in accordance with subsections (a) and (b) will select a third arbitrator. If they fail to do so within that time period, either party may apply to the Superior Court for Snohomish County, State of Washington, to appoint a third arbitrator.

(d) Arbitration Meeting. The arbitrators will meet in Lynnwood, Washington within twenty (20) days after the selection of the third arbitrator and will allow each party an opportunity to submit oral and written evidence and argument concerning the issue in

dispute. The three arbitrators may resolve only the question or questions submitted to the arbitration and must include as part of their consideration a full review of the Agreement and all material incorporated in the Agreement by reference.

(e) Decision. The decision of a majority of the arbitrators will be final and will bind the parties.

(f) Consent to Change. By consent of all parties to any dispute under this Agreement, the method of selection of arbitrators, or even the arbitrators selected, may be changed at any time.

(g) Payment of Costs. Subject to the provisions of Section 14.10, in any arbitration, each party will pay its own costs, witness fees, and attorneys' fees and the fees charged by the arbitrator it selects. The fees charged by the third arbitrator and the costs of the proceeding shall be borne equally.

(h) State Law. Except to the extent inconsistent with the terms of this Agreement, the terms and provisions of Chapter 7.04 RCW are incorporated in and made a part of this Agreement.

The parties have executed this Agreement as of the year and day first above written.

Mary Ann Danard

Craig Bernhart

Appendix 3

6/11/02

Craig Bernhart Deposited \$130,000
To Account of Mariann Daxard
For Closing of the Skyway
Property. This loan to be repaid
immediately following closing and
sale of Skyway to Mariann Daxard
which will be a ~~LLC~~ LLC with
Daxard and Bernhart members
Sale of the property shall be
for 650,000 with balance to
Bernhart at sale of property
when mutually agreed. Interest
payments and all costs shall be
equal All profits shall be divided
equally AFTER Expenses & Costs

Craig Bernhart
Mariann Daxard

COURT OF APPEALS
STATE OF WASHINGTON
FILED
2010 JUL 30 PM 3:55

No. 63711-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CRAIG BERNHART

Appellant

v.

MARIANN DANARD

Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2010, I caused to be served a copy of *Brief of Respondent* by ABC Legal Messenger and U.S. Mail on the following:

Craig Bernhart
23413 39th Ave. SE
Bothell, WA 98021


Heather L. White