

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
810 N Swinton, LLC.

OPERATING AGREEMENT

This Limited Liability Company Operating Agreement (this "Agreement") of **810 N Swinton, LLC**; a limited liability company organized pursuant to the Limited Liability Company Act of the State of Florida, is entered into and shall be effective as of January 23, 2018 ("Effective Date") by and among said company and the Persons executing this Agreement. Capitalized terms will have the meanings ascribed to them in Article I (the Definitions section) or as otherwise defined in this Agreement.

WITNESSETH

WHEREAS, the individuals and entities signing this Agreement desire to form a limited liability company known as **810 N Swinton, LLC**; pursuant to the Limited Liability Company Act of the State of Florida, as may be amended from time to time;

WHEREAS, the individuals and entities signing this Agreement desire to establish their respective rights and obligations pursuant to Chapter 605 of the Florida Revised Limited Liability Company Act of the State of Florida, in connection with forming such a limited liability company;

NOW THEREFORE, in consideration of the recitals, promises, covenants, warranties, representations and provisions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the recitals above are true and correct and incorporated herein by reference, and further agree as follows:

ARTICLE I

Definitions

1.1 Definitions. In this Agreement, the following terms shall have the meanings set forth below:

(a) "**Acquisition Fee**" Intentionally deleted

(b) "**Articles of Organization**" shall mean the Articles of Organization of the Company filed with the Florida Secretary of State on January 23, 2018 as they may from time to time be amended.

(c) "**Approved Current Company Budget and Plan**" means: (a) the initial Current Company Budget and Plan in effect as of the Effective Date, which is set forth on Exhibit "C", attached hereto; or (b) any subsequent current Company budget and plan (i) prepared by the Managers, which does not increase the obligations of the Members to fund Capital Contributions in excess of those required by the proposed Current Company Budget and Plan proposed by Managers.

(d) "**Capital Account**" as of any date shall mean the Capital Contribution to the Company by a Member, adjusted as of such date pursuant to this Agreement

(e) "**Capital Contribution**" shall mean any contribution by a Member to the

Capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services.

(f) "**Code**" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(g) "**Company**" shall refer to . 810 N Swinton, LLC

(h) "**Distribution**" shall mean any cash and other property paid to a Member by the Company from the operations of the Company.

(i) "**BELLA HOMES LLC**" shall mean, a Florida limited liability company, whose business address is PO Box 2334, Pompano Beach, FL 33061.

(j) "**Fiscal Year**" shall mean the fiscal year of the Company, which shall be the year ending December 31.

(k) "**Florida Act**" shall mean the Florida Limited Liability Company Act of the State of Florida, pursuant to Chapter 605 of the Florida Statutes, as may be amended from time to time.

(l) "**Managers**" shall mean each individual listed in the Articles of Organization or in Exhibit "A" to this Agreement as a manager of the Company or any other individual that succeeds him or her as such a manager pursuant to this Agreement.

(m) "**Construction Management Fee**" shall mean Ten percent (10%) of gross construction costs from Project. - N/A for this project.

(n) "**Members**" shall mean those Persons identified on Exhibit "B."

(o) "**Membership Interest**" shall mean a Member's percentage interest in the Company as more fully set forth in Exhibit "B," including the Member's (i) right to receive allocations of Profits and Losses, Distributions and a return of Capital, (ii) rights to participate in management, if any, and (iii) other rights provided for in this Agreement and under the Florida Act.

(p) "**Net Losses**" shall mean for each Fiscal Year the taxable losses of the Company, if any, determined in accordance with the Code.

(q) "**Net Profits**" shall mean for each Fiscal Year the taxable income of the Company, if any, determined in accordance with the Code.

(r) "**Person**" shall mean any corporation, governmental authority, Limited Liability Company, partnership, trust, unincorporated association or other entity.

(s) "**High End Developers LLC - Richard & Ray**" shall mean Richard Capezzali & Ray Di Iulio, an individual with a place of business 16881 Rose Apples Drive, Delray Beach, FL 33445

(t) **"Project"** shall mean the acquisition, financing, new construction and selling of

the of the Property.

(u) **"Property"** shall mean the real property commonly referred to as **810 N Swinton Ave Delray Beach, FL**

(v) **"Selling Member"** shall mean a Member desiring to sell its Membership Interest.

(w) **"Treasury Regulations"** shall mean all proposed temporary and final regulations promulgated under the Code as from time to time in effect.

ARTICLE II Organization

2.1 Formation. One or more Persons has acted or will act as an organizer or organizers to form a limited liability company by preparing, executing and filing with the Florida Secretary of State the Articles of Organization pursuant to the Florida Act. The Company has not engaged in any business and has not incurred any liabilities prior to the Effective Date.

2.2 Name. The name of the Company is **810 N Swinton, LLC** and all business of the Company shall be conducted under that name.

2.3 Principal Place of Business. The principal place of business of the Company shall be 16881 Rose Apple Drive, Delray Beach, FL 33445. The Company may establish any other places of business as the Managers may from time to time deem advisable.

2.4 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization. The Managers, may, from time to time, change the registered agent or office through appropriate filings with the Division of Corporation of the State of Florida. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managers shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Managers shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

2.5 Term. The Company shall have a perpetual duration and shall be dissolved and its affairs wound up only in accordance with the Florida Act and this Agreement.

2.6 Purposes. The Company is formed for acquiring, developing, and selling of the Project and for no other purpose.

2.7 Evidence of Membership. Unless otherwise agreed upon by a consent of the Members, the Company shall not issue any certificate evidencing or representing the Members' Membership Interests in the Company.

ARTICLE III

Members

3.1 Names and Addresses. The names and addresses of the Members are as set forth in Exhibit "B" to this Agreement.

3.2 Additional Members. A Person may be admitted as a member after the date of this Agreement upon the approval of Members.

3.3 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of the Members.

3.4 Information. Each Member (at the expense of such member) may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, this Agreement, the minutes of any meeting of the Members, the books and records of accounts of the Company and any tax returns of the Company for the immediately preceding three (3) Fiscal Years.

3.5 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the Florida Act, and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of his, her, or its Capital Contribution and as otherwise set forth in this Agreement, the Florida Act, and any other applicable law.

3.6 Management Rights. No Member other than the Managers shall have authority to bind the Company except:

(a) the following actions shall require the approval of the Members:

- (i) the merger or consolidation of the Company with any other Person;
- (ii) the sale, lease, exchange or other disposition of all or substantially all of the assets of the Company;
- (iii) the requirement that additional Capital Contributions be made; the borrowing of funds or the pledging, mortgaging or otherwise encumbering of any property Company (except in the ordinary course of business and except for the acquisition and/or new Construction and/or rehabilitation of Property);
- (iv) any amendment to this Agreement or to the Articles of Organization;
- (v) the admission of a new Member; any contracts of sale to Members or their affiliates; and
- (vi) approval of annual budget.

3.7 Priority and Return of Capital. Except as otherwise set forth in this Agreement, no Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this

Section shall not apply to loan or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

3.8 Liability of a Member to the Company. A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the Florida Act. A Member who or which receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount of such Distribution.

3.9 Financial Adjustments. No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Managers may at the time a Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with the Code.

ARTICLE IV Management

4.1 Management. Except as otherwise provided in this Agreement, the management of the Company and all decisions concerning the business affairs of the Company shall be made by the Managers. Except as provided in Article III, the Managers shall expressly have the power and authority, on behalf of the Company to (a) purchase, lease or otherwise acquire from any person any property, (b) sell, lease, or otherwise dispose of any property to any person, (c) arrange for loans regarding the acquisition of the Property, refinancing of any loans, or construction of any improvements made on the Property, (d) open bank accounts and otherwise invest the funds of the Company, (e) purchase insurance on the business and assets of the Company, (f) commence lawsuits and other proceedings, (g) enter into any agreement, instrument or other writing, (h) retain accountants, attorneys or other agents, including, without limitation, a property management company that is wholly or partially owned by the Managers provided said company only charges this Company customary and reasonable property management fees, and (i) take any other lawful action that the Managers consider necessary, convenient or advisable in connection with any business of the Company.

4.2 Voting. If there is more than one Manager, the Managers shall manage the Company by the approval of both Managers.

4.3 Tenure and Qualifications of Managers. The Company shall initially have up to two (2) Managers. Each of the individuals listed on Exhibit "A" to this Agreement shall serve as the Managers. Each Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified.

4.4 Binding Authority. Unless authorized to do so by this Agreement or the Managers, no Person shall have any power or authority to bind the Company. The Managers can jointly or severally sign on behalf of the Company.

4.5 Liability for Certain Acts. The Managers shall perform their duties in good faith, in a manner he or she reasonably believes to be in the best interest of the Company and with such

care as an ordinarily prudent person in a similar position would use under similar circumstances. A Manager who so performs such duties shall not have any liability by reason of being or having been a Manager. The Managers shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Manager. Without limiting the generality of the preceding sentence, the Managers do not in any way guaranty the return of any Capital Contribution to a Member or a profit for the Members from the operations of the Company.

4.6 No Exclusive Duty to Company. The Managers shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Managers shall incur no liability to the Company or any Member as a result of engaging in any other business interest or activities.

4.7 Indemnification. The Company shall indemnify and hold harmless the Managers from and against all claims and demands to the maximum extent permitted under the Florida law.

4.8 Resignation. Any Manager may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The 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. In the event a Manager shall resign he shall have the exclusive right to designate a successor Manager and the Members hereto agree to vote in support of said successor.

4.9 Vacancies. Any vacancy occurring for any reason by a Manager shall be filled by a Person designated by the Manager who has vacated his office (or by said Manager's legal representative), in said Manager's sole discretion, and the Members hereto agree to vote in support of said Person. A Manager elected to fill a vacancy shall be elected for the unexpired term of the Manager's predecessor in office and shall hold office until the expiration of such term and until the Manager's successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Member and until a successor has been elected and qualified.

4.10 Salaries. The salaries and other compensation of the Managers shall be fixed from time to time by the consent of all the Members. No Manager shall be prevented from receiving such a salary or other compensation because such Manager is also a Member.

4.11 Officers. The Managers may designate one or more individuals as authorized representatives or officers of the Company, who shall have such titles and exercise and

perform such powers and duties as shall be assigned to them from time to time by the Managers. Any officer may be removed by the Managers at any time, with or without cause. Each officer shall hold office until his or her successor is elected and qualified. Any number of offices may be held

by the same individual. The salaries and other compensation of any authorized representative or officers shall be fixed by the Managers upon unanimous consent of the Managers.

ARTICLE V Meetings of Members

5.1 Annual Meeting. The annual meeting of the Members shall be held on each third at such other time as shall be determined by the vote or written consent of the Members the purpose of the transaction of any business as may come before such meeting.

5.2 Intentionally Omitted.

5.3 Place of Meetings. Meetings of the Members may be held within or outside the state of Florida. The exact location shall be designated in the notice of such meeting. If no such designation is made, the place of any such meeting shall be the principal office of the Company.

5.4 Telephonic Meetings. Members may participate in any meeting of the Members by means of conference telephone or similar form of communication, if all persons participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon. Participating in a meeting pursuant to this Section shall constitute presence in person at such meeting.

5.5 Notice of Meetings. Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

5.6 Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

5.7 Quorum. All Members represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, the Member so present may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment.

5.8 Manner of Acting. If a quorum is present at any meeting, the vote or written

consent of the all Members in the Company shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Florida Act, the Articles of Organization, or this Agreement.

5.9 Proxies.

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his or her attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

5.10 Action by Member Without a Meeting.

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to be taken, shall be signed by the Members delivered to the office of the Company, its principal place of business or a Manager, employee or agent of the Company. Delivery made to the office of the Company shall be by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business or a Manager, employee or agent of the Company having custody of the records of the Company. Delivery made to such office, principal place of business or Manager, employee or agent shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

5.11 Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

5.12 Voting Agreements. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the voting membership interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

ARTICLE VI Capital Contributions

6.1 Capital Contributions. Each Member shall contribute the initial amount set forth in Exhibit "B" to this Agreement as the Capital Contribution to be made by him, her, or it. The personal liability of each of the Members (in the capacity as a Member) arising out of or any manner relating to the Company shall be limited to and shall not exceed payment of such Member's Capital Contribution.

6.2 Additional Contributions. Except as set forth in Section 6.1 of this Agreement, no Member shall be required or have any obligation to make Additional Capital Contributions.

6.3 Capital Accounts. A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of income and other allocations to such member pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such member of Net Losses and other allocations to such Member pursuant to the Code.

6.4 Transfers. Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her, or its Membership Interests shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

6.5 Modifications. The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Managers the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members evidenced by this Agreement.

6.6 Deficit Capital Account. Except as otherwise required in the Florida Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in a Capital Account.

6.7 Withdrawal or Reduction of Capital Contributions. A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness and liabilities of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the

Managers, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

ARTICLE VII

Allocations and Distributions

7.1 Allocations of Profits and Losses. The Net Losses for each Fiscal Year shall be allocated to each Member in accordance with the ratio of the value of his, her, or its Membership Interest. The Net Profits shall be allocated to each Member in accordance with the Distributions of said profits as set forth in Section 7.2 below.

7.2 Distributions. The Managers may from time to time, upon a unanimous vote by the Managers, make Distributions to the Members. All Distributions shall be paid as follows:

- a. First, to establish and maintain reasonable reserves as determined in the sole discretion of the Managers;
- b. Second, to pay all capital contributions funded into the Company on a pari-passu basis;
- d. Third, all remaining cash shall be distributed on a pari-passu basis, to the Members in accordance with his, her, or its Membership Interest.

7.3 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member in accordance herewith.

7.4 Limitation Upon Distributions. No Distribution shall be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

7.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on his, her, or its Capital Contribution, or to a return of his, her, or its Capital Contribution, except as specifically set forth in this Agreement.

7.6 Accounting Period. The accounting period of the Company shall be the Fiscal Year.

ARTICLE VIII

Compensation for Services

8.1 Management Fee. Managers shall not receive compensation for its services unless otherwise agreed to by all the Members.

8.2 Acquisition Fee. Intentionally Deleted.

ARTICLE IX

Taxes

9.1 Tax Returns. The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company. Each member shall furnish to the Managers all

pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) To adopt the calendar year as the Fiscal Year;
- (b) To adopt the cash method of accounting and keep the Company's books and records on the income tax method;
- (c) If a Distribution as described in Section 734 of the Code occurs or if a transfer of a Membership Interest described in Section 743 of the Code occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;
- (d) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under Section 195 of the Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Code; and
- (e) Any other election that the Managers may deem appropriate and in the best interest of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

9.3 Tax Matters Partners. The Managers shall designate one Manager to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code. Any Manager who is designated "tax matters partner" shall take any action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code.

ARTICLE X

Transferability and Buy/Sell Events

10.1 General. Except as set forth in this Agreement and to immediate family members, no Member shall gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person any portion of his, her, or its Membership Interest.

10.2 Offer to Acquire. If a Member desires to sell his, her, or its Membership Interest to another Person, such Member shall obtain from such Person a bona fide written offer to purchase such Membership Interest, stating the terms and conditions upon which the purchase is to be made. Such Member shall give written notification to the other Members of his, her, or its intention to sell such Membership Interest and a copy of such bona fide written offer.

10.3 Right of First Refusal. Each Member other than the Selling Member, on a basis pro rata to the Membership Interests of each Member exercising his, her, or its right of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Membership Interest proposed to be sold by the Selling Member upon the same terms and

conditions as stated in the bona fide written offer by giving written notification to the Selling Member of his, her, or its intention to do so within thirty (30) days after receiving written notice from the Selling Member. The failure of any Member to so notify the Selling Member of a desire to exercise such right of first refusal within such thirty-day period shall result in the termination of such right of first refusal and the Selling Member shall be entitled to consummate the sale of his, her, or its Membership Interest with respect to which such right of first refusal has not been exercised to the Person offering to do so pursuant to the bona fide written offer. If the Selling Member does not sell his, her, or its Membership Interest within thirty (30) days then his, her, or its right shall terminate and the terms and conditions of this Section shall again be in effect.

10.4 Closing. If any Member gives written notice to the Selling Member of his, her, or its desire to exercise such right of first refusal and to purchase all of the Selling Member's Interest upon the same terms and conditions as are stated in the written offer, such Member shall have the right to designate the time, date and place of closing within ninety (90) days after receipt of written notification from the Selling Member of the bona fide offer.

10.5 Transferee Not a Member. No Person acquiring a Membership Interest pursuant to this Section other than a Member shall become a Member unless such Person is approved by the vote or written consent of the Members. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and losses to which the Member from whom or which such Person received such Membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Members.

10.6 Effective Date. Any sale of a Membership Interest or admission of a Member pursuant to this Article shall be deemed effective as of the last day of the calendar month in which such sale or admission occurs.

10.7 Buy/Sell Event. A "Buy/Sell Event" is defined herein as the occurrence of one of the following events with respect to a Member: (a) death; (b) divorce; and (c) disability. A Member who directly or indirectly causes a Buy/Sell Event shall be referred to herein as a "Terminating Member." The Company shall continue without dissolution, and the Member or his, her or its personal representative shall cease to be a Member and shall have no further right to participate in the Company's business, Net Profits, Net Losses, or Distributions, but shall have only the rights provided below. Each Member hereby grants and gives the Company first and the Members second the right and option to purchase the Membership Interests of the Terminating Member on the terms and conditions stated below. This right and option to purchase shall be effective from the date of the Buy/Sell Event for a period of thirty (30) days at which time this right and option shall expire. This right and option may be exercised by giving notice of exercise thereof within said thirty-day period, and once notice is given, closing shall occur within thirty (30) days thereafter.

- (a) **Death of a Member.** If a Member dies, the personal representative, beneficiaries, heirs or other successors shall take the Membership Interests and rights of the deceased Member subject to the terms of this Agreement. Each Member hereby grants and gives

the Company first, and the Members second, the right and option to purchase the Membership

Interests of the Terminating Member on the terms and conditions set forth under this Section 10.7.

(b) **Divorce of a Member.** In the event a Member of the Company becomes involved in divorce proceedings, the agreed upon valuation, as set forth Section 10.7(d), will be the conclusive value of the divorcing Member's Membership Interests relative to such proceedings. Furthermore, in the event the Membership Interests are divided between spouses, that act shall constitute a Buy/Sell Event, which grants and gives the Company first, and the Members second, the right and option to purchase the interest of the "spouse" on the terms set forth herein.

(c) **Disability.** If a Member is deemed to be disabled, such Member (hereinafter also referred to as the "**Disabled Member**") hereby grants and gives the Company first, and the Members second, the right and option to purchase the Membership Interests of the Disabled Member on the terms and conditions set forth under this Section 10.7. For purposes of this paragraph, a Member is deemed to be disabled if said Member is (1) under a legal decree of incompetency; (2) submits any claim for disability insurance benefits or for early distribution of any amounts from a qualified pension or profit-sharing plan maintained by Company on account of more than fifty percent (50%) disability; or (3) is subject to a medical determination that the Member, because of a medically determinable disease, injury, or other mental or physical disability, is unable to perform substantially all of his or her regular duties, as determined by a Majority of the Members holding a Membership Interest, and that such disability is determined or reasonably expected to last at least twelve (12) months, based on then-available medical information. A medical determination of disability shall exist upon the receipt by Company of the written opinion of a physician who has examined the Member whose disability is in question. If Company disagrees with the opinion of such physician (hereinafter also referred to as the "**First Physician**"), it may engage at its own expense another physician (hereinafter also referred to as the "**Second Physician**") to examine the Member whose disability is in question. The Second Physician shall confer with the First Physician and, if they together agree in writing that the Member is or is not disabled, their written opinion shall be conclusive as to such disability. If the First and Second Physicians do not agree, they shall choose a third consulting physician (the expense of which shall be borne by Company), and the written opinion of a majority of these three (3) physicians shall be conclusive as to such disability. The date of any written opinion that is conclusive as to such disability is the date on which such disability, if that is the conclusion, will be deemed to have occurred. This shall apply whether the Member is a company, trust, etc., such that indirect ownership/beneficial interest shall trigger this provision.

(c) **Purchase of Membership Interests.** When a Buy/Sell Event occurs the Company may purchase, and the Terminating Member shall sell, the total Membership Interests that the Terminating Member owns for the price and upon the terms herein provided. If the Company elects not to purchase said Membership Interests, the remaining Members have the option to purchase the Membership Interests based upon their respective percentage Membership Interests in the Company on the date at which the Buy/Sell Event occurs. In determining the percentage Membership Interests in the Company, the Membership Interests of the Terminating Member shall be disregarded.

(d) **Purchase Price.** The "Purchase Price" of the Terminating Member's Membership Interests shall be the following calculation:

- (1) In the event of death, disability or divorce by a Member, the Purchase Price shall be the Company value determined by subsection (3) below, multiplied by the Membership Interests of the Terminating Member.
- (2) The Purchase Price of the Terminating Member's Membership Interests shall be determined by the valuation contained on **Exhibit "D"** attached hereto, less liabilities multiplied by the Membership Interests of the Terminating Member.

(e) **Partial Purchase Prohibited.** The Company must purchase no less than all of the Terminating Member's Membership Interests if the option is exercised.

(h) **Closing; Payment of Purchase Price, Etc.**

- (1) **Closing.** Closing shall take place at the Company's principal office or such other place as the Company shall direct.
- (2) **Closing Date.** The Closing Date shall be a date not later than thirty (30) days after the Company's election, or any Member(s) election to exercise the option.

(3) **Payment of Purchase Price.** The Purchase Price shall be paid in full at Closing.

(i) **Delivery of Instruments.** On the Closing Date, the Terminating Member or his, her or its personal representative shall deliver to the Company appropriate duly-executed instruments of transfer and assignment, assigning and transferring good and marketable title to the Membership Interests purchased, free from any liens or encumbrances or rights of others therein. The Terminating Member or his, her or its personal representative shall pay the cost (including the Company's attorney fees) of such transfer, and shall execute and deliver such other instruments as may reasonably be requested.

ARTICLE XI Dissolution

11.1 **Dissolution.** The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The latest date on which the Company is to dissolve, if any, as set forth in the Articles of Organization;
- (b) The vote or written consent of Members in the Company; or
- (c) The bankruptcy, death, dissolutions, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of

any Member, unless within one hundred eighty (180) days after such event the Company is continued by the vote or written consent of all of the remaining Members.

11.2 Winding Up. Upon the dissolution of the Company the Managers may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining asset of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

- (a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members;
- (b) To Members and former Members in satisfaction of liabilities for Distributions;
- and
- (c) To Members first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Interests, in the proportions in which the Members share in Distribution in accordance with this Agreement.

11.3 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed with the Florida Secretary of State pursuant to the Florida Act.

11.4 Deficit Capital Account. Upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

11.5 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her, or its Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

11.6 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

ARTICLE XII

Indemnification

12.1 Third party actions. The Company shall indemnify any Member who is or was a party, or who is threatened to be made a party, to any threatened, pending or completed action, suit

or proceeding, whether, civil, criminal, administrative or investigative, including all appeals, by reason of the fact that he, she, or it is or was a Member, Manager, or employee of the Company, or is or was serving at the request of the Company as a director, trustee, officer or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, against any and all expenses (including reasonable attorneys' fees), judgments, decrees, fines, penalties and amounts paid in settlement, which were actually and reasonably incurred by him, her, or it in connection with such action, suit or proceeding, if he, she, or it acted in good faith and in a manner which he, she, or it reasonably believed to be in, or at least not opposed to, the best interests of the Company, and, with respect to any criminal action or proceeding, he, she, or it had no reasonable cause to believe his, her, or its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he, she, or it reasonably believed to be in, or at least not opposed to, the best interests of the Company.

ARTICLE XIII General Provisions

13.1 **Notices.** Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party or to an executive officer of the party to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his, her, or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three (3) business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

13.2 **Amendments.** This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect thereto, whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each provision of this Agreement being amended.

13.3 **Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.4 **Headings.** The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement

13.5 Waiver. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

13.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

13.7 Binding. This Agreement shall be binding upon and inure to the benefit to the benefit of all Members, and each of the successors and assignees or the Members.

13.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. For purposes of this Agreement and facsimile or electronic signature (including .pdf) shall be deemed valid and enforceable.

13.9 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of law.

13.10. Legal Counsel. Intentionally deleted

ARTICLE XIV DISPUTE RESOLUTION

14.1 Judicial Resolution.

14.1.1 Any action to enforce or interpret this Agreement, or to resolve any dispute with respect to this Agreement as between the Company and a Member, or between or among the Members, other than an action to enforce a Commitment as provided in Section 6.2, shall be settled by court of competent subject matter jurisdiction sitting in Palm Beach County, Florida.

14.1.2 The Members and Assignees consent to the jurisdiction over them of the courts of the State of Florida for purposes of resolving disputes within the scope of this Article 14.

14.1.3 Prior to the determination of a prevailing party by the court, each party to any judicial proceeding pursuant to this Article 14 shall bear his own costs and attorney fees, unless otherwise agreed upon by all Members. Upon the court's determination of a prevailing party or parties, the

prevailing party or parties shall be entitled to reimbursement of his costs, attorney fees, expert fees, and expenses incurred in connection with the litigation from the non-prevailing party or parties.

14.2 Arbitration.

14.2.1 Any dispute described in this Article 14 shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless the Members otherwise agree, any such arbitration shall not be submitted to or administered by the American Arbitration Association.

14.2.2 If the parties to a dispute within the scope of this Article 14 all agree on a single arbitrator, that individual shall serve as the arbitrator for such dispute. Should the parties fail to agree on a single arbitrator, each side to the dispute shall select one arbitrator and the two arbitrators selected by the parties shall select a third arbitrator, who shall serve as chairman of the three-person arbitration panel.

14.2.3 Any arbitration pursuant to this Article 14 shall be conducted in Palm Beach County, Florida unless the Members agree upon some other location.

14.2.4 Prior to the arbitrator's determination of a prevailing party, the parties shall share equally the arbitrator's fees and costs, and each party shall bear his own costs and attorney fees in connection with the arbitration. Upon the arbitrator's determination of a prevailing party or parties, the prevailing party or parties shall be entitled to reimbursement of arbitration costs, attorney fees, expert fees, and costs and expenses in connection with the arbitration from the non-prevailing party or parties.

14.2.5 All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon the arbitrator's decision in accordance with applicable law in any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision.

14.3 Governing Law. The substantive law of the State of Florida, without regard to any choice of law rules that might otherwise apply, shall be applied by the arbitrator or the court in the resolution of any dispute pursuant to this Article 14.

14.4 Initiation of Dispute Resolution. Any Member may initiate the dispute resolution process by sending a written Notice demanding dispute resolution to the Company and the Members. Such Notice shall set forth the nature of the matter to be resolved. If the Members fail to agree to resolve the dispute by arbitration by the Members within thirty (30) days following receipt of a demand for dispute resolution, any Member or the Company may commence a judicial proceeding as provided in Section 14.1 seeking resolution of the dispute.

Signatures on Next Page.

IN WITNESS WHEREOF, the individuals and entities signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

COMPANY:

810 N Swinton, LLC

MANAGERS:

Bella Homes, LLC

By: 
Stephen Petrucci, Manager

High End Developers LLC.

By: 
Richard Capezzali, Manager

By: 
Raymond DiJulio, Manager

MEMBERS:

Bella Homes, LLC - 50%

By: 
Stephen Petrucci, Manager

High End Developers LLC - 50%

By: 
Richard Capezzali

By: 
Raymond DiJulio



Exhibit "A"

Managers

Bella Homes LLC - Stephen Petrucci

High End Developers LLC - Richard Capezzali

High End Developers LLC - Raymond Di Iulio

[Handwritten signature]