

**OPERATING AGREEMENT  
OF  
183 COLUMBIA HOLDING LLC  
A New York Limited Liability Company**

THIS OPERATING AGREEMENT (the “**Agreement**”) of 183 Columbia Holding LLC (the “**Company**”), effective as of the \_\_\_\_ day of February, 2012, is made by DAVID J. MITCHELL (the initial “**Manager**” of the Company), the other persons or entities (“**Persons**”) executing this Agreement as Members and any other person, trust or other legal entity who becomes a member hereof in accordance with the terms of this Agreement (each, a “**Member**” and, collectively, the “**Members**”).

1. **Formation.** The Company has been formed as a New York limited liability company under and pursuant to the New York Limited Liability Company Act (as the same may be amended from time to time, the “**Act**”).

2. **Purposes.** The purpose and business of the Company is to acquire, hold, renovate, maintain, manage, lease, operate, finance, refinance and ultimately dispose of that certain land and improvements located at 183 Columbia Heights, Brooklyn, New York (the “**Property**”) and engage in any other legal enterprise that is reasonably related thereto. It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a “partnership” for federal, state and local income tax purposes.

3. **Term; Dissolution.** Subject to the provisions of Section 12 hereof, the Company’s existence shall continue until (i) the sale, assignment, condemnation or other disposition of all or substantially all of the assets of the Company, or (ii) until the Manager elects, in written notice to the Members, to dissolve the Company. The death, resignation, withdrawal, insolvency, bankruptcy, liquidation or dissolution of the Manager or a Member shall not dissolve the Company.

4. **Members; Membership Interests.**

(a) Members and Their Interests. The Persons who are the Members hereof as of the date hereof and their respective initial “Percentage Interests” are set forth on Exhibit A hereto. A Member’s “**Percentage Interest**” shall initially be the percentage which the Member’s initial capital contribution to the Company bears to the total initial capital contributions of all Members. A Member’s Percentage Interest shall be adjusted from time to time to reflect the effect of any transfers of the Member’s membership interest in the Company, the admission of additional Members in accordance with the terms of this Agreement. A Member’s “**Membership Interest**” shall be all of such Person’s rights with respect to his interest in the Company, including without limitation his rights to distributions and allocations of profits and losses, rights to vote on or approve certain actions as provided in this Agreement, and any other rights, powers or obligations of a Member as set forth herein.

(b) Admission of Additional Members. After the admission of Members pursuant to the Company’s initial offering (as described in Section 5(a)), the Company shall not issue any additional Membership Interests in the Company without the prior written approval of Members holding a majority in interest of all of the Percentage Interests (a “**Majority-in-Interest**”); provided, however, that to the extent that the Company raises less than \$2,800,000 in capital contributions pursuant to such initial offering, the Manager may admit additional Members for additional capital

contributions (even after the date the Company acquires the Property), without the consent or approval of any other Members, until such time as the Company has issued Membership Interests in exchange for capital contributions totaling \$2,800,000, so long as the admission of such additional Members does not involve amending the terms of Section 6(d) hereof, relating to distributions.

(c) Limitations on Power of Members. Except as expressly authorized by this Agreement, no Member shall, directly or indirectly, in the Member's capacity as a member of the Company, withdraw from the Company or require the Company to purchase the Member's Membership Interest. In addition, except as expressly authorized by this Agreement, to the fullest extent permitted by law, no Member shall (i) dissolve, terminate or liquidate the Company, (ii) petition a court for the dissolution, termination or liquidation of the Company, or (iii) cause any property of the Company to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency and similar proceedings).

## 5. **Contributions.**

(a) Initial Capital Contributions. The Company is offering up to approximately \$2,800,000 in Membership Interests for sale to certain prospective investors to raise capital for the acquisition and renovation of the Property and to provide working capital. Any Person who subscribes for the purchase of a Membership Interest pursuant to a Subscription Agreement in form and content approved by the Manager and which is accepted by the Manager in his sole and absolute discretion shall contribute the amount of cash provided in such agreement to the Company as such Person's initial capital contribution to the Company. Following the closing on the acquisition of the Property, the names, initial cash contributions and Percentage Interests of the Members will be set forth on **Exhibit A** hereto.

(b) Additional Contributions or Member Loans. No Member shall be obligated to make any capital contributions in excess of its initial capital contribution required herein. No Member may loan or advance money to the Company without the Manager's prior written consent and any such loan shall, unless otherwise agreed by a Majority-in-Interest of the Members, be deemed a loan repayable on demand, bearing interest at a fluctuating annual rate of five percent (5%) above the "prime rate" as published in the Wall Street Journal. The Manager may but is not required to offer the opportunity to participate in making Member Loans to any other Members prior to accepting any such loan, but no Member is obligated to participate in making any such loans.

(c) Guarantees and Indemnities. (i) Except as set forth in Section 5(c)(ii), no Member shall be required to execute and deliver any guarantees or indemnities with respect to any obligation or debt of the Company or pledge any personal assets as security for any debt or obligation of the Company.

(ii) The Manager will provide a personal guaranty of the Company's acquisition financing if and to the extent required by the lender providing such financing, but shall not be required to provide any guaranties with respect to any replacement financing. If the Manager makes any payment under or pursuant to such guaranty, such payments shall not be treated as a capital contribution to the Company. Instead, the Manager shall, to the extent permitted by the applicable loan documents, be subrogated to the position of the lender with respect to any payments made and, to the extent that the applicable loan documents do not permit such subrogation, any payments made by the Manager on such guaranty shall be treated as a "**Guarantor Loan**" bearing interest at the greater of (i) the interest rate payable to the lender on the acquisition financing or

seven percent (7%) per annum. Any Guarantor Loan shall be paid in full before making any other payments on Member Loans or distributions to Members.

(d) No Interest on Capital; No Right to Demand Return of Capital. No Member shall receive any interest on any capital contribution to the Company unless the Members shall unanimously agree otherwise. No Member shall have the right to demand a return of its contributions or the right to demand to receive property other than cash for its membership interest. Any return of the capital contributions of any Member shall be made solely from the assets of the Company and only in accordance with the terms of this Agreement.

## 6. **Distributions and Allocations.**

(a) Taxation; Capital Accounts. The Company shall establish and maintain a separate capital account (each, a “**Capital Account**”) for each Member as specified in greater detail in **Exhibit B** hereto.

(b) Capital Account Deficit. No Member with a deficit in its Capital Account shall be obligated to restore such deficit balance or make a capital contribution to the Company solely by reason of such deficit.

(c) Allocations. Allocations of profits, losses and items of income, gain, loss, or expense shall be made in accordance with **Exhibit B** hereto.

(d) Distributions. Except as otherwise provided in Section 10 hereof upon dissolution of the Company, after making any payments due on any Guarantor Loans and Member Loans, distributions to the Members and Assignees shall be made to the Members as follows: (i) first, to all Members, pro rata in proportion to their respective Unreturned Capital Contributions, until their Unreturned Capital Contributions are reduced to zero; and (ii) thereafter, fifty percent (50%) to all Members, pro rata in proportion to their Percentage Interests, and fifty percent (50%) to the Manager and/or any of his permitted successors or assigns. “**Unreturned Capital Contributions**” means, as to any Member as of any date, the sum of all capital contributions made by that Member prior to such date reduced, but not below zero, by the sum of all distributions made to that Member pursuant to Section 6(d)(i) prior to such date. Unless otherwise expressly provided, in writing, in the instrument of transfer, any Person who acquires a portion of a Member’s interest in the Company pursuant to a transfer made in accordance with the terms of Section 9 hereof shall acquire and succeed to the corresponding proportionate part of the transferor’s Unreturned Capital as of the date of transfer. Assignees (as defined in Section 6(e)) shall be treated as though they were Members for purposes of making distributions pursuant to this Section 6(d).

(e) Withholding. The Manager is authorized to cause the Company to withhold from distributions or with respect to allocations and pay over to any federal, state, local or foreign government any amounts required, pursuant to any provisions of federal, state, local or foreign law, to be withheld with respect to any Member or assignee of an interest in the Company who is not admitted as a Member of the Company (an “**Assignee**”). All amounts so withheld shall be treated as amounts distributed to the Members or Assignees pursuant to Section 6(d) of this Agreement. To the extent any amount withheld with respect to a Member or Assignee pursuant to this Section 6(e) for any year exceeds the amount distributable to such Member or Assignee for such year, such Member or Assignee shall pay such excess to the Company within ten (10) days after such Member or Assignee receives written notice from the Company of the amount of such excess. The Manager may

require any Member and Assignee to provide such IRS tax forms and other information it requires to comply with federal and state withholding taxes on the Member's or Assignee's distributive share of taxable income or items of income and gain, as applicable, and each Member and Assignee agrees to promptly provide such requested information. If the Company is required to withhold any amounts and remit funds to the IRS or other taxing authority, the Manager may require the Member or Assignee on whose behalf the Company is required to withhold (the "**Member Subject to Withholding**") to contribute all or a portion of the amount of the withholding taxes funds, and the Manager shall then promptly utilize such funds for such purpose. Such amounts shall not be treated as a capital contribution of the Member Subject to Withholding to the Company for any purpose hereunder, but shall be treated as though the Company were simply acting as a conduit for the payment of the Member Subject to Withholding's tax liability. Each Member Subject to Withholding shall indemnify and hold the Company and every other Member and Assignee harmless from any and all costs, expenses, penalties, interest and other losses incurred by the Company or such other Members or Assignees as a result of such obligation unless and except to the extent such Member or Assignee timely provides the funds with which to pay such withholding taxes and the Managing Member timely fails to make payment thereof to the applicable taxing authority.

(f) Tax Matters Partner. The Manager is hereby designated as the "**Tax Matters Partner**" under Section 6231(a)(7) of the IRC to manage administrative tax proceedings conducted at the LLC level by the Internal Revenue Service with respect to partnership tax matters. Each of the other Members expressly consents to such designation and agrees that, upon the request of the Manager, it will execute, acknowledge, deliver, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

## 7. **Management.**

(a) General. The full management and control of the Company, its business, affairs and assets shall be vested exclusively in the Company's "Manager" who shall initially be Mitchell (the "**Manager**"). The Manager shall have all the powers of a manager under the Act. Only the Manager or a person expressly authorized, in writing to do so shall have the power to execute any agreements, contracts, deeds or other instruments or to otherwise represent or act as an agent of or for the Company and shall have the power to bind the Company. The Manager may from time to time hire one or more persons to act as officers of the Company, or otherwise to manage the Company's day-to-day affairs, who shall have such management powers and responsibilities as the Manager shall designate and determine in the Manager's sole and absolute discretion, subject, however, to the management oversight of the Manager, and may designate such persons as "President," "Vice-President," "Secretary" or "Treasurer" or similar titles as customarily applicable with respect to their assigned duties. Persons hired or employed as such executive officers shall have the power, duties and responsibilities customarily attaching to their titular positions, or as otherwise specified or directed by the Manager and shall serve in such position at the Manager's discretion. The Manager shall determine the terms and conditions of any such employment in the Manager's sole and absolute discretion.

(b) Manager Succession. Upon the written resignation, death or disability of the Manager that renders him unable to substantially perform his management duties hereunder for a period of at least six successive months, the individual or entity that such Manager then designates or has previously designated in writing as his successor in written notice to the other Members and/or on file in the records of the Company in the form attached hereto as **Exhibit C** shall automatically succeed to his rights and powers as a Manager hereunder.

(c) No Annual Meeting Required. The Company may, but is under no obligation to, hold any annual meeting of members.

(d) Books and Records. True and correct books of account with respect to the operations of the Company shall be kept by the Manager at such place as shall be designated by the Manager. Any Member shall have the right to examine, or have its duly authorized representative examine, the books of account of the Company at any reasonable time. The Manager will provide copies of any reports and financial statements, correspondence or other documents that Holdings distributes to its Members generally, such as tax information and quarterly performance reports.

(e) Banking. All funds of the Company shall be deposited in the Company's name in such account or accounts in the name of the Company as shall be designated by the Manager. The funds in such accounts shall be used solely for the business of the Company. Withdrawals from, or checks drawn upon, such accounts shall require the signature of such person or persons as are designated by the Manager from time to time.

(f) Compensation. The Manager shall not be entitled to any compensation for its services managing the Company, but shall be entitled to be reimbursed any expenses he incurs in performing such services. The Company will pay a property management fee to an entity owned and controlled by the Manager for managing the Property (the "**Property Manager**"). The Property Manager may subcontract property management to another property manager but compensation of any such subcontractor will be paid out of the fee otherwise payable to the Property Manager. The property management fee will not cover or include any leasing commissions that the Company may pay to third party rental agents, or the cost of any super hired to maintain the Property, but such expenses shall be additional costs borne by the Company.

(g) Dealing with Related Parties. The Manager may enter into agreements or arrangements with Members or Persons related to the Manager or any Members provided, however, that such agreements or other arrangements shall be on terms and conditions that are fair market terms and conditions or are substantially similar to those that would apply were the agreement or arrangement made by the Company with an unrelated Person in similar circumstances. The foregoing restrictions shall not apply to the property management fee payable pursuant to Section 7(f), and the Members hereby agree that the Manager may determine the amount and terms thereof in its sole but reasonable discretion.

(h) Time; Other Interests. The Manager and each Member shall devote such business time managing the affairs of, and working for the Company, as it deems reasonably necessary or advisable. Neither the Manager nor any Member shall be required to devote all or substantially all of their time and energies to the management of the Company. The Manager and each Member may engage in other business and civic activities, for compensation or otherwise. The manager and each Member and any person or entity who is an affiliate of a Member may engage or hold interests in other business ventures of every kind and description for its or its affiliate's own account, regardless of whether it or its affiliate shall have an interest in, be employed by or act as a consultant for business ventures that are in competition with the business of the Company.

## 8. **Liability; Indemnification.**

(a) No Personal Liability. Except to the extent required by the Act or other applicable law or as expressly provided in this Agreement, as amended from time to time, or as otherwise specifically contractually agreed with a creditor, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Manager or Member shall have any personal liability for any such debt, obligation or liability of the Company solely by reason of being a Manager or Member or exercising management authority as a Manager or Member.

(b) Indemnification As to Third Party Claims. To the fullest extent permitted by the Act, (i) the Manager is exculpated for any liability to third parties (i.e., persons other than the Members) for the Member's acts or omissions in connection with the business of the Company or by virtue of the Manager's status as a manager, member, officer or employee of the Company, and (iii) the Company shall indemnify and hold the Manager harmless from any and all costs, losses, liabilities, claims, damages and expenses and claims or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the Manager with respect to third parties by reason of any act performed or omitted to be performed by the Manager in connection with the business of the Company or by virtue of the Manager's status as a manager, member, officer or employee of the Company.

## 9. **Assignment.**

(a) Restrictions on Transfer Based on Loan Documents. Notwithstanding any other provision of this Agreement, no Member may assign, transfer, pledge, grant an option in or otherwise encumber ("**Transfer**") all or any portion of its Membership Interest in the Company including without limitation any Economic Rights therein (as defined below), if such Transfer is prohibited by the provisions of any agreement between the Company and any lender providing the Company financing secured by the Property. In order to avoid inadvertent violations of such loan agreements, any Member who is contemplating making any Transfer of all or any portion of a Membership Interest shall first notify the Manager, in writing, of the proposed transfer at least fifteen (15) business days prior to the intended date for such Transfer and shall not effect any such Transfer unless and until the Manager notifies the Member, in writing, that the transfer is permitted under the terms of the Company's loan documents. A Member's "**Economic Rights**" are the Member's rights to receive distributions (in the Member's capacity as a Member) and allocations of profits and losses, or items of income, gain, loss and expense, as provided herein. Any transferee shall be subject to the terms and conditions of this Section 9.

(b) General. Except as specifically provided in Sections 9(c) and (d) hereof, (i) no Member may assign, pledge or otherwise transfer all or any portion of his Membership Interests in the Company (including but not limited to a transfer of a merely economic interest in the Company), and (ii) no transferee or assignee, may be admitted as a Member of the Company, in each case without the prior written approval of the Manager, the granting or withholding of which shall be in the Manager's sole and absolute discretion. Except as provided in Sections 9(c) or 9(d), a transfer of a Membership Interest or any portion thereof shall convey only "Economic Rights," as defined below, in the Company unless and until the Manager approves admission as a Member, in his sole discretion. Any transferee shall, as a condition to being admitted as a Member, execute a signature addendum to this Agreement agreeing to be bound by the terms and conditions of this Agreement ("**Signature Addendum**"). Promptly following any transfer of all or any portion of a membership interest pursuant to Section 9(c) or any transfer by the estate of a deceased Member pursuant to

Section 9(d), the transferor shall provide the Manager with a copy of the executed document or instrument effecting the transfer.

(c) Certain Permitted Transfers. Notwithstanding Section 9(b) but subject to Section 9(a), any Member may assign the whole or any part of his or its interest in the Company to a Permitted Transferee. Permitted Transferees shall be admitted as Members upon presentation of a copy of the instrument of transfer to the Manager and other Members and execution of the Signature Addendum and delivery thereof to the Manager. With respect to a particular Member, the term “**Permitted Transferee**” means all or any of the following persons:

- (i) as to any Member or Assignee that is an individual means (A) such individual’s descendants (whether natural or by adoption), full brothers and sisters (whether natural or adopted), and descendants of any such full brothers or sisters (whether natural or adopted), (B) any custodian under the New York Uniform Transfers to Minors Act holding an interest in the Company for the benefit of one or more of the individuals described in clause (A), and (C) any trust substantially all of the beneficial interests in which are owned by one or more of the individuals identified in clause (A); or
- (ii) Any other Member.

(d) Certain Involuntary Transfers. Notwithstanding Section 9(b), upon the death or bankruptcy of a Member, the Company shall not be dissolved but the estate of the deceased Member or trustee or legal representative of the bankrupt Member’s estate shall immediately succeed to such Member’s interest in the Company and shall have the same rights and obligations in the Company as the deceased or bankrupt Member would have had pursuant and subject to the terms, covenants and conditions of this Agreement. The executor, bankruptcy trustee or representative shall, at the request of the Company, execute those documents necessary in connection with such substitution.

(e) Capital Accounts upon Death of a Member. After the death of a Member, the capital accounts of all the Members shall be updated by charging or crediting thereto all profits and losses of the Company during the period beginning on January 1 of the Company’s then current fiscal year and ending on the last day of the month in which the Member’s death occurred. Thereafter, the decedent’s proportionate share of any profits and losses of the Company shall be allocated to his or her estate.

10. **Liquidation**. Following dissolution of the Company in accordance with Section 3 above, the Company’s business shall be wound up and the Company liquidated, in a manner designed to preserve or realize the fair value of the Company’s assets. The proceeds of the liquidation shall be distributed in the following manner:

- (a) first, to the payments of the expenses of liquidation;
- (b) second, to pay the debts and obligations of the Company including, without limitation Guarantor Loans and Member Loans;

(c) third, to the establishment of any reserve which the Manager shall deem reasonably necessary for contingent or unforeseen liabilities;

(d) finally, to the Members in accordance with the terms of Section 6(d).

**11. Miscellaneous.**

(a) Governing Law. This Agreement is governed by and shall be construed in accordance with the internal laws of the State of New York, excluding its rules applicable to conflict-of-laws. The Manager and Members agree to submit to the exclusive jurisdiction and venue of the State and Federal courts of the City and County of New York, New York in connection with any dispute related to this Agreement.

(b) Notices. All notices, demands, offers or other communications required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested overnight delivery service, or by hand delivery, and addressed to the other party hereto at such party's address set forth in Exhibit A (as the same shall be amended from time to time), and shall be deemed given upon the date the return receipt is signed on behalf of the receiving party or, if hand delivered, upon delivery.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and permitted assigns.

(d) Severability. If any provision of this Agreement shall be determined to be unlawful or unenforceable to any extent, such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in force and effect.

(e) No Waiver. The waiver by any Member of any matter provided herein shall be effective only if made in writing and signed by such Member.

(f) Entire Agreement; Amendment. This Agreement and, as to any Member, any Subscription Agreement between the Company and the Member, sets forth the entire agreement and understanding of the Members and supersedes all prior agreements or understanding, whether oral or written, between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended by a writing signed by Members holding a Majority-in-Interest and designated as an amendment or modification of this Agreement.

(g) Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

David J. Mitchell, as Manager and Member

**EXHIBIT A**

Names, Addresses and Contributions of the Members  
(as of \_\_\_\_\_, 2012)\*

<u>Name:</u>	<b>Capital Contributions:</b>	<b>Percentage Interest:</b>
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\*This Exhibit shall be completed promptly following conclusion of the initial offering of Membership Interests of the Company pursuant to Section 5(a).

Exhibit A

## EXHIBIT B

### Allocations of Profits and Losses

*Note: The following provisions shall apply commencing on the date that the Company has more than one Member or a Member and any Assignee(s). All Assignees shall be treated as though they were "Members" for purposes of applying this Exhibit B.*

#### B-1 Defined Terms.

(a) "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Section 1.704-1(d)(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(b) "Asset Value" with respect to any asset means the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Asset Value of any asset contributed by a Member to the Company shall be the value of such asset, as agreed to by the contributing Member and the Manager.

(ii) The Asset Values of all Company Assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Manager, and the resulting unrecognized gain or loss shall be allocated to the Capital Accounts of the Members as though such assets had been sold for their respective fair market values, as of the following times: (1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (2) the distribution by the Company to a Member of more than a *de minimis* amount of Company Assets as consideration for an interest in the Company; and (3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (1) and (2) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(iii) The Asset Value of any Company Asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

(iv) The Asset Values of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m); provided, however, that Asset Values shall not be adjusted pursuant to this (iv) to the extent the Manager determines that an adjustment pursuant to (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this (iv).

If the Asset Value of an asset has been determined or adjusted pursuant to (i), (ii), or (iv) above, such Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Company profits and losses.

(c) **“Capital Account”** means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member’s Capital Account there shall be credited such Member’s Capital Contribution, such Member’s distributive share of Net Income and any item in the nature of income or gain which is specially allocated pursuant to Section 7.8, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(ii) To each Member’s Capital Account there shall be debited the amount of cash and the Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Net Loss and any item in the nature of expense or loss which is specially allocated pursuant to Section 7.8, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company;

(iii) In the event all or a portion of an Interest in the Company is Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent that it relates to the Transferred interest; and

(iv) In determining the amount of any liability for purposes of subdivisions (i) and (ii) there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provision and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations.

(d) **“Code”** means the Internal Revenue Code of 1986, as the same has been amended.

(e) **“Company Minimum Gain”** has the same meaning as “partnership minimum gain” set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

(f) **“Depreciation”** means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for Federal income tax purposes with respect to an asset for such Fiscal Year, except that (i) with respect to any asset the Asset Value of which differs from its adjusted tax basis for Federal income tax purposes at the beginning of such Fiscal Year and which difference is being eliminated by use of the “remedial method” as defined by Section 1.704-3(d) of the Regulations, Depreciation for such Fiscal Year shall be the amount of book basis recovered for such Fiscal Year under the rules prescribed by Section 1.704-3(d)(2) of the Regulations, and (ii) with respect to any other asset the Asset Value of which differs from its adjusted tax basis for Federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Asset Value as the Federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that in the case of clause (ii) above, if the adjusted tax basis for Federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Asset Value using any reasonable method selected by the Non-Member Manager.

(g) **“Fiscal Year”** means the calendar year, except that if the Company is required by the Code to use a taxable year other than a calendar year, then Fiscal Year shall mean such taxable year.

**(h)** “**Member Nonrecourse Debt**” has the same meaning as the term “partner nonrecourse debt” set forth in Regulations Section 1.704-2(b)(4).

**(i)** “**Member Nonrecourse Debt Minimum Gain**” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

**(j)** “**Member Nonrecourse Deductions**” has the same meaning as the term “partner nonrecourse deductions” set forth in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

**(k)** “**Net Profits**” and “**Net Losses**” means, for each Fiscal Year or relevant portion thereof, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss) with the following adjustments:

(i) Any income of the Company that is exempt from Federal income tax, and to the extent not otherwise taken into account in computing Net Profits or Net Losses pursuant to this paragraph, shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and to the extent not otherwise taken into account in computing Net Profits or Net Losses pursuant to this paragraph, shall be subtracted from such taxable income or loss;

(iii) In the event the Asset Value of any Company asset is adjusted pursuant to subdivisions (ii) or (iii) of the definition of Asset Value herein, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(iv) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Asset Value;

(v) In lieu of depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such calendar year; and

(vi) Any items which are specially allocated pursuant to the provisions of Section B-4 of Exhibit B shall not be taken into account in computing Net Profits or Net Losses.

**(l)** “**Nonrecourse Liability**” has the meaning set forth in Regulations Section 1.752-1(a)(2).

**(m)** “**Regulation(s)**” means the U.S. Department of Treasury Regulations promulgated under the Code.

**B-2 Capital Accounts.** A separate Capital Account shall be established and maintained for each Member. In the event that all or a portion of the limited liability company interest of a Member are Transferred in accordance with the terms of this Agreement, the transferee of such assigned limited liability company interest shall also succeed to all or the relevant portion of the Capital Account of the transferor, unless the instrument of Transfer specifies the parties to such assignment intend that only a “profits interest” is to be Transferred. No Member shall have any obligation to repay any deficit balance in its Capital Account.

**B-3 General Allocations.**

**(a) Hypothetical Liquidation.** The items of income, gain, loss and expense of the Company comprising Net Profits or Net Losses for a Fiscal Year shall be allocated among the Persons who were Members during such Fiscal Year in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Year to equal the excess (which may be negative) of:

(i) the amount of the hypothetical distribution (if any) that such Member would receive if, on the last day of the Fiscal Year, (x) all Company assets, including cash, were sold for cash in an amount equal to their Asset Values, taking into account any adjustments thereto for such Fiscal Year, (y) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Liability or Member Nonrecourse Debt in respect of such Member, to the Asset Values of the assets securing such liability), and (z) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full pursuant to Section 10, over

(ii) the sum of (x) the amount, if any, without duplication, that such Member would be obligated to contribute to the capital of the Company, (y) such Member’s share of Company Minimum Gain determined pursuant to Regulations Section 1.704-2(g) and (z) such Member’s share of Member Nonrecourse Debt Minimum Gain determined pursuant to Regulations Section 1.704-2(i)(5), all computed as of the hypothetical sale described in Section B-3(a)(i) above.

**(b) Loss Limitation.** Notwithstanding anything to the contrary in this Section B-3, the amount of items of Company expense and loss allocated pursuant to this Section B-3 to any Member shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year, unless each Member would have an Adjusted Capital Account Deficit. All such items in excess of the limitation set forth in this Section B-3(b) shall be allocated first, to Members who would not have an Adjusted Capital Account Deficit, *pro rata*, in proportion to their Capital Account balances, adjusted as provided in clauses (i) and (ii) of the definition of Adjusted Capital Account Deficit, until no Member would be entitled to any further allocation, and, thereafter, to all Members, *pro rata*, in proportion to their respective Percentage Interests.

**B-4 Special Allocations.** Notwithstanding anything to the contrary contained in this Exhibit B:

**(a) Nonrecourse Deductions.** Nonrecourse Deductions shall be allocated to the Members *pro rata*, in accordance with their Percentage Interests.

**(b) Member Nonrecourse Deductions.** Member Nonrecourse Deductions shall be allocated to the Member who bears the economic risk of loss with respect to the liability to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(j) of the Regulations.

**(c) Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain or in Member Nonrecourse Debt Minimum Gain during a Company Fiscal Year, the Members shall be

allocated items of Company income and gain in accordance with Treasury Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

**(d) Qualified Income Offset.** In addition, in the event that any Member has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (a) the amount, if any, that such Member is obligated to restore pursuant to this Agreement, and (b) the amount such Member is deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Member shall be specially allocated items of Company income and gain (consisting of a pro rata portion of each item of income and gain of the Company for such Fiscal Year in accordance with Regulations section 1.704-1(b)(2)(ii)(d)) in the amount of such excess as quickly as possible; provided, however, that such an allocation shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section B-4 have been tentatively made as if this sentence were not in this Agreement. This Section B-4(d) is intended to comply with the qualified income offset requirement of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted and applied consistently therewith.

**B-5 Tax Allocations.**

**(a) Code Section 704(b) Allocations.**

(i) Each item of income, gain, loss, deduction or credit for Federal income tax purposes that corresponds to an item of income, gain, loss or expense that is either taken into account in computing Net Profits or Net Losses or is specially allocated pursuant to Section B-4 (a "Book Item") shall be allocated among the Members in the same proportion as the corresponding Book Item.

(ii) If the Company recognizes Depreciation Recapture (as defined below) in respect of the sale of any Company asset:

(A) the portion of the gain on such sale which is allocated to a Member pursuant to Section B-3 or Section B-4 shall be treated as consisting of a portion of the Company's Depreciation Recapture on the sale and a portion of the Company's remaining gain on such sale under principles consistent with Regulations Section 1.1245-1; and

(B) if, for Federal income tax purposes, the Company recognizes both "unrecaptured Section 1250 gain" (as defined in Section 1(h) of the Code) and gain treated as ordinary income under Section 1250(a) of the Code in respect of such sale, the amount treated as Depreciation Recapture under clause (i) above shall be comprised of a proportionate share of both such types of gain.

For purposes of this Section B-5(a), "Depreciation Recapture" means the portion of any gain from the disposition of an asset of the Company which, for Federal income tax purposes, (i) is treated as ordinary income under Section 1245 of the Code, (ii) is treated as ordinary income under Section 1250 of the Code or (iii) is "unrecaptured Section 1250 gain" as such term is defined in Section 1(h) of the Code.

**(b) Code Section 704(c) Allocations.**

(i) In accordance with Section 704(c) of the Code, income, gain, loss and deduction with respect to any property contributed to the Company with an adjusted basis for Federal income tax purposes different than the initial Asset Value at which such property was accepted by the Company shall, solely for tax purposes, be allocated among the Members in a manner determined by the Tax Matters Member (as defined below) so as to take into account such difference in a manner that complies with Section 704(c) and the applicable Treasury Regulations. The Company, in the discretion of the

Manager, may make, or not make, “curative” or “remedial” allocations (within the meaning of the Regulations under Section 704(c) of the Code) including:

(A) “curative” allocations which offset the effect of the “ceiling rule” for a prior Fiscal Year (within the meaning of Regulations Section 1.704-3(c)(3)(ii)); and

(B) “curative” allocations from dispositions of contributed property (within the meaning of Regulations Section 1.704-3(c)(3)(iii)(B)).

(ii) If upon the acquisition of an additional limited liability company interest in the Company by a new or existing Member the Asset Value of any of the assets of the Company are adjusted as required pursuant to the definition of “Asset Value”, subsequent allocations of income, gain, loss and deduction with respect to such assets shall, solely for tax purposes, be allocated among the Members in a manner determined by the Manager so as to take into account such adjustment in a manner that complies with Section 704(c) of the Code and the applicable Treasury Regulations.

(iii) The allocations required by this Section B-5(b) are solely for purposes of Federal and, as applicable, state and local, income tax purposes and shall not affect the allocation of Net Profits or Net Losses as between Members or any Member’s Capital Account.

**B-6 Tax Matters Member.** The Manager is hereby designated the “**Tax Matters Member**” and shall serve as the tax matters partner (as defined in Code Section 6231) of the Company.

**EXHIBIT C**

**MANAGER SUCCESSOR DESIGNATION**

*Note: When completed, a copy of this Manager Successor Designation should be provided to all Members (except that the Manager need not provide a copy to himself) and the original should be filed in the records of the Company.*

Dated effective \_\_\_\_\_, 20\_\_.

The undersigned hereby revokes any and all designations of Manager successors made prior to the date hereof.

The undersigned Manager of 183 Columbia Holding LLC hereby designates \_\_\_\_\_, having an address at \_\_\_\_\_, to be his successor to the position of Manager either on \_\_\_\_\_ [specify date if applicable] or automatically following his death, written resignation or disability rendering him unable to substantially perform his management responsibilities under the Operating Agreement of 183 Columbia Holding LLC for a period of at least six successive months.

In the event that at such time \_\_\_\_\_ does not wish to become successor, then the undersigned hereby designates \_\_\_\_\_, having an address at \_\_\_\_\_ to become his successor.

In witness whereof, the undersigned has made this Manager Successor Designation as of the date first written above.

\_\_\_\_\_  
DAVID J. MITCHELL