



# **OPERATING AGREEMENT FOR PROFESSIONAL INVESTORS 23, LLC**

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( A LIMITED LIABILITY COMPANY )  
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# OPERATING AGREEMENT FOR PROFESSIONAL INVESTORS 23, LLC

## ARTICLE 1 - EFFECTIVE DATE

1.1 This Operating Agreement of “ Professional Investors 23 , LLC ” is effective February 1, 2015 , and is adopted by the Members whose signatures appear at the end of this Agreement .

## ARTICLE 2 - FORMATION

2.1 This Limited Liability Company was formed by the filing of Articles of Organization with the State of California in August 7, 2014 . A copy of this organizational document is included with this Agreement as Exhibit D .

2.2 The name of the Company is “ Professional Investors 23 , LLC ”.

2.3 The signatories to this Agreement adopt and approve the filed Articles .

2.4 The legal existence of this Limited Liability Company commenced on the date of such filing .

## ARTICLE 3 - DURATION OF THE LIMITED LIABILITY COMPANY

3.1 The duration of this Limited Liability Company shall commence on the filing of the Articles of Organization , with the State of California , and shall continue until December 31 , 2045 .

3.2 This Limited Liability Company shall also terminate when a proposal to dissolve the Company is adopted by a unanimous vote of the Members .

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3.3 This Limited Liability Company shall also terminate with the sale or other disposition of substantially all of the Company's assets or in accordance with Article 18 of this Operating Agreement .

**ARTICLE 4 - BUSINESS PURPOSE**

4.1 The Members enter into this Agreement to form and provide for the governance of the Company and the conduct of its business , and to specify their relative rights and obligations . The specific business purpose and activity contemplated by the founders of this Company at the time of initial signing of this Agreement consist of the following :

- a) To purchase , manage and sell a 35,836 square foot office building, with 18 quality tenants , located in Novato , California .
- b) The purchase to be 40% cash and 60% bank financing .
- c) To provide cash flow from rental operations , distributed on a quarterly basis, with tax advantages from depreciation allowances .
- d) To sell the Property and achieve tax advantaged capital gain profits from market appreciation of the Property.

4.2 It is understood that the foregoing statement of purposes shall not serve as a limitation on the powers or abilities of this Company , which shall be permitted to engage in any and all lawful business activities .

4.3 This Company does not intend to do business outside the State of California.

4.4 However , if such activities do occur the Company will acquire the necessary qualifications to do business in that particular state or country.

4.5 The Members intend the Company to be a limited liability company under the Act as defined in Article 22.1 . Neither the General Manager nor any Member shall take any action inconsistent with the express intent of

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the parties to this Agreement .

- 4.6 Except as provided in this Agreement , no provision of this Agreement shall be construed to limit , in any manner , the Members in the carrying on of their own respective businesses or activities .

**ARTICLE 5 - NONLIABILITY OF MEMBERS AND INDEMNIFICATION**

- 5.1 A Member shall not be bound by , or be personally liable for , the expenses , debts , obligations or liabilities of this Limited Liability Company , Professional Investors 23 , or for any claims made against it .
- 5.2 Except as provided in this Agreement , no provision of this Agreement shall be construed to constitute a Member , in the Member’s capacity as such , the agent of any other Member .
- 5.3 No Member acting solely in the capacity of a Member is an agent of the Company , nor can any Member acting solely in the capacity of a Member bind the Company or execute any instrument on behalf of the Company . Accordingly , each Member shall indemnify , defend , and save harmless each other Member and the Company from and against any and all loss , cost , expense , liability or damage arising from or out of any claim based upon any action by such Member acting as an unauthorized agent of the Company .

**INDEMNIFICATION**

- 5.4 The Company shall have the power to indemnify any Person who was or is a party , or who is threatened to be made a party , to any Proceeding by reason of the fact that such Person was or is a Member , General Manager , officer , employee , or other agent of the Company against expenses, judgments , fines , settlements , and other amounts actually and reasonably incurred by such Person in connection with such proceeding , if such person acted in good faith and in what they believed was in the best interests of the Company .

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- 5.5 Expenses of each Person indemnified under this Agreement actually and reasonably incurred in connection with the defense or settlement of a Proceeding may be paid by the Company in advance of the final disposition of such Proceeding .
- 5.6 Each Member shall look solely to the assets of the Company for the return of the Member’s investment , and , if the Company property remaining after the payment of the debts and liabilities of the Company is insufficient to return all or part of the Member’s investment , such Member shall have no recourse against any other Member , including the General Manager , for indemnification or reimbursement .

**ARTICLE 6 - MEMBERSHIP MANAGEMENT**

- 6.1 This Limited Liability Company shall be managed exclusively by all of the Members as Member Managers .
- 6.2 The names of the Initial Members , and their respective Membership Interests , are as set forth in Exhibit A .
- 6.3 Members shall have the right to Vote on all matters with respect to which this Agreement or the Act requires or permits .
- 6.4 There shall be only one class of Membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member .
- 6.5 Members shall have the right and power to appoint , remove and replace the General Manager of the Company .
- 6.6 This action does not change the Membership Percentage Ownership of the Initial General Manager , including subsequent purchases of Membership Interests , or the rights , and responsibilities of such ownership interests .
- 6.7 By the signing of this Operating Agreement , the Member agrees to ratify

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the attached “ Company Management Agreement ” , Exhibit B and its terms, conditions , requirements and compensation .

- 6.8 By the signing of this Operating Agreement , the Member agrees to ratify the attached “ Property Management Agreement ” , Exhibit C , and its terms, conditions , requirements and compensation .
- 6.9 Upon presentation of receipts , Members shall be reimbursed by the Company for any organizational expenses paid by the Member in the formation of the Company .
- 6.10 Members shall not be paid as Members of the Company for performing any duties associated with such Membership . However , Members may be paid for any services rendered in any other capacity for the Company, including services rendered by the General Manager .
- 6.11 It is understood and agreed that each Member may engage in other enterprises that may be in competition with the Company .

**ARTICLE 7- REGISTERED OFFICE AND AGENT**

7.1 The registered office address of the Limited Liability Company is :  
Professional Investors 23 , LLC  
350 Ignacio Boulevard - Suite 300  
Novato , California 94949

7.2 The registered agent of this Limited Liability Company is Kenneth Casey.  
350 Ignacio Boulevard - Suite 300  
Novato , California 94949

**ARTICLE 8 - MEMBERSHIP CERTIFICATES**

8.1 This Limited Liability Company shall be authorized to issue Certificates representing and certifying Membership Interests in this Company .

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- 8.2 The Certificate shall show :
- The name of the Limited Liability Company...  
“ Professional Investors 23, LLC ”
  - Name of the Member .
  - Percentage Interest of the Member .

- 8.3 The Certificate :
- shall state that the person named is entitled to all the rights granted to members of the Company under the Articles of Organization .
  - shall be consecutively numbered and signed by the General Manager , or authorized agent for the General Manager .
  - shall bear a legend summarizing any transfer restrictions .
  - shall include additional information appropriate for inclusion .
  - shall be manually signed by the General Manager .

- 8.4 The records kept by the Company will show :
- a list of the names of all persons and entities to whom Certificates have been issued .
  - the date of issuance of each Certificate .
  - the date of all cancellations or transfers of Membership Certificates .

8.5 Once Membership Interest Certificates have been issued , they shall continue to be issued as necessary to reflect current Membership Interests held by Members .

**ARTICLE 9 - MEMBERSHIP MEETINGS**

- 9.1 Meetings of the Members may be called at any time by the General Manager, but not less than once a calendar year .
- 9.2 Meetings of the Members may be called at any time by Members representing more than 50% of the Members .
- 9.3 Meetings may be held at the principal executive office of the Company or

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at such other location as may be designated by the General Manager .

- 9.4 To all Members entitled to vote , the General Manager , after a meeting has been called , shall deliver Form 1 “ Notice of Membership Meeting” to each voting Member . This Notice shall be delivered not less than fourteen (14) days , nor more than sixty (60) days prior to the date of the meeting .
- 9.5 The Notice shall state :
- a) The date of the Notice .This is the Record Date .
  - b) The date and time of the meeting .
  - c) Final date for a Vote , if one is required .
  - d) Location of the meeting .
  - e) Business to be discussed .
  - f) The matter(s) requiring a Vote .
  - g) The signature of the Company Member documenting receipt of the Notice .
- 9.6 Attendance of a Member at a meeting shall constitute a waiver of receiving the Form 1 “ Notice of Membership Meeting ”.
- 9.7 The Record Date for determining Membership notice of any meeting , shall be the date set by the General Manager or by a Majority of Members . This Record Date will be clearly identified on Form 1 . “ Notice of Membership Meeting ”. In the absence of any action setting a record date , the record date shall be determined in accordance with Corp C Section 17104(k) .
- 9.8 If a meeting of the Members is called by the Members , notice of the meeting will be delivered , in writing , to the General Manager , 15 days prior to the meeting .
- 9.9 A quorum at any meeting of Members shall consist of a Majority of Members , in person , or by Proxy .
- 9.10 At all meetings of Members, a Member may vote in person or by Proxy.

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- 9.11 Such Proxy shall be filed with the General Manager before or at the time of the meeting . This Proxy may be filed by letter , written note , facsimile transmission , e-mail or similar transmission and shall be delivered to the General Manager at the principal executive office .
- 9.12 Members may participate in a meeting through use of conference telephone, computerized communication equipment or similar equipment, provided that all Members can hear and communicate with one another . Such participation shall be deemed attendance at the meeting .
- 9.13 The business to be transacted at a duly called and Noticed meeting will be as specified on Form 1 “ Notice of Membership Meeting ”. No other business may be transacted at the meeting .
- 9.14 A meeting of Members at which a quorum is present may be adjourned to another time and place and any business which may have been transacted at the original meeting may be transacted at the adjourned meeting .
- 9.15 The Members present at a duly called meeting at which a quorum is present may continue to transact business until adjournment , notwithstanding the withdrawal of a sufficient number of Members to leave less than a quorum. The action to be taken , other than adjournment , would still require a Majority vote .
- 9.16 If a quorum is not present at the original meeting , that meeting may be adjourned by a Vote of a Majority of Interests in attendance , either in person or by Proxy . Notice of the adjournment shall be given to all Members and a new Record Date set for announcement of a new meeting date and place as stated on an updated Form 1 “ Notice of Membership Meeting ”.
- 9.17 Written minutes of any meeting that was noticed on Form 1 “ Notice of Membership Meeting ” or , on Form 2 “ Notice of a Vote on a Company Action ” , will be kept , including discussions , votes taken, and matters approved at such meeting or non-meeting written correspondence .

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9.18 The transactions of any meeting of Members , however called and noticed , and wherever held , shall be valid as though consummated at a meeting duly held after regular call and notice , if

- A quorum is present at that meeting , either in person or by Proxy .
- Each of the Members entitled to Vote , not present at that meeting in person or Proxy,
  - Signs a written waiver of notice .
  - Signs a written consent to the holding of the meeting .
  - Signs a written approval of any minutes of the meeting .
  - Signs a written approval of any votes taken at the meeting .

9.19 Any action that may be taken at any meeting of the Members may be taken without a meeting , if , a consent in writing , setting forth the action to be taken , is signed by a Majority of Members , unless prohibited elsewhere in this Agreement .

9.20 If the Members are requested to consent to an action without a meeting , each Member entitled to vote will be given written Notice of the action to be voted upon . This action will be specified on Form 2 “ Notice of a Vote on a Company Action ”. This Notice shall be delivered not less than fourteen (14 ) days , nor more than thirty ( 30 ) days prior to the date of the Vote .

9.21 The Notice shall state :

- a) The date of the Notice .This is the Record Date .
- b) The final date for a Vote , if one is required .
- c) The business to be voted on .
- d) The matter(s) requiring a Vote .
- e) The signature and Vote of the Company Member .

The General Manager , shall determine the final Voting Date .

9.22 Any action taken without a meeting shall be effective when a signed

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Form 2 has been received , by a Majority Interest Vote of the signed Form 2 , that have been received by the General Manager , by the Voting Date . Within two weeks after the final Vote , a Form 3 , “ Notice of Membership Voting Action ” will be given , in writing , to the Members .

**ARTICLE 10 - MEMBERSHIP VOTING**

- 10.1 As of the governing Record Date , on any matter submitted to the Membership for approval by the General Manager , each Member shall Vote in proportion to the Member’s Percentage Interest .
- 10.2 A Member’s Percentage Interest shall be computed as a fraction , the numerator of which is the total of a Member’s Capital Account and the denominator of which is the total of all Capital Accounts of all Members , not including the thirty ( 30% ) percent Capital Account of the Initial General Manager , Professional Financial Investors , Inc . Any Membership Interests , purchased subsequent to the initial capitalization , by the Initial General Manager , would be included in the computation . This fraction shall be expressed as a percentage , which shall be called each Member’s “ Percentage Interest ”.
- 10.3 Except as provided otherwise in this Agreement , and as defined in Article 22.19 , a “Majority of Members” means the Vote of Members whose combined Vote equals more than 50% of the Voting interest , as defined in Article 22.34 , of all Members in this Company , according to the Members’ Membership Interest as recorded in Exhibit A .
- 10.4 A Majority of Members , so defined in Article 10.3 , may approve any item of business brought before the Membership for a vote .
- 10.5 If , for any reason , a Member is unable to vote , the Capital Account of the Member shall be removed and , for purposes of voting only , the Membership Interest Percentages recalculated for the other Members as

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specified in Article 10.2 and 10.3 .

10.6 All of the following acts shall require the unanimous Vote of the Members :

- Any amendment to the Articles of Organization .
- Any amendment to this Agreement .
- The requirement for an Additional Capital Contribution as specified in Article 11.11 .
- A compromise and reduction of the obligation of a Member to make a Capital Contribution as required under Article 11.
- The transfer of a Membership Interest and the admission of the Assignee as a Member of the Company .
- To extend the term of the existence of the Company beyond December 31 , 2045 .
- The sale or other disposition of substantially all of the Company’s assets .
- Entry of a decree of judicial dissolution under Corp C Section 17351 .
- For a Member to receive a return of an original Capital Contribution or current Capital Account Balance .
- Removal and replacement of the General Manager .
- A voluntary Capital Contribution by any Member .

**ARTICLE 11 - CAPITAL AND CAPITAL CONTRIBUTIONS**

11.1 Each Member shall contribute money to the capital of the Company as specified in Exhibit A .

11.2 There will be no property or services which will be considered as an addition to a Member’s Capital Account .

11.3 No Member may voluntarily make any additional Capital Contributions , without the consent of all the other Members .

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- 11.4 No interest shall be paid on Capital Contributions or on the balance of a Member's Capital Account .
- 11.5 A Member shall not be entitled to withdraw any part of the Member's Capital Contributions or to receive any distribution from the Company , whether of money or property , except as provided in this Agreement .
- 11.6 Other than upon the termination and dissolution of the Company as provided in this Agreement , there has been no time agreed upon for when the Capital Contribution of any Member may be returned .
- 11.7 If any Economic Interest , or portion thereof , is transferred , the transferee of such Economic Interest or portion shall succeed to the transferor's Capital Account attributable to such interest or portion .
- 11.8 If a Member lends money to the Company in the form of a promissory note , with or without a security interest , the principal amount of the note shall not be included in the Capital Account of such Member .
- 11.9 The Member shall make the required Initial Capital Contribution , as specified in Exhibit A , within 30 days after signing the Operating Agreement or another timetable as agreed to by the General Manager .
- 11.10 If a Member fails to make the Initial Capital Contribution within the required time frame , that Member's entire Membership Interest shall terminate . That Member shall indemnify and hold the Company and the other Members harmless from any loss , cost or expense , including reasonable legal fees , caused by the failure to make the Initial Capital Contribution .
- 11.11 The Business Plan provides all monies required for the operation of the business to come from rental income , related income and established reserve accounts . However , the General Manager may determine that additional capital contributions are required to enable the Company to conduct its business .
- 11.12 The Members may agree , by unanimous vote , to require the payment of

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additional capital contributions , on a mutually agreeable date .

11.13 If an Additional Capital Contribution is required , the General Manager must give 60 days written notice with Company Form 4 – “ Notice of Additional Capital Contributions ” stating :

- The Date of the Notice .
- Name of the Company Member .
- The amount of the required Additional Capital Contribution .
- Complete explanation for purpose of the additional funds .
- The date when the money will be required ( no less than 60 days from the Date of Notice ) .
- Signature by the Member(s) verifying receipt of notice .

11.14 Each Member shall be required to make an approved additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Member’s respective share of profits and losses bears to the total share of profits and losses of all Members . The thirty (30%) Membership Interest of the General Manager , Professional Financial Investors , Inc. shall not be included in the profit and loss proportional percentages , unless the General Manager elects to make a proportional capital contribution to increase the General Manager Membership Interest above 30% .

11.15 If a Member fails to make an approved Additional Capital Contribution on the “ Funds Required Date ” as specified on “ Form 4 - Notice of Additional Capital Contribution ”, the Member shall be a Defaulting Member .

11.16 The Defaulting Member shall have 30 days from the date of “ Notice of Capital Contribution Default ” - Form 5 , to cure the default .

11.17 The Initial General Manager will not be required to make additional capital contributions . However , the Initial General Manager can purchase another Members Membership Interest . In such case , the General Manager becomes a Substituted Member , after which time he would be re-

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responsible for any additional capital contributions required for that Substituted Member Interest .

11.18 Within five ( 5 ) business days of the default the General Manager will notify the other non-defaulting Members of the default on Form 5 - “ Notice of Capital Contribution Default ”.

The notification will include :

- Date of the Notice .
- Name of the Company Member .
- Amount of Additional Capital Contribution in default .
- Date of the Original Notice for Additional Capital Contribution .
- Date the Additional Capital Contribution of funds was required .
- Date of Notice of Capital Contribution Default .
- Date of Expiration of the 30 day period to cure the default , called the “ Default Date ”.
- Dates during which Non-Defaulting Members can fund the Additional Capital Contribution .

11.19 If the total amount of the default is not so contributed , the General Manager may use any reasonable method to provide Members the opportunity to make additional capital contributions to cure as much of the default as possible .

11.20 Following the Non-Defaulting Member’s completion of any additional capital contributions , each Member’s Percentage Interest shall be adjusted to reflect the ratio that the Member’s Capital Account bears to the total capital accounts of all the Member’s , not including the forty ( 40% ) percent Membership Interest of the General Manager , Professional Financial Investors , Inc .

11.21 There shall be no late payment penalties , interest charges or other monies charged to a Defaulting Member on any defaulted Capital Contribution .

11.22 A unanimous vote of the other Non-Defaulting Members cannot remove a Defaulting Member and have their Membership cancelled .

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- 11.23 On the occurrence of , and for the duration of , a Default by any Member , the Defaulting Member shall not have any right to vote the Defaulting Member’s Membership Interest or otherwise participate in the management or control of the business and affairs of the Company and any and all provisions of this Agreement with respect to management and control shall be determined without including the Membership Interest of the Defaulting Member . On satisfaction of a Defaulting Member’s obligations that Member shall be restored to full membership status to the extent of any remaining Membership Interest .
- 11.24 If any Economic Interest , or portion thereof , is transferred , the transferee of such Economic Interest or portion shall succeed to the transferor’s Capital Account attributable to such interest or portion .
- 11.25 An individual Capital Account for each Member shall be maintained on the books of the Company and adjusted as specified in Article 11.28 , 11.29 , 11.30, and 11.31 .
- 11.26 At the “ Default Date ” each non-defaulting Member may make an additional capital contribution which shall be not less than an amount bearing the same ratio to the amount of the default as the non-defaulting Member’s Capital Account balance bears to the total Capital Accounts of all Non-Defaulting Members . This computation does not include the thirty (30%) General Manager Capital Account . An additional thirty ( 30 ) days shall be allowed for this process .
- 11.27 The General Manager may , in its sole and absolute discretion , loan or advance money to or for the Company’s benefit if it determines that the Company is in need of funds over and above the Capital Contributions of the Members . This may become necessary for ordinary business operations when time may be of the essence . Such loan will bear interest at 8% per year simple interest and will be repaid as soon as Company funds are available . Such loan will not increase the lending General Managers Capital Account , entitle it to any greater share of Company profits or

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distributions , or subject it to any greater proportion of Company losses .

11.28 The Capital Account of each Member , including the General Manager , shall be adjusted in accordance with any future changes to the applicable provisions of the Internal Revenue Code and corresponding regulations .

11.29 The Member Capital Account shall be increased :

- By that Member’s Cash Capital Contributions .
- By that Member’s share of taxable income of the Company as determined under IRC Section 703(a) .
- By that Member’s share of profits and gains from any activity of the Company as determined by Subchapter K , Part I and Part II , of the Internal Revenue Code of 1986 and corresponding regulations .
- By the amount of any partnership liabilities personally assumed by that Member , who will deemed to be the Assuming Party who will have ultimate liability . This liability transaction would be subject to the provisions of IRC Reg 1.704-1(b)(2)(iv)(c) and IRC Section 752(a) .

11.30 The Member Capital Account shall be decreased :

- By the amount of cash distributed to that Member .
- By that Member’s share of taxable loss of the Company as determined under IRC Section 703(a) .
- By that Member’s share of losses and expenses from any activity of the Company as determined in accordance with Subchapter K , Part I and Part II , of the Internal Revenue Code of 1986 and corresponding regulations .
- By the Fair Market Value of any of the Property of the Company so distributed , net of liabilities secured by such distributed Property that the distributee Member is considered to assume or to be subject to under IRC Section 752 (c) .
- By any decrease in liabilities for which a Member was personally

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liable as an Assuming Party as per IRC Section 752(b) .

- By that Member’s share of expenditures not deductible in computing taxable income as provided for in IRC Section 705(a)(2)(B) .
- By that Member’s share of losses not deductible in computing taxable income due to related taxpayer provisions of IRC Section 267(a)(1) or the controlled partnership provisions of IRC Section 707(b) .

11.31 As regards the Capital Account of the General Manager :

- The General Manager , Professional Financial Investors , Inc . shall not be required to make a cash , service , property , or any other contribution to the Capital of the Company to receive a thirty (30%) Membership Interest .
- The Capital Account shall be increased by any cash Capital Contribution by the General Manager .
- The Capital Account shall be increased by the General Manager’s share of profits and gains from any activity of the Company during the period of operations , not including the sale of the Property , as determined in accordance with Subchapter K , Part I and Part II , of the Internal Revenue Code of 1986 and corresponding regulations .
- The Account shall be decreased by the General Manager’s share of losses and expenses from any activity of the Company, as determined in accordance with Subchapter K , Part I and Part II , of the Internal Revenue Code of 1986 and corresponding regulations .
- Upon the sale of the Property , the General Manager shall receive thirty (30%) of any cash distributions after all Other Members have received cash distributions of 100% of their Initial and Additional Capital Contributions .  

These Other Member cash distributions include , but are not limited to :

  - Monies received from operating profits earned during the holding period of the Property .
  - Monies received from proceeds from the sale of the Property .
  - Monies received from any financing of the Property .

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- Capital Contributions returned .

After such General Manager distribution , the remaining sixty (70%) of any cash proceeds will be distributed to the Other Members in accordance with Article 12 .

**ARTICLE 12 - ALLOCATIONS AND DISTRIBUTIONS**

12.1 The profits and losses of the Company and items of income , gain, loss , deduction or credit shall be allocated to Members , for Company book and tax purposes as follows :

- Thirty percent (30%) to the General Manager
- Seventy percent (70%) to the Other Members , allocated as regards to their then current respective Capital Account Percentage , not including the General Manager Account .
- The allocation in this Article does not apply to proceeds from the sale of the Company Property .

12.2 As used in this Agreement , “Profits and Losses ” means , for each calendar year , an amount equal to the Company’s taxable income or loss for such year , determined in accordance with IRC Section 703 ( a ) . Adjustments to this computation are necessary for ;

- a) Any income of the Company exempt from Federal income tax .
- b) Any non-deductible expenditures pursuant to IRC Section 705(a)(2)(B) .
- c) Gain or loss recognized for Federal income tax purposes from a sale of Company Property shall be computed by reference to the Fair Market Value of the Property sold , notwithstanding that the adjusted tax basis of such Property differs from its Fair Market Value .

12.3 No Member shall be given priority or preference with respect to other Members in obtaining a return of Capital Contributions , distributions







or allocations of the income , gains , losses , deductions , credits or other items of the Company . The exception to this rule is as regards to the General Manager , Professional Financial Investors , Inc . , as specified in Article 11.31.

12.4 Determination of a Member’s distributive share of items of income , gain , loss , deductions or credits are to be in accordance with IRC Section 704(b). Items of income , gain, loss , deductions or credits that are determined to be specially allocated under IRC Section 704(b) shall be taken into account in computing Profits and Losses under Article 12.1 .

12.5 The parties hereto waive , and disclaim , any rights they may have under law or equity to seek partition , knowingly and voluntarily , of any Property owned by the Company .

12.6 There shall be no distribution of the Property to any of the Members. Only a sale of the Property will conclude and dissolve the Company .

12.7 All available cash , other than proceeds from a sale of the Property , shall be distributed among Members in the same manner as Profits as specified in Article 12.1. The parties intend that Available Cash shall be distributed as soon as is practicable following the General Manager’s sole determination that such cash is available for distribution . The parties acknowledge that no assurances can be given with respect to when said cash will be available for distributions to the Members .

12.8 Upon the sale of the Property , the sales proceeds shall :

- 1) First be applied to the payment of the costs and expenses of the sale;
- 2) Then applied to the repayment of loans and encumbrances ; secured or unsecured , owed by the Company on the Property ;
- 3) Then applied to any remaining expenses , costs and obligations related to the dissolution of the Company .
- 4) Then , all remaining cash resulting from the sale of the Property,

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shall be distributed to the Members :

- a) 100% to the Other Members until they have received , in cash ,
  - I. 100% of their original Capital Contribution .
  - II. 100% of any Additional Capital Contributions .
 ( Article 11.31 defines return of Capital Contributions . )
- b) Then cash will be distributed thirty per cent (30%) to the Initial General Manager and seventy per cent (70%) to the Other Members in accordance with their respective Membership Percentage Interest .
- c) Other Members includes Membership Interests acquired by the Initial General Manager as a result of Additional Capital Contributions, purchases , and assignments of Membership Interests .
- d) Refer to Article 4.6 of the Company Management Agreement , Exhibit B of the Operating Agreement , for the specifics and clarifications of the compensation for the General Manager , to which this Agreement is subordinate .

12.9 It is the intent of the Members that each Members allocated share of Company Tax Items be determined in accordance with this Agreement to the fullest extent permitted by IRC sections 704(a) and 704(b) . Notwithstanding anything to the contrary contained in this agreement , if the Company is advised that , as a result of the adoption of new or amended regulations pursuant to IRC sections 704(a) and 704(b) , or the issuance of authorized interpretations , the allocations provided in this Agreement are unlikely to be respected for federal income tax purposes , the General Manager is hereby granted the power to amend the allocation provisions of this Agreement , on advice of accountants and legal counsel , to the minimum extent necessary to cause such allocation provisions to be respected for federal income tax purposes .

12.10 In the case of a transfer of an Economic Interest during any calendar year of the Company , the Assigning Member and Assignee shall each be allocated Profits and Losses based on the number of days each held the Economic Interest during that calendar year .

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12.11 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 Fair Market Value of the property disposed of , notwithstanding that the adjusted tax basis of such property differs from its Fair Market Value .

12.12 In any fiscal year of the Company , losses in excess of profits of the Company resulting from :

- a) insurance proceeds derived from an involuntary conversion
- b) proceeds from a refinancing of Company Property ,
- c) or a similar event with respect to Company Property or assets, shall be allocated to the Members with positive Capital Accounts, in proportion to their positive Capital Account balances , until no Member has a positive Capital Account .

12.13 In any calendar year of the Company , profits in excess of losses of the Company resulting :

- a) from insurance proceeds derived from an involuntary conversion
- b) proceeds from a refinancing of Company Property ,
- c) or a similar event with respect to Company Property or assets , shall be allocated to the Members in the following order :

1) Among the Members in the proportion that the Capital Contribution of each Member bears to the Capital Contributions of all Members including an allocation of thirty per-cent (30%) to the General Manager , Professional Financial Investors , Inc. , as per the terms of Article 11.27 .

2) To Members whose Adjusted Capital Contributions are in excess of their Capital Accounts , in proportion to those excesses , until all of those excesses have been eliminated . ( Adjusted Capital Contributions means , with respect to each Member , the excess of such Member's contribution to the capital of the Company over all prior

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distributions to the Members that have resulted from involuntary conversions , refinancing and similar events .)

**ARTICLE 13 - MANAGEMENT**

- 13.1 The business of the Company shall be managed by all the Members and all Members agree to participate in the Company management as noted in this Agreement .
- 13.2 All Member decisions concerning the management of the Company’s business shall be made by the vote of a Majority of Members , except as specified in Article 13.3 .
- 13.3 The Initial General Manager shall be Professional Financial Investors , Inc. and is appointed by the signing of this Agreement . The term of the appointment will continue until the dissolution of the Company or to the removal of the General Manager subject to the provisions of Article 13.7 .
- 13.4 The Company shall have one (1 ) General Manager .
- 13.5 The General Manager shall be the chief executive officer of the Company and shall have general supervision of the business and affairs of the Company , shall preside at all meetings of the Members , and shall have such other powers and duties usually vested in a chief executive officer .
- 13.6 A Majority of Members may alter the powers and duties of the General Manager , subject to the terms , conditions and agreements as specified in the attached “ Property Management Agreement ” , Exhibit C , and the attached “ Company Management Agreement ” , Exhibit B .
- 13.7 The General Manager can be removed only by a unanimous Vote of all the Other Members and the filing of an Amended Statement of Information with the California Secretary of State . Any subsequent purchases of Membership Interests , after the date of the

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signing of this Agreement , by the General Manager , shall be included for purposes of this Vote . This removal would be subject to any contractual arrangements and agreements as specified ,

- in the attached “ Company Management Agreement ” , Exhibit B ,
- and the attached “ Property Management Agreement ” , Exhibit C .

13.8 The Initial General Manager , Professional Financial Investors , Inc . , shall serve until :

- The resignation of the Initial General Manager .
- The dissolution of the Company .
- The removal of the Initial General Manager by the Other Members with a unanimous Vote subject to the provisions of Article 13.7.
- The expiration of the term of the Initial General Manager as Manager , as specified in the attached “ Property Management Agreement ” , Exhibit C , and the attached “ Company Management Agreement ” , Exhibit B.
- If a term has been designated by a unanimous Vote of the Other Members subject to the provisions of Article 13.7 .
- The dissolution of Professional Financial Investors , Inc .

13.9 Upon the removal of the Initial General Manager , and any subsequent General Manager , a new Member General Manager shall be appointed by a Majority vote of the Members , and such appointment shall have a specified term . The new General Manager may be entitled to a Manager’s fee and/or reasonable compensation as established by a Member Majority .

13.10 A Member shall be a General Manager only during the time when the General Manager is a Member of the Company .

13.11 A new General Manager will assume all the rights and duties of the Initial General Manager and will be subject to the same provisions for removal as specified in Article 13.7, and will include retirement , death or disabil-

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ity , if applicable .

13.12

- A) It is acknowledged and understood that the General Manager has other business interests and responsibilities which may require substantial amounts of time by the General Manager .
- B) It is understood and agreed that the General Manager may engage in other business enterprises , including enterprises that may be in competition with the Company.
- C) In the good faith and discretion of the General Manager , the General Manager shall devote such time , and attention to the business of the Company , as the General Manager deems necessary for the conduct of normal Company business .

13.13 For creating the Company ; locating and purchasing of the Property ; providing and taking liability for the financing ; acquiring the \$4,100,000 Capitalization ; providing Company management and supervision services , as specified in the “ Company Management Agreement ” , Exhibit B ; and , for any other services rendered to the Company by the General Manager for the conduct of all day-to-day Company business during the life of the Company , as also discussed in Article 13.14 , the compensation will be as follows :

- a) The Initial General Manager shall receive a thirty percent ( 30% ) Membership Interest in the original Capital Contributions , established with the signing of this Agreement , as specified in Exhibit A . The General Manager shall not be required to make a cash or property contribution to acquire this Membership Interest .
- b) The Initial General Manager shall receive thirty percent ( 30% ) of operating profits and losses of the Company and any items of Company income , deduction , credits and cash distributions . This will be in accordance with Article 12.4 and 12.1 . This does not include compensation from the sale of Company Property as specified in Article 12.8 .

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- c) Upon the sale of the Company Property , the profits and cash distributions shall be allocated seventy per cent (70%) to the Other Members and thirty percent (30%) to the General Manager .
- d) The General Manager shall guarantee the Other Members shall receive , in cash , one hundred percent ( 100% ) of their original Capital Contribution as specified in Exhibit A of this Agreement and one hundred percent ( 100% ) , in cash , of any Additional Capital Contributions .
- e) If needed , the distribution to the General Manager shall be reduced by an amount necessary to comply with the provisions of Article 13.13( g ) .
- f) Any Membership Interests acquired by the General Manager Member as a result of Additional Capital Contributions , purchases of Membership Interest from other Members , assignments of Membership Interests or any other situation are not subject to the limitations specified in this Article 13.13 .
- g) Actual out-of-pocket and minor expenses incurred for the normal conduct of Company business , and paid by the General Manager, shall be reimbursed by the Company upon presentation of receipts.

13.14 The Initial General Manager , Professional Financial Investors , Inc ., will not be directly or additionally compensated for the following services , except as specified in Article 13.13 , and as specified in the “ Company Management Agreement ”, Exhibit B;

- a) Locating , negotiating and completing the purchase of the Company Property .
- b) All functions necessary to manage the normal activities of the Limited Liability Company , as separate from property management services .
- c) Marketing services to sell the Property , negotiation and sale of the Property , managing closing of the escrow and disbursements of funds .
- d) General supervision of the business and affairs of the Company .

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- e) Organizing and presiding at all meetings of the Members .
- f) Services rendered for the dissolution of the Company .

The “ Company Management Agreement ”, Exhibit B , will be ratified by the Member upon the signing of this Operating Agreement .

13.15 The Initial General Manager , Professional Financial Investors , Inc . will be directly compensated for all normal property management services , as separate from Company management services , rendered to manage the Property during the life of the Company and the ownership of the Property , including , but not limited to :

- office functions ( rent collections , payment of bills , maintaining records et cetera ) .
- supervision of maintenance , repairs , turnover of apartments and capital improvement projects .
- acquiring appropriate insurance policies .
- marketing and renting of apartments .
- managing tenant relationships .

The compensation will be six percent ( 6% ) of scheduled rents , payable quarterly .

The “ Property Management Agreement ”, Exhibit C , will be ratified by the Member upon the signing of this Operating Agreement .

13.16 The Initial General Manager , Professional Financial Investors , Inc . , or any other appointed General Manager , shall not take any of the following actions on behalf of the Company unless a majority of the Members has consented , in writing , to such action :

- The dissolution of the Company .
- The sale of any Property owned , or to be owned , by the Company.
- Any act that would make it impossible to carry on the ordinary business of the Company.

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- Any confession of a judgment against the Company.
- The incurring of any debt not in the ordinary course of Company business.
- The incurring of any debt secured by deed-of-trust liens against the Property.

13.17 The General Manager shall cause all assets of the Company , whether real assets or personal property assets , to be held in the name of the Company , not in the name of any individual Member.

13.18 All funds of the Company shall be deposited in one or more accounts with a recognized financial institution in the name of the Company , at a location determined by the General Manager . Withdrawal from such accounts shall require a signature of the General Manager or such person as authorized by the General Manager.

13.19 The funds of the Company , however and wherever deposited or invested , shall not be comingled with the personal or business funds of any Member of the Limited Liability Company or any other outside or third party entity.

13.20 The General Manager has a fiduciary responsibility for the safekeeping and use of all funds and assets of the Company.

13.21 The General Manager :

Shall keep with the records of the Company full and accurate minutes of all meetings , notices and waivers of meetings , and all written consents to actions by the General Manager including related communications .

- May certify to other businesses , financial institutions and individuals as to the authority of one or more Members to transact specific items of business on behalf of the Company .

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- May employ agents , management companies and management professionals , contractors , legal and accounting professionals , appraisers , brokers and other counsel to assist in Company business .
- Shall manage the affairs of the Company in a reasonably prudent manner .
- Shall not make a loan to itself .
- Shall not receive any rebates , kickbacks or similar arrangements .

13.22 The General Manager is authorized :

- To obtain unsecured encumbrances for the Company to maintain operations in the ordinary course of business .
- With Membership approval , to acquire , refinance , consolidate or extend a deed-of-trust or other security device securing the Company Property .
- Is authorized to buy , sell , hold , exchange or convey title to Company Property in the ordinary course of Company business .
- To execute all relevant contracts , loan documents and encumbrances on behalf of the Company .
- To negotiate , carry , and manage appropriate insurance policies .
- To perform all acts necessary to perfect the organization of this Limited Liability Company and to carry out its business operations expeditiously and efficiently .
- To commence , defend or compromise litigation .

**ARTICLE 14 - BOOKS , RECORDS AND TAX FILINGS**

- 14.1 Complete and normal accounting records , in which the Company’s financial business shall be fully and accurately recorded , shall be kept at the Company’s principal executive office and any other location deemed necessary by the General Manager .
- 14.2 The books and records of the Company shall be open to inspection and copying , upon reasonable Notice and during normal business hours ,

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by any Member or the Member’s authorized representative . The costs of such inspection and copying shall be the direct responsibility of the Member and will be payable at the time the services or materials are provided . The inspection request shall be submitted by the Member on Form 4 “ Notice of Request for Inspection of Company records ”.

- 14.3 The fiscal year of the Company shall be a calendar year from January 1 to December 31.
- 14.4 Financial accounting records of the Company shall be kept on the accrual method of accounting which shall be the method of accounting used by the Company for federal and state tax filings of the Limited Liability Company .
- 14.5 Any financial statements of the Company shall be prepared in accordance with generally accepted accounting principles and shall be appropriate and adequate for the Company’s business .
- 14.6 Within one hundred and twenty days (120) after the end of the taxable calendar year of the Company the General Manager shall prepare an internal unaudited financial statement , including a balance sheet and income statement . There will be no requirement for a Certified report by independent certified accountants . Any request for such an audit and any fees , costs and expenses associated therewith will be paid for by the Member requesting the audit .
- 14.7 The Members intend that this Limited Liability Company be initially classified as a Partnership for Federal and State of California income tax purposes.
- 14.8 The General Manager shall cause to be timely filed all necessary Federal and State Information Tax returns ( Form 1065 and Form 565 ) .
- 14.9 Within ninety ( 90 ) days after the end of the taxable calendar year of the Company the General Manager shall send to each Member the following;

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- All information necessary for the Members to complete their own Federal and State income tax and/or information returns . ( Form 1065 K-1 and Form 565 K-1 ) .
- A copy of the annual unaudited financial statement , including a balance sheet and income statement .

14.10 The General Manager shall cause to be timely filed all necessary County of Marin tax and business filings , including but not limited to , real estate tax , business license , business personal property tax , and permits .

14.11 The General Manager shall act as the Tax Matters Member of the Company pursuant to IRC Section 6231(a)(7) and the regulations of 1.301.6231(a)(7)-1(a) . This authorizes the General Manager to take any action on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding to the extent permitted by law or regulations , including retaining tax advisors , at the expense of the Company , to whom the Tax Matters Member may delegate such rights and duties as deemed necessary and appropriate .

14.12 The Tax Matters Member is authorized and required to keep the Members informed of administrative and judicial proceedings for the adjustment of Company items and the conclusion of such proceedings that may cause changes to the tax treatment of certain tax matters of the Member . Tax treatment and procedure will be implemented as per the provisions of Chapter 63 Subchapter C of the Internal Revenue Code ( IRC Section 6221 and 6222 ) .

14.13 This Agreement authorizes the General Manager to enter into settlement agreements under IRC Section 6224(c)(3) and applicable regulations with the Internal Revenue Service or the Secretary of the Treasury with respect to any tax audit or judicial review . The Tax Matters Member may state that the settlement agreement shall bind the other Members , except that such settlement agreement shall not bind any Member who files a statement with the Secretary providing that the Tax Matters Member shall

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not have the authority to enter into a settlement agreement on behalf of such Member .

14.14 At all times during the existence of the Company , and for six years following the dissolution date , the General Manager shall keep the records as referred to in Article 14.1 , including , but not limited to :

- A current list of the full name and last known business address of each Member .
- A current schedule indicating each Members Capital Contributions, Capital Accounts , percentage share of profits and losses as specified in Article 12 including rights to distributions .
- A copy of the Article of Organization , including any amendments.
- A signed original copy and counterparts of this Agreement by all Members , including any amendments .
- Any powers of attorney under which the Article of Organization and /or this Agreement , including amendments , were executed .
- Copies of the Company’s Federal and State information returns ( Form 1065 and Form 565 ) .
- Any prepared financial statements of the Company .
- All internal records including accounting and bookkeeping records.
- All local tax filings , permits and licensing records .
- Copy of all proceedings of Membership Meetings .
- Records of Membership Certificates of all Initial Members and records of subsequent “Transfers of Ownership Interests ”.

14.15 If the General Manager determines that any of the records of the Company shall be kept beyond six years after the dissolution of the Company , the location of such records and the length of time deemed necessary , shall be designated by the General Manager .

14.16 It is understood that , subject to Federal and State law requirements , all Members may agree to change the tax treatment of this Limited Liability Company by signing , or authorizing the signature of , IRS Form 8832 ,

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“ Entity Classification Election ” and the consequent filing with the IRS and State of California .

14.17 If a change in tax classification is different than as stated in Article 14.7, the General Manager shall cause to be timely filed and sent to the Members , and appropriate government agencies , the necessary tax forms appropriate for the new tax classification .

14.18 The Company shall be authorized to elect to deduct organizational expenses and start up expenses as permitted by Internal Revenue Code Section 195 .

**ARTICLE 15 - TRANSFERS OF MEMBERSHIP INTERESTS**

15.1 A Member may withdraw from the Company , at any time , by giving a Notice of Withdrawal to all Other Members at least 90 days before the specified date of withdrawal . This withdrawal notification can be submitted on Form 7 “ Notice of Member Withdrawal ” or in an equivalent written communication .

15.2 A withdrawing Member shall divest the Member’s entire Membership interest before or on the effective date of withdrawal .

15.3 There is no requirement for any compensation of any kind to be paid to the withdrawing Member by the Other Members , the General Manager or the Company , regardless of the fair market value of the withdrawing Members Interest .

15.4 Withdrawal shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal .

15.5 A Member shall not transfer any part of the Member’s Interest in the Company , whether now owned or later acquired , unless all Other Members unanimously approve the transferee’s admission to the Company as a Member . Any transfer of a Membership Interest without such approval

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shall be void . Such approval will not be unreasonably withheld .

- 15.6 Any Member shall be allowed to assign an Economic Interest in their Membership to another person without the approval of the Other Members . Such an assignment shall not include a transfer of the Member’s voting or management rights in this Company , and the Assignee shall not become a member of the Company .
- 15.7 No Member may encumber , all or part , of their Membership in the Limited Liability Company by mortgage , pledge , granting of a security interest , lien , or otherwise , unless the encumbrance has first been approved in writing by all Other Members of the Limited Liability Company . Any encumbrance of a Membership Interest without such approval shall be void.
- 15.8 A Member who is a natural person may transfer all or any portion of their Membership Interest to any revocable trust created for the benefit of the Member , the Member’s spouse , and the Member’s issue ; provided that the Member retains a beneficial interest and all of the voting interest in the trust . A transfer of a Member’s beneficial interest in such trust , or failure to retain such voting interest , shall be deemed a Transfer of a Membership Interest .
- 15.9 Transfer of all or part of a Membership Interest shall be with a written instrument in form and substance satisfactory to the General Manager and not in contravention of any of the provisions of this Agreement . A counterpart of the instrument of transfer , executed and acknowledged by the selling Member and accepted by the Assignee , shall be filed with the Company .

**ARTICLE 16 - PURCHASE OF A MEMBERSHIP INTEREST**

- 16.1 If a Member wants to sell and transfer all or part of the Member’s Membership Interest pursuant to a “ Bona Fide Offer ” the Member shall give written notice to all Other Members at least 60 days prior to the proposed

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sale or transfer date .This written Notice shall include similar information as contained in Form 8 . The notice shall include the “ Bona Fide Offer”. This notice can be sent to the Other Members on Form 8 “ Notice of Intent to Sell or Transfer a Membership Interest ”.

16.2 For purposes of the Agreement , “ Bona Fide Offer ” means

- An offer in writing setting forth the identity of the Offeror , the purchase price , any financing terms , closing date and all relevant purchase terms and conditions .
- The offer must be a cash offer .
- The Offeror must be ready , willing and able to consummate the purchase.
- The Offeror , if Affiliated , in any way , with the selling Member , obtains the approval of the General Manager . This approval will not be unreasonably withheld unless majority controlling membership interests would result from the purchase .
- For purposes of determining any affiliation by the Offeror with the Selling Member , the attribution rules of IRC Section 267 and corresponding regulations shall be followed .

16.3 The Company and the Other Members shall have a sixty ( 60 ) day option to purchase the Membership Interest proposed to be sold or transferred at the same price and terms as stated in the “ Bona Fide Offer ” and on the terms provided in this Agreement .

16.4 For twenty (20 ) business days after the Form 8 “ Notice of Intent to Sell or Transfer a Membership Interest ” has been received by the General Manager , or other equivalent written notification , the Company shall have the right to purchase the Membership Interest offered , on the same terms , including closing date , price and financing , as stated in the Offer.

16.5 If , after twenty (20 ) business days , the Company does not exercise the right to purchase all or part of the Membership Interests offered , then , that right shall be given to the Other Members for the remainder of the

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escrow period specified in the “ Bona Fide Offer ”, or sixty (60) days , whichever is longer .

- 16.6 If all the remaining Members wish to participate in purchasing the Membership Interest being offered , each of the Members shall have the right to purchase , for the remainder of the escrow period as stated in the “ Bona Fide Offer ”, or sixty (60) days , and for the same terms and conditions, a part of the interest of the Offering Member in the proportion that the Member’s Percentage Interest bears to the total Percentage interests of all the Members who chose to participate in the purchase . The Company and the participating Members may not , in the aggregate , purchase less than the entire interest to be sold by the Offering Member .
- 16.7 If the Company and the other Members do not exercise their rights to purchase all of the Membership Interest , the Offering Member may , complete the transfer or sale , to the Offeror , as specified in the terms of the “ Bona Fide Offer ”, including closing date , price and financing .
- 16.8 The Company and other Members shall have the option to purchase the Membership Interest in the Company of a Member if :
- There is the death or incapacity of a Member .
  - There is the withdrawal of a Member as per Article 15 of this Agreement .
  - The dissolution of a Corporate Member .
  - A merger or other corporate reorganization the result of which the corporate Member does not survive as an entity .
  - The failure of a Member to make the Member’s Capital Contribution pursuant to the provisions of Article 11 of this Agreement .
  - The occurrence of any other event that would cause a Transfer or Sale of Membership Interest’s in contravention of this Agreement .

Each Member , or representative , shall give immediate notice to the General Manager of any such above mentioned event .

- 16.9 The purchase price of the Membership Interest that is the subject of an

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option under Article 16.8 shall be the “ Fair Market Value ” as specified under Article 16.10 and 16.11 .

16.10 The “ Fair Market Value ” means the cash price that a willing buyer would pay to a willing seller when neither is acting under duress and both have reasonable knowledge of the relevant facts as of the time of the transaction . Each of the selling and purchasing parties shall use best efforts to mutually agree on the “ Fair Market Value ”.

16.11 If , within 15 business days , the parties are unable to agree on the “ Fair Market Value ” , the General Manager will provide the valuation , using any necessary appraisers and other professionals to document a fair market value . The “Fair Market Value ”, as established by the General Manager , will be final and agreed to by the signatories to this Agreement . This appraisal shall be completed within 21 business days , after requested by the parties .The parties to the transaction will divide the associated costs and expenses . None of these appraisal and evaluation costs will be the responsibility of the Company .

16.12 After the “Fair Market Value ”, has been established and noticed , in writing , by the General Manager , the purchase price , as so determined, shall be payable in cash within ninety ( 90 ) days of the date noticed .

16.13 If , in connection with the divorce or dissolution of the marriage of a Member , any court issues a decree or order that transfers , confirms , or awards a Membership Interest , or any portion thereof , to that Member’s spouse , then , notwithstanding that such Transfer would constitute an unpermitted Transfer under this Agreement , that Member shall have the right to purchase from the former spouse the Membership Interest , or portion thereof , that was so transferred , and such spouse shall sell the Membership Interest , or portion thereof , to that Member at the price as set forth in Article 16.10 , 16.11 and 16.12 .

16.14 The Member mentioned in Article 16.14 has six months (180 days ) from the date of the award of the Membership Interest to the former spouse

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to complete the purchase of such Membership Interest from the former spouse . At the end of such period the Company and the other Members shall have the option to purchase from the former spouse the Membership Interest , or portion thereof , pursuant to Article 16.8 of this Agreement .

16.15 If , upon the death of a spouse of a Member , any portion of a Membership Interest that is transferred to a transferee other than that Member or a trust created for the benefit of that Member , and that Member’s issue , in which the Member is the sole Trustee and the Member , as Trustee or individually possesses all of the Voting Interest included in that Membership Interest , then the Member shall have the right to purchase the Membership Interest , or portion thereof , from the estate , successor or other transferee of their spouse . This transferee shall sell the Membership , or portion thereof , at the price set forth in Article 16.9 of this Agreement .

16.16 The Member mentioned in Article 16.16 has six months (180 days ) from the date of death of the former spouse to complete the purchase of such Membership Interest from the estate or other successor of the deceased spouse . At the end of such period the Company and the other Members shall have the option to purchase from the estate or other successor of the deceased spouse the Membership Interest , or portion thereof , pursuant to Article 16.8 of this Agreement .

16.17 The Member whose interest is subject to purchase under Article 15 and 16 of this Agreement shall not participate in any Vote or discussion of any matter pertaining to the disposition of the Member’s Membership Interest in the Company .

16.18 The Assigning Member shall not be released from liabilities as a Member solely as a result of the assignment , both with respect to obligations to the Company and to third parties , incurred prior to the assignment .

16.19 If the Offeror is not unanimously accepted as a new Member of the Company , the Offeror , shall become an Assignee , and shall be entitled to

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receive only the share of Profits , Gains and other income compensation and the return of the Capital Contribution to which the Assigning Member would have been entitled .

16.20 The initial sale of Membership Interests in the Company to the Initial Members has not been qualified or registered under the securities laws of any state , or registered under the Securities Act of 1933 , in reliance upon exemptions from the registration provisions of those laws .

**16.21 INITIAL CAPITALIZATION OF THE COMPANY**

During the formation of the Company and Initial Capitalization of \$4,100,00, the provisions of this Article 16 and Article 17 shall not apply.

Due to the limited time period allowed for closing of escrow and purchase of the Property , all of the Capitalization may not be funded by the Purchase date of the Property .

If the \$3,730,000 down payment has not been capitalized by the Purchase Date of the Property any required monies to close escrow will be loaned to the Company by the General Manager as per the terms specified in Article 11.27 .

Upon the signing of this Agreement the Member agrees to such loan transaction .

After purchase of the Property , the remaining Membership Interests not yet purchased , may be acquired . These Membership Interests shall be purchased under the same terms and conditions as if acquired before the Purchase date of the Property .

Any Membership Interests not purchased by ninety (90 ) days following the Purchase date of the Property will be purchased by the General Manager and any loan balance outstanding will be paid and cancelled.

**ARTICLE 17 – SUBSTITUTED MEMBER**

17.1 A prospective transferee of a Membership Interest may be admitted as a

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Member with respect to such Membership Interest as a Substituted Member ;

- only on the unanimous vote of the other Members in favor of the transferee’s admission as a Member .
- And , the transferee executing a counterpart to this Agreement as a party hereto .

17.2 Until the prospective transferee has been admitted as a Substituted Member

- the transferee of a Membership Interest shall be deemed an Assignee and ,
- the owner of an Economic Interest only .

17.3 Such Assignee , unless admitted as a Substituted Member ;

- shall be only entitled to receive allocations and distributions for a Membership Interest only as specified in this Agreement .
- shall not have the right to vote .
- cannot exercise any right of a Member of the Company .

17.4 Any person admitted to the Company as a Substituted Member shall be subject to all the provisions of this Agreement that apply to the Member from whom the Membership Interest was assigned .

17.5 After admission of a Substituted Member to the Limited Liability Company by a unanimous vote of the Members , the General Manager will provide a written confirmation to the Substituted Member of the Membership acceptance and the date when such substitution will become effective .

17.6 After admission of a Substituted Member , the General Manager will amend Exhibit A to this Agreement to reflect the substitution of such Member .

**ARTICLE 18 - DISSOLUTION OF THE COMPANY**

18.1 The Company shall be dissolved upon the occurrence of any of the fol-

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lowing events :

- a) The expiration of the term of the existence of the Company .
- b) The sale or other disposition of substantially all of the Company's assets .
- c) The written agreement of all the Members to dissolve the Company.
- d) Entry of a decree of judicial dissolution under Corp C Section 17351.

18.2 In the event of the death , incapacity , withdrawal , or dissolution of a Member the remaining Members may , by a vote of the Majority of Members , within 60 days of the happening of that event , vote to continue the business of the Company , in which case , the Company shall not dissolve . If the remaining Members fail to vote to continue the Company , the remaining Members shall wind up the Company .

18.3 For purposes of Article 18.2 , in determining a Majority of Members , the Percentage Interest of the Member who has died , become incapacitated , withdrawn or dissolved shall not be taken into account .

18.4 The General Manager or the Other Members may wind up the business and affairs of the Company .

18.5 The General Manager or Other Members winding up the affairs of the Company shall give a Notice of dissolution of the Company , by mail , to all known creditor and claimants against the Company .

18.6 On the dissolution of the Company , the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company .

18.7 After paying or adequately providing for the payment of all known debts of the Company , the remaining monies of the Company shall be distributed in the following order :

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- a) To pay the expenses of liquidation .
- b) To the establishment of reasonable reserves by the General Manager for any contingent liabilities or obligations of the Company . Upon the General Manager’s determination that such reserves are no longer necessary, said reserves shall be distributed as provided in Article 18.7(d) .
- c) To repay outstanding loans to Members . If there are insufficient funds to pay such loans , together with unpaid accrued interest , each Member shall be repaid in the ratio that the Member’s loan , together with unpaid accrued interest , bears to the total of all such loans from Members , including accrued and unpaid interest . Such repayment shall first be credited to accrued and unpaid interest due and the remainder shall be credited to principal .
- d) Among the Members in proportion to their remaining Capital Account .

18.8 At the time the Company Property is sold , prevailing economic conditions may make it necessary , or desirable , to provide primary or secondary financing to the purchaser .

18.9 In the event the Company finds it necessary , or desirable , to provide financing upon the sale of the Company Property , the liquidation of the Company may be delayed beyond the disposition of the Property until all such loans are repaid or otherwise liquidated .

**ARTICLE 19 - MEDIATION AND ARBITRATION.**

19.1 Any action to enforce or interpret this Agreement , or to resolve disputes as between the Company and a Member , including the General Manager, or between or among the Members , shall attempt to be resolved first through mediation before a neutral mediator knowledgeable in business and real estate law. The terms and procedure for mediation shall be arranged by the parties to the dispute .

19.2 If the Members involved in the dispute , after good faith efforts , cannot

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resolve the dispute to their mutual satisfaction , the matter shall be submitted to arbitration before a neutral arbitrator knowledgeable in business and real estate law .

19.3 The arbitration will be in accordance with the rules of the American Arbitration Association . Arbitration shall be the exclusive dispute resolution process in the State of California .

19.4 Any party may commence arbitration by sending a written demand for arbitration to the other parties . Such demand shall set forth the nature of the matter to be resolved by arbitration . If all parties to the dispute agree to arbitration , after written confirmation , arbitration shall be commenced as soon as practical .

19.5 The General Manager shall select the place of arbitration .

19.6 The substantive law of the State of California shall be applied by the arbitrator for the resolution of the dispute .

19.7 The parties shall share equally all initial costs of arbitration . The prevailing party shall be entitled to reimbursement of attorney fees , costs , and expenses incurred in connection with the arbitration .

19.8 All decisions of the arbitrator shall be final , binding , and conclusive on all parties .

19.9 A judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof .

**ARTICLE 20 - ATTORNEY - IN - FACT AND AGENT**

20.1 Each Member , by execution of this Agreement , irrevocably constitutes and appoints Professional Financial Investors , Inc., the Initial General Manager , and any subsequent General Manager , as such Member’s true and lawful attorney-in-fact and agent , with full power and authority in such Member’s name :

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- To file and record any necessary documents in the appropriate jurisdiction
  - to qualify the Company as a limited liability company .
  - to qualify to transact business in any jurisdiction in which the Company conducts business .
  - for any amendment to the Company’s Articles of Organization .
  - to reflect the dissolution of the Company and winding up the Company .
  - any certificates , documents and paperwork necessary to comply with the provisions of this Agreement .

20.2 This power - of - attorney will be deemed to be coupled with a Membership Interest and will survive the transfer of the Member’s economic interest .

20.3 Each Member agrees to join in the signature , execution , acknowledgment , and delivery of the instruments referred to above if requested to do so by the General Manager .

20.4 This power - of - attorney is a limited power - of - attorney and does not authorize any General Manager to act on behalf of a Member except as described in this Article 20 .

20.5 This Agreement and its amendments shall govern in the event of any conflict between the provisions of this Agreement , or any amendment to it, and any document executed , acknowledged , sworn to , or filed by the General Manager under this power-of-attorney .

**ARTICLE 21 - GENERAL PROVISIONS**

21.1 This Operating Agreement represents and constitutes the whole and entire agreement between the Members of this Limited Liability Company . It shall not be amended , modified , altered , replaced or repealed except by a written instrument executed by all the parties to this Agreement who are current Members of this Limited Liability Company as well as any and all additional Members who become Members of this Limited Liability

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Company after the adoption of this Agreement .

- 21.2 The Members have formed a limited liability company under the Beverly-Killea Limited Liability Company Act .
- 21.3 The formal name of this limited liability company is Professional Investors 23 , LLC . However , this limited liability company may do business under a different name by complying with the State of California fictitious or assumed business name statutes and procedures .
- 21.4 Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement .
- 21.5 The parties to this Agreement shall promptly execute and deliver any and all documents , instruments , forms , notices and communications , and shall do any and all other acts and things , reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties .
- 21.6 This Agreement shall be binding on and inure to the benefit of the parties and their heirs , personal representatives , and permitted successors and assigns .
- 21.7 This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns , and no other person or entity shall have or acquire any right by virtue of this Agreement .
- 21.8 This Agreement shall be construed and enforced in accordance with the internal laws of the State of California . In the event of litigation hereunder , the venue for any and all actions will be Marin County , California .
- 21.9 If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid , illegal , or unenforceable , the remaining provisions of this Agreement shall remain in effect and shall in

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no way be affected , impaired or invalidated .

- 21.10 This Agreement may be executed in one or more counterparts , each of which shall be deemed an original , but all of which together shall constitute one and the same instrument .
- 21.11 Whenever used in this Agreement , the singular shall include the plural and the plural shall include the singular , and the neuter gender shall include the male and female as well as a trust , firm , company , organization , or corporation , all as the context and meaning of this Agreement may require .
- 21.12 The article , paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes , including the construction or enforcement of this Agreement or any of its provisions .
- 21.13 Each Member hereby represents , warrants and covenants with the Company and each of the Other Members that the Membership Interest being acquired by this Member is being acquired for the personal or business account of this Member for investment purposes only and with no intention of reselling or otherwise transferring such Membership Interest or any portion thereof ; and that the Member has no contract or arrangement with any Person to sell or transfer to such Person all or a portion of the Members Membership Interest .
- 21.14 The registered office and/or agent of this Limited Liability Company may be changed as the Members may see fit .The General Manager shall file the appropriate forms with the State of California with such changes . It will not be necessary to amend this provision of the Operating Agreement if and when such changes are made .
- 21.15 This Agreement replaces and supersedes all prior written and oral agreements among any and all Members of this Limited Liability Company .

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21.16 Time is of the essence of every provision of this Agreement that specifies a time of performance .

**ARTICLE 22 - DEFINITIONS**

22.1 ACT .....means the Beverly-Killea Limited Liability Company Act , California Corporations Code #17000-17705 , including amendments .

22.2 AFFILIATE.....of a Member means any Person directly or indirectly , through one or more intermediaries , controlling , controlled by , or under common control with the Member . The term “control” means the possession , direct or indirect , of the power to direct or cause the direction of , the management and policies of a Person , whether through Membership, ownership of voting securities , by contract , or otherwise .

22.3 AGREEMENT.....means this operating agreement , as originally executed , and any amendments .

22.4 ARTICLES OF ORGANIZATION.....as defined in Corporation Code Section 17001(b) . The original filing with the California Secretary of State , adopted and approved by the members .

22.5 ASSIGNEE .....means a person who has acquired a Member’s Economic Interest in the Company , by way of a Transfer in accordance with the terms of this Agreement , but who has not become a Member .

22.6 ASSIGNING MEMBER.....means a Member who by means of a Transfer , in accordance with the terms of this Agreement , has transferred an Economic Interest in the Company to an Assignee .

22.7 AVAILABLE CASH.....means all net revenues from Company operations , including net proceeds from all sales , refinancing , and any other disposition of Company Property . In the sole discretion of the General Manager , these amounts would be deemed in excess of the amount nec-

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essary for the operating requirements of the Company , including debt reduction and Reserves .

- 22.8 CAPITAL ACCOUNT.....means , with respect to any Member , the account reflecting the capital interest of the Member in the Company , consisting of the Member’s Initial Capital Contribution as recorded in Exhibit A and adjusted in accordance with Article 11.26 , 11.27 , 11.28 and 11.29 .
- 22.9 CAPITAL CONTRIBUTION.....means , with respect to any Member , the amount of cash money contributed to the Limited Liability Company in consideration for a Percentage Interest in the Company . A Capital Contribution shall not be deemed to be a loan .
- 22.10 CAPITAL EVENT.....means a sale or disposition of the Property of the Company , the receipt of insurance and other proceeds derived from the involuntary conversion of Company Property , the receipts of proceeds from a refinancing of Company Property , or a similar event with respect to Company Property or assets .
- 22.11 CODE OR IRC..... the Internal Revenue Code of 1986 , as amended , and any successor provision .
- 22.12 COMPANY...the Limited Liability Company , organized in August 2014 , and registered under the name “ Professional Investors 23, LLC ” .
- 22.13 CORPORATIONS CODE..... the California Corporations Code .
- 22.14 ECONOMIC INTEREST..... a Person’s right to share in the income , gains , losses , deductions , credits or similar items of , and to receive distributions from the Company , but does not include any other rights of a Member , including the right to vote or to participate in management .
- 22.15 ENCUMBRANCE.....means , with respect to any Membership Interest , or any element thereof , a mortgage , pledge , security interest , lien , preferential right to purchase or similar obligation .

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- 22.16 FAIR MARKET VALUE....as defined in Article 6.10 and 16.11 .
- 22.17 INITIAL GENERAL MANAGER....means Professional Financial Investors , Inc. , as appointed on the signing of this Agreement , and any subsequent Member who may be appointed as determined in Article 13.9 .
- 22.18 INITIAL MEMBERS.....those Persons whose names are set forth in Exhibit A of this Agreement .
- 22.19 MAJORITY OF MEMBERS.....means the Vote of Members whose Membership Percentage Interests represent more than 50 percent (50%) of the eligible voting Percentage Interests of all the Members for the specific Vote .
- 22.20 MEMBER.....means a Person who has acquired a Membership Interest through initial Capital Contributions as confirmed on Exhibit A to this Agreement or who has acquired a subsequent Membership Interest upon the purchase or transfer of a Membership Interest , and approval by a unanimous vote of the Other Members .
- 22.21 OFFEROR.....means a Person making a “ Bona Fide Offer ” to purchase a part or all of a Membership Interest or otherwise have a financial transaction with a Member .
- 22.22 OTHER MEMBERS.....in reference to the General Manager the Other Member will mean a Member who is not the General Manager . In reference to general Company business , the Other Members will represent the Members who are eligible to Vote on a specific provision of this Agreement and/or are not involved in a specific transaction with the Company .
- 22.23 MEMBERSHIP INTEREST .....means a Member’s rights in the Company , collectively , including the Member’s Economic Interest , any right to Vote or participate in management , and any right to information concerning the business and affairs of the Company .

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- 22.24 NOTICE ..... means a written notice required or permitted under this Agreement which the General Manager has reasonable cause to believe has been appropriately received by , and communicated to , the respective Member .
- 22.25 PERCENTAGE INTEREST means a fraction , expressed as a percentage, the numerator of which is the total of a Member’s Capital Account and the denominator of which is the total of all Capital Accounts of all Members , allowing for a General Manager Membership percentage of thirty per cent (30%) added to such total as specified in this Agreement .
- 22.26 PERSON.....means an individual , partnership , limited partnership , trust , estate , association , corporation , limited liability company , tax-exempt organization , or other entity , whether domestic or foreign .
- 22.27 PROFITS AND LOSSES.....as described in the 1986 Internal Revenue Code Section 703(a) .
- 22.28 PROPERTY.....means the 35,836 square foot office building located at 1701 South Novato Boulevard , Novato , California .
- 22.29 PROXY.....as per the meaning as set forth in California Corporation Code C Paragraph 17001(a)(i) . A Proxy Vote must be in written form , it cannot be transmitted orally .
- 22.30 RECORD DATE.....the date set by the General Manager or by a Majority of Members to establish a deadline within which a certain action needs to finalized . The Members or Member , as the case may be , will be informed in writing , with reasonable advance notice , of any record date .
- 22.31 REGULATIONS.....means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Internal Revenue Code , as such Regulations may be amended , including

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corresponding provisions of applicable successor regulations .

22.32 RESERVES.....means the aggregate of reserve accounts that , in the sole discretion of the General Manager , is deemed reasonably necessary to meet current , accrued or contingent liabilities of the Company . This would include accounting for anticipated normal operating expenses and working capital requirements .

22.33 TRANSFER...means , with respect to all or part of a Membership Interest , any sale , assignment , gift , involuntary or judicial judgment , encumbrance or other disposition of such a Membership Interest .

22.34 VOTE AND VOTING INTEREST..... means , with respect to a Member , the right to Vote or participate in management , and , means a ballot cast at a meeting or a voice vote with such votes being memorialized and agreed to in writing ; and , a written Vote requested by the General Manager . A Member’s Voting Interest shall be directly proportional to that Member’s Percentage Interest as indicated on Exhibit A of this Agreement.

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**CONSENT OF SPOUSES :**

1 ) The undersigned is a spouse of a Member of Professional Investors 23 , LLC and has read this Agreement and agreed to be bound by its terms in any matters in which they have a financial interest , including restrictions on the transfers of Membership Interests and the terms under which Memberships in this Limited Liability Company may be sold or otherwise transferred .

\_\_\_\_\_  
Signature of Member Date

\_\_\_\_\_  
Signature of Member Date

\_\_\_\_\_  
Signature of Member Date

\_\_\_\_\_  
Signature of Member Date

\_\_\_\_\_  
Signature of Member Date

\_\_\_\_\_  
Signature of Member Date

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## **EXHIBIT A**

( THIS EXHIBIT IS AN ATTACHMENT TO THE OPERATING AGREEMENT OF THE LIMITED LIABILITY COMPANY FORMED BY PROFESSIONAL INVESTORS 23, LLC..... DATED FEBRUARY 1 , 2015 )

- Each Member shall make a Cash Capital Contribution as shown on the following schedule .
- As agreed to in Article 13.13 , the Initial General Manager shall not be required to make a Cash Capital Contribution to acquire a thirty ( 30% ) Membership Interest .
- The Membership Interest in the Company that each Member shall receive in return for their Capital Contribution is indicated for each Member .

NAME OF MEMBER	CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
----------------	----------------------	---------------------

1. PROFESSIONAL FINANCIAL INVESTORS , INC.	\$ -0-	30 %
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2.	\$ _____	_____ %
3.	\$ _____	_____ %
4.	\$ _____	_____ %
5.	\$ _____	_____ %

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## **EXHIBIT A (continued)**

( THIS EXHIBIT IS AN ATTACHMENT TO THE OPERATING AGREEMENT OF THE LIMITED LIABILITY COMPANY FORMED BY PROFESSIONAL INVESTORS 23 , LLC..... DATED FEBRUARY 1 , 2015 )

NAME OF MEMBER	CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
6. _____	\$ _____	_____ % _____
7. _____	\$ _____	_____ % _____
8. _____	\$ _____	_____ % _____
9 _____	\$ _____	_____ % _____
10 _____	\$ _____	_____ % _____
		100 %















# EXHIBIT B

## PROFESSIONAL FINANCIAL INVESTORS, INC. COMPANY MANAGEMENT AGREEMENT

This Agreement is dated February 1, 2015 and is entered into between :

The COMPANY.....Professional Investors 23 , LLC

The GENERAL MANAGER...Professional Financial Investors , Inc .

A California Corporation

The PROPERTY...1701 South Novato Boulevard , Novato , California

### **ARTICLE 1 – EXCLUSIVE APPOINTMENT**

- 1.1 The Membership of Professional Investors 23, LLC , a California Limited Liability Company, appointed Professional Financial Investors , Inc. as GENERAL MANAGER of the Company . This appointment was made in accordance with Article 13.3 of the Operating Agreement .
- 1.2 Professional Financial Investors , Inc . accepts this appointment as GENERAL MANAGER of the COMPANY and shall be responsible for the exclusive management of the COMPANY .

### **ARTICLE 2 – TERM OF THE AGREEMENT**

- 2.1 The term of this Agreement shall commence by the date of signing of the Operating Agreement by a Member of Professional Investors 23 , LLC ; in accordance with Article 13.3 of the Operating Agreement .
- 2.2 The term of the appointment will continue until the dissolution of the COMPANY or the removal of the GENERAL MANAGER subject to the provisions of Article 13.7 of the Operating Agreement .

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**ARTICLE 3 – RESPONSIBILITIES OF THE GENERAL MANAGER**

- 3.1 The GENERAL MANAGER shall be the Chief Executive Officer of the COMPANY and shall have general supervision of the business and affairs of the COMPANY , shall preside at all meetings of the Members, and shall have such powers and duties usually vested in a chief executive officer .
- 3.2 The GENERAL MANAGER shall comply with the provisions of Article 4.1 of the Operating Agreement .
- 3.3 The GENERAL MANAGER responsibilities are summarized below :

**ORGANIZATION STAGE**

- Forming the Limited Liability Company with the filing of the Articles of Organization and all related legal and tax documents .
- Creating the COMPANY Operating Agreement , including related contracts and forms .
- Creating the Private Investment Memorandum with related Property and Investment information .
- Preparing pro forma financial statements projecting future cash flow from operations and anticipated gains from the investment .
- Provide marketing services to subscribe Member investors .
- Organizing the Members of the COMPANY, including establishing investment commitments .
- Complete the subscription and collection of \$4,100,000 in Membership Interests.
- Acquiring a \$5,595,000 loan from a major financing bank . This loan will be acquired solely on the financial statements

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and credit of Professional Financial Investors ,Inc ., who will assume full liability for the loan .

- Establishing the COMPANY office , including the books and records , accounting and tax systems .
- Complete initial filings with all government agencies .
- Provide general supervision of the business and affairs of the COMPANY .

**PROPERTY ACQUISITION STAGE**

- Locating , documenting and researching the PROPERTY .
- Managing all inspections of the Property , including termite reports .
- Review and analysis of
- Property financial statements .
- Tenant files , profiles and rent history .
- Inspection history , repair and capital improvement history.
- Utilities ,
- State of California regulatory reports etc .
- Completing PROPERTY appraisal reports with an independent outside appraiser .
- Negotiating the purchase .
- Managing all the financial arrangements necessary to close the escrow and purchase the Property , including review of all escrow and title documents .
- Reporting to the Members the details of the Property purchase transaction .
- Handling necessary government regulatory and filing requirements .

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## **OPERATIONAL STAGE**

### **Company Management**

- Manage the normal daily and annual activities of the Limited Liability Company , as separate from property management services .
- Provide all normal office functions ; maintaining bank accounts ; payment of bills; maintaining records et cetera .
- Preparation of quarterly cash -flow checks , where applicable .
- Supervising outside vendors .
- Managing major property repair and improvement projects .
- Supervision of capital improvement projects .
- Arranging for all necessary insurance coverages .
- Provide general supervision of the business and affairs of the COMPANY.
- Compliance work with local government agencies .

### **Property Management**

- Property management services are specified in a separate “ Property Management Agreement ” , Exhibit C , attached to the Operating Agreement.
- This property management responsibility will include :
  - Supervising office and field staff .
  - Collection of rents .
  - Marketing , renting of apartments and establishing leasing policies .
  - Managing tenant relationships .
  - Monitoring of normal repairs and maintenance .
  - Monitoring of normal apartment turnover maintenance .

### **Member Meetings**

- Organize and preside at all meetings of the Members .
- Shall keep with the records of the COMPANY full and accurate minutes of all meetings , notices and waivers of meetings , and all written consents to actions by the GENERAL MANAGER , in-

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cluding related communications .

**Member Reporting**

- Within ninety ( 90 ) days after the end of the taxable calendar year of the COMPANY the GENERAL MANAGER shall prepare and send to each Member the following :
- All information necessary for the Members to complete their own Federal and State income tax and/or information returns . ( Form 1065 K-1 and Form 565 K-1 ) .
- A copy of the annual unaudited financial statement , including a balance sheet and income statement .
- A copy of the Annual Property Report .

**Accounting , Records and Tax Filings**

- Keep complete and normal accounting records , in which the Company's financial business shall be fully and accurately recorded .
  - Keep a current list of the full name and last known business address of each Member .
  - A current schedule indicating each Members Capital Contributions , Capital Accounts , percentage share of profits and losses as specified in Article 12 , including rights to distributions .
  - Cause to be timely filed all necessary County of Marin tax and business filings , including but not limited to , real estate tax , business license , business personal property tax , and permits .
  - Cause to be timely filed all necessary Federal and State Information Tax returns (Form 1065 and Form 565 ) .
  - Act as the Tax Matters Member of the COMPANY including Federal and State tax audits that may arise .
  - Within one hundred and twenty days (120) after the end of the taxable calendar year of the COMPANY the GENERAL MANAGER shall prepare an internal unaudited financial statement , including a balance sheet and income statement .
- There will be no

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requirement for a Certified report by independent certified accountants .

Any request for such an audit and any fees , costs and expenses associated therewith will be paid for by the Member requesting the audit .

- Within one hundred and twenty days (120) after the end of the taxable calendar year of the COMPANY the GENERAL MANAGER shall prepare an Annual Property Report providing a summary of activities related to the PROPERTY for the prior year .

**SALE OF THE PROPERTY**

- Supervise the maintenance and improvements necessary to prepare the PROPERTY for sale .
- Researching the market to ascertain the most advantageous time to sell the PROPERTY and establish the best selling price and financing terms .
- Prepare financial statements , property brochures , and marketing materials necessary to sell the PROPERTY .
- Advertising and promoting the Property for sale .
- Provide marketing services to sell the PROPERTY.
- Negotiate the sale .
- Managing all the financial arrangements necessary to sell the PROPERTY, including review of all escrow and title documents.
- Manage closing of the escrow and disbursements of funds .
- Reporting to the Members the details of the PROPERTY sale transaction .
- Handling necessary government regulatory and filing requirements.

**LIQUIDATION STAGE**

- Render services for the dissolution of the COMPANY .
- Close the COMPANY books and records , including local governmental filings .

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- Prepare the final Federal and State tax returns , recording the sale of the PROPERTY .
- Prepare a final report to the Members , reporting the overall results of the investment .
- Complete any unfinished COMPANY business .

3.4 The GENERAL MANAGER shall cause all assets of the COMPANY , whether real assets or personal property assets , to be held in the name of the COMPANY .

3.5 The GENERAL MANAGER shall cause all funds of the COMPANY to be deposited in one or more accounts with a recognized financial institution in the name of the COMPANY .

**ARTICLE 4 - COMPENSATION TO THE GENERAL MANAGER**

4.1 Professional Financial Investors , Inc ., will provide professional services for the comprehensive management of Professional Investors 23 , LLC . A summary of these services is outlined in Article 3 of this Agreement .

4.2 The Members acknowledge that Professional Financial Investors , Inc . will expend substantial money , resources and professional staff time to provide the services noted in Article 4.2 and accepts the responsibility to provide these services as a multiple year commitment as noted in Article 2.2 .

4.3 Professional Financial Investors , Inc . will provide the \$5,595,000 financing necessary to buy the Property . This loan will be acquired solely on the financial statements and credit of Professional Financial Investors ,Inc ., who will assume full liability for the loan .

4.4 Compensation for these services by the INITIAL GENERAL MANAGER will be :

- A 30 % Full Membership Interest . (

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The remaining Interest of 70% available to Other Members .)

- This 30 % Full Membership Interest will be earned and transferred to Professional Financial Investors , Inc. as of the date of the close of escrow and purchase of the PROPERTY .
- Thirty percent (30%) of the profits and losses of the Company and items of income , gain, loss , deduction or credit .

4.5 Professional Financial Investors , Inc., acting as the Property Manager of the Property , ( as different from the General Manager of the Company ) will receive a fee of six percent ( 6%) of scheduled rent for daily property management services .

Refer to the Property Management Agreement , Exhibit C , attached to and made a part of the Operating Agreement .

This Property Management Agreement is a separate management contract, not attached to , or a part of , this Company Management Agreement .

4.6 To clarify the compensation for the GENERAL MANAGER :

**ORGANIZATION STAGE**

- No fees charged for professional services to create the COMPANY.
- No fees charged for creation of the Operating Agreement and related documents necessary for the purchase of the PROPERTY .
- No reimbursements for any marketing expenses needed to subscribe Membership for the COMPANY.
- No referral fees or commissions paid for Membership subscriptions .
- Upon presentation of receipts , reimbursements for organization expenses ( filing fees , office expenses, legal expenses et cetera ) are allowed under Article 6.9 of the Operating Agreement .

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**PROPERTY ACQUISITION STAGE**

- No real estate commissions or professional fees will be paid to the GENERAL MANAGER .

**COMPANY MANAGEMENT**

- The GENERAL MANAGER will provide , and continue to provide , substantial services to Professional Investors 23, LLC , for which it will receive a 30% Membership Interest and thirty per cent ( 30% ) operating profit percentage as per Article 4.4 of this Agreement and Article 13.13 of the Operating Agreement .
- No management fees will be paid to the GENERAL MANAGER for normal and customary day-to-day property management responsibilities .

**PROPERTY MANAGEMENT**

- Professional Financial Investors , Inc . , operating as a property management company , will receive a fee of six percent ( 6% ) of scheduled rent for providing normal and customary daily property management services .
- Refer to the Property Management Agreement , Exhibit C , attached to and made a part of the Operating Agreement of Professional Investors 23 , LLC.
- It should be noted there is a conflict of interest in the negotiation of the property management agreement referred to in this Article 4 . ( See page 1 of Exhibit C for details ) .

**MEMBER MEETINGS**

- There are no fees or compensation for the GENERAL MANAGER to organize , preside and report on any Membership meetings .
- There are no fees or compensation for the GENERAL MANAGER to comply with the provisions of Article 9 of the Operating Agreement .

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## **MEMBER REPORTING**

- There are no fees or compensation for the GENERAL MANAGER to provide to the Members information needed for tax filings ; financial reporting ; annual property reporting ; forms required for Company business ; and , any other relevant reporting .
- All costs associated with the above reporting such as , mailing costs , secretarial and related office costs , et cetera will be borne by the GENERAL MANAGER with no reimbursement required .

## **ACCOUNTING , RECORDS AND TAX FILINGS**

- There are no fees or compensation for the GENERAL MANAGER to keep complete and normal accounting records .
- There are no fees or compensation for the GENERAL MANAGER for the preparation of Company financial statements and Company tax returns .
- There are no fees or compensation for the GENERAL MANAGER acting as the Tax Matters Member of the Company .
- All costs associated with the above reporting such as , tax preparation fees , professional bookkeeping and accounting costs , office management supervision , secretarial and related office costs , et cetera will be borne by the GENERAL MANAGER with no reimbursement required .
- There will be no consulting fees charged by the GENERAL MANAGER for any services related to the Company books , records , accounting and tax affairs .

## **SALE OF THE PROPERTY**

- There is no sales commission due and payable to the GENERAL MANAGER for any activities related to the sale of the PROPERTY .
- All remaining cash resulting from the sale of the Property, shall be distributed to the Members :

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- a) 100% to the Other Members until they have received , in cash ,
  - I. 100% of their original Capital Contribution .
  - II. 100% of any Additional Capital Contributions .
- b) Then cash will be distributed thirty per cent (30%) to the Initial General Manager and seventy percent (70%) to the Other Members in accordance with their respective Membership Percentage Interest .
- c) Other Members includes Membership Interests acquired by the Initial General Manager as a result of Additional Capital Contributions, purchases , and assignments of Membership Interests.
- d) Cash distributed from Operations during the holding period , is included in determining the amount of original Capital Contribution , in cash , the Members have received .
- e) Cash from refinancing , involuntary conversions or other similar circumstances that has been distributed to the Other Members is included in determining the amount of original Capital Contribution , in cash , the Members have received .

The final distributions of cash to the Members will be subject to the provisions of Article 12 of the Operating Agreement , and , specifically Article 12.8 .

**LIQUIDATION STAGE**

- There are no fees or compensation for the GENERAL MANAGER to complete the final business of the COMPANY including , but not limited to ,
  - a) closing of books and records ;
  - b) final local government filings ;
  - c) final Federal and State tax return filings ;
  - d) final tax documentation to the Members ; and
  - e) final investment report .

**ARTICLE 5- OTHER GENERAL MANAGER PROVISIONS**

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5.1 The GENERAL MANAGER has a fiduciary responsibility for the safe-keeping and use of all funds and assets of the COMPANY.

5.2 The GENERAL MANAGER may :

- Employ agents , management companies and management professionals , contractors , legal and accounting professionals , appraisers , brokers and other counsel to assist in COMPANY business .
- Not make a loan to itself .
- Not receive any rebates , kickbacks or similar arrangements .
- Certify to other businesses , financial institutions and individuals as to the authority of one or more Members to transact specific items of business on behalf of the COMPANY.

5.3 The GENERAL MANAGER is authorized :

- To obtain unsecured encumbrances for the COMPANY to maintain operations in the ordinary course of business .
- With Membership approval , to acquire , refinance , consolidate or extend a deed-of-trust or other security device securing the COMPANY Property.
- Is authorized to buy , sell , hold , exchange or convey title to COMPANY Property in the ordinary course of COMPANY business.
- To execute all relevant contracts , loan documents and encumbrances on behalf of the COMPANY.
- To negotiate , carry, and manage appropriate insurance policies.
- To perform all acts necessary to perfect the organization of this Limited Liability Company and to carry out its business operations expeditiously and efficiently .
- To commence , defend or compromise litigation .

5.4 In the good faith and discretion of the GENERAL MANAGER , the GENERAL MANAGER shall devote such time , and attention to the

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business of the COMPANY , as the GENERAL MANAGER deems necessary for the conduct of normal COMPANY business .

5.5 It is understood and agreed that the GENERAL MANAGER may engage in other business enterprises , including enterprises that may be in competition with the COMPANY.

5.6 It is acknowledged and understood that the GENERAL MANAGER has other business interests and responsibilities which may require substantial amounts of time.

5.7 At all times during the existence of the Company , and for six years following the dissolution date , the GENERAL MANAGER shall keep the records as referred to in Article 14.1 of the Operating Agreement , including , but not limited to:

- A copy of the Article of Organization , including any amendments .
- A signed original copy and counterparts of this Agreement by all Members , including any amendments .
- Any powers of attorney under which the Article of Organization and /or this Agreement , including amendments , were executed .
- Copies of the Company’s Federal and State information returns ( Form 1065 and Form 565 ) .
- Any prepared financial statements of the Company .
- All internal records including accounting and bookkeeping records .
- All local tax filings , permits and licensing records .
- Copy of all proceedings of Membership Meetings .
- Records of Membership Certificates of all Initial Members and records of subsequent “Transfers of Ownership Interests ”.

**ARTICLE 6 – INDEMNIFICATION**

6.1 The COMPANY agrees to hold the GENERAL MANAGER free and

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harmless from any liability for damages or injuries to persons or property by reason of any cause whatsoever in or about the PROPERTY or elsewhere when the GENERAL MANAGER is carrying out the provisions of this Agreement or acting under the express or implied direction of the COMPANY .

- 6.2 To reimburse the GENERAL MANAGER , upon demand , for any monies which the GENERAL MANAGER is required to pay out for any reason whatsoever , under this Agreement , or as an expense in defense of any claim , civil or criminal action , proceeding ,or charge made against the COMPANY and GENERAL MANAGER , jointly or severally , affecting or due to the conditions or use of the PROPERTY or acts or omissions of the GENERAL MANAGER or employees .
- 6.3 To defend , promptly and diligently , at the sole expense of the COMPANY , any claim , action or proceeding brought against the COMPANY and GENERAL MANAGER , jointly or severally arising out of or connected to this Agreement , and to hold harmless and fully indemnify the GENERAL MANAGER from any judgment, loss or settlement on account thereof .
- 6.4 Shall indemnify the GENERAL MANAGER for any liability , loss , damages , expenses , suit , judgment , attorney’s fees or other costs and expenses arising out of the COMPANY failure to comply with employment and labor laws and regulations .
- 6.5 Any Member shall have no recourse against the GENERAL MANAGER for a return of the Member’s investment as specified in Article 5.6 of the Operating Agreement .
- 6.6 The foregoing provisions of this Article shall survive the termination of the Agreement .

## **ARTICLE 7 - TERMINATION OF THE GENERAL MANAGER**

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- 7.1 According to Article 6.5 of the Operating Agreement the Members of Professional Investors 23, LLC have the right and power to appoint, remove and replace the GENERAL MANAGER of the Company .
- 7.2 If the INITIAL GENERAL MANAGER is removed or replaced by the COMPANY this management agreement will be terminated as of the date of such removal or replacement .
- 7.3 As of the date of such termination , the GENERAL MANAGER will be relieved of all manager responsibilities as summarized in Article 3.3.
- 7.4 Upon termination of this Agreement the GENERAL MANAGER will be responsible , at its own expense , to complete any and all management responsibilities necessary to provide a normal transition to a new GENERAL MANAGER .
- 7.5 This termination , at any time following the date of signing of this Agreement and purchase of the PROPERTY, does not change , reduce or lessen the original thirty percent ( 30% ) Membership Percentage Ownership of the INITIAL GENERAL MANAGER , as specified in Article 4.4 of this Agreement , or the voting and other rights , obligations and responsibilities of such ownership interest .
- 7.6 Professional Financial Investors , Inc will maintain such thirty percent ( 30% ) ownership interest , with normal voting rights and responsibilities , until the dissolution of the Company , sale , assignment , or transfer of such Membership Interests , or portion thereof .
- 7.7 Any subsequent new General Manager will not receive any portion of the thirty percent ( 30% ) Membership Interests of Professional Financial Investors , Inc.
- 7.8 After termination of this Agreement, Professional Financial Investors , Inc. will continue to receive compensation as specified in the “ Sale of the Property ” section of Article 4.6 of this Agreement and Article 12.8 of the Operating Agreement .

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- 7.9 Any subsequent purchases of Membership Interests or assignment or other transfers of Membership Interests to Professional Financial Investors , Inc. shall not be subject to any of the terms of this Management Agreement .
- 7.10 The Property Management Agreement ( Exhibit C ) between Professional Financial Investors , Inc . and Professional Investors 23 , LLC , is a whole and separate contract , from the Company Management Agreement ( Exhibit B ) between Professional Financial Investors , Inc and Professional Investors 23, LLC .
- 7.11 The Property Management Agreement ( Exhibit C ) , between Professional Financial Investors , Inc and Professional Investors 23 , LLC will not be terminated with the removal of Professional Financial Investors , Inc . as GENERAL MANAGER of the COMPANY. This removal will not be considered good and reasonable cause to terminate the Property Management Agreement .
- 7.12 If the Property Management Agreement ( Exhibit C ) between Professional Financial Investors , Inc and Professional Investors 23 , LLC is terminated without good and reasonable cause , there will be damages to Professional Investors 23 , LLC as specified in Article 6.5 of the Property Management Agreement .

**ARTICLE 8- GENERAL PROVISIONS**

- 8.1 Upon termination of the Agreement the GENERAL MANAGER will be responsible , at its own expense , to complete any and all management responsibilities necessary to provide a normal transition to a new GENERAL MANAGER .
- 8.2 Upon termination of the Agreement the COMPANY shall remain bound and be responsible for all contracts for services , supplies and repairs the GENERAL MANAGER has entered into in connection with the performance of its obligations hereunder .

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- 8.3 This Property Management Agreement will become effective and ratified upon a Professional Investor 23 , LLC Investor signing of the Operating Agreement .
- 8.4 All terms and conditions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns .
- 8.5 This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns , and no other person or entity shall have or acquire any right by virtue of this Agreement .
- 8.6 This Agreement shall be construed and enforced in accordance with the internal laws of the State of California .
- 8.7 If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid , illegal , or unenforceable , the remaining provisions of this Agreement shall remain in effect and shall in no way be affected , impaired or invalidated .
- 8.8 This Agreement may not be modified , amended , altered , replaced or repealed except by written agreement of the Parties .
- 8.9 Each Party represents and warrants to the other Party that they have the capacity and authority to enter into this Agreement .
- 8.10 Time is of the essence of every provision of this Agreement that specifies a time of performance .

GENERAL MANAGER \_\_\_\_\_ DATE \_\_\_\_\_

Professional Investors , 23 LLC.

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# EXHIBIT C

## PROFESSIONAL FINANCIAL INVESTORS, INC PROPERTY MANAGEMENT AGREEMENT

This Agreement is dated March 1, 2015 and is entered into between

The OWNER.....Professional Investors 23 , LLC

The MANAGER...Professional Financial Investors , Inc . A California Corporation

The PROPERTY...1701 South Novato Boulevard , Novato , California

### **CONFLICT OF INTEREST**

Professional Financial Investors , Inc .,

- Is the General Manager of Professional Investors 23 , LLC , a California limited liability company (as appointed in Article 13.3 of the Operating Agreement ) .
- Is entering into this management contract . (As authorized by Article 13.21 of the Operating Agreement ) .
- Is the same Professional Financial Investors , Inc . as identified as the MANAGER in this management contract , and is the one and the same signatory to this contract .
- Will have a conflict of interest, having significant control of both the OWNER and MANAGER participants to this contract .
- Will exercise its fiduciary duty to impartially perform its duties , to the best of its ability , and will notify the General Manager of Professional Investors 23 , LLC of any acts that may be in conflict

If questions arise on the part of any Member of Professional Investors 23 , LLC as to this management contract , they are advised to consult an independent advisor .

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## **ARTICLE 1- EXCLUSIVE AGENCY**

- 1.1 The OWNER hereby appoints the MANAGER its sole and exclusive agent to manage , operate , maintain and rent the PROPERTY.
- 1.2 The MANAGER accepts such employment and shall be responsible for all management of the PROPERTY .

## **ARTICLE 2 - TERM OF THE AGREEMENT**

- 2.1 The term of this Agreement shall commence March 1, 2014 and continue for seven years until February 28 , 2021 .
- 2.2 The Agreement , under the same conditions , responsibilities and compensation, shall be automatically renewed thereafter for successive periods of one year each.
- 2.3 This Agreement will terminate upon the closing date of the sale of the PROPERTY .
- 2.4 Upon termination of the Agreement the OWNER shall remain bound and be responsible for all contracts for services , supplies and repairs the MANAGER has agreed to in connection with the performance of its obligations hereunder .
- 2.5 Upon termination of the Agreement the MANAGER will be responsible , at its own expense , to complete any and all management responsibilities to provide a normal transition to a new owner ; to complete any final financial statements and tax filings ; and finalize any local regulatory requirements or legal issues .
- 2.6 The termination of this Agreement shall not end the indemnification provisions of this Agreement by the OWNER for the benefit of the MANAGER .

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2.7 In the event the OWNER fails to perform any of its duties or obligations as stated in this Agreement the MANAGER may terminate this Agreement with thirty days (30) written notice to the OWNER .

2.8 In the event the MANAGER fails to perform any of its duties or obligations as stated in this Agreement the OWNER may terminate this Agreement with thirty days (30) written notice to the MANAGER .

**ARTICLE 3 – MANAGER RESPONSIBILITIES**

3.1 The MANAGER shall rent , manage , operate and maintain the Property , in accordance with the terms and conditions of this Agreement , This management will be in an efficient and business like manner to standards comparable to those generally performed by property managers of similar properties located in Marin County .

3.2 The MANAGER owes the OWNER the duties of loyalty , obedience , confidentiality , reasonable care and diligence , and full accounting .

3.3 The MANAGER agrees to use due diligence in the exercise of the duties , authority and powers conferred upon the MANAGER under the terms of this Agreement .

3.4 The MANAGER, in the name of , and at the expense of the OWNER , shall :

A. Make or cause to be made all ordinary repairs , improvements , maintenance , replacements and decorating if , in the opinion of the MANAGER , such actions are necessary to protect the PROPERTY from damage , maintain the PROPERTY in good condition and continue operating efficiency . The expense for any one item of maintenance or repair shall not exceed \$ 5,000 , unless authorized by the OWNER . OWNER approval is not required in the event of an emergency where im-

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mediate repairs are required to preserve the PROPERTY , continue essential services to the PROPERTY or tenants , avoid danger to life or the PROPERTY, or to comply with federal , state or local law .

- B. Maintain services to tenants as called for in the contractual tenant leases .
- C. Contract for those utilities and other Property operation and maintenance services as the MANAGER shall deem advisable . No service contract will be for a term exceeding 7 years without the approval of the General Manager of Professional Investors 23 , LLC
- D. Purchase and keep the PROPERTY furnished with necessary supplies
- E. Hire , discharge and supervise all labor , employees and resident managers as are necessary to properly maintain and operate the PROPERTY .
- F Engage legal counsel and cause such legal procedures to be instituted as may be deemed necessary by the MANAGER to enforce payment of rent , reimbursement of damages or to dispossess tenants .  
 Participate in any administrative proceedings on behalf of the Company involving tenants of the Property .
- G Have the authority to compromise a dispute with a tenant with an amount up to ten thousand dollars ( \$10,000) .
- H Comply with federal , state and local employment , labor laws and regulations for all personnel under the full control of the MANAGER .
- I Maintain complete and accurate records showing income and expenditures , receipts and disbursements , in connection with the operation of the PROPERTY . These records will be maintained on a accrual basis using a calendar year , with monthly prepared books and records .

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- J Advise the OWNER as to current rental rates and make recommendations to OWNER with respect to rental rate increases .
- K Collect rents and other revenues from the PROPERTY .
- L Make disbursements from OWNER’S funds for contractual mortgage payments , property and employee taxes , operating expenses, salaries and other compensation due and payable to the employees of the OWNER , special assessments , insurance premiums for any and all insurance policies required and any and all expenses necessary for the daily operation of the PROPERTY .
- M Deposit all receipts of the OWNER into a separate account in a bank insured by the Federal Deposit Insurance Corporation . This account and funds will not be co-mingled with the funds of any other entity .
- N Have the authority to endorse checks made payable to the OWNER , deposit funds of the OWNER to the OWNER separate account ,and to draw on such account any payment necessary to discharge any of the liabilities or obligations incurred by the MANAGER pursuant to this Agreement .
- O Deal honestly and fairly with all parties to the lease agreement .

**ARTICLE 4 - RENTAL RESPONSIBILITIES**

- 4.1 The rental rates for apartments in the Property shall be established by the OWNER and executed by the MANAGER .
- 4.2 The MANAGER shall :
  - A. Advise , recommend and execute rental increases .
  - B. Use all reasonable efforts to rent all space in the PROPERTY which may become vacant during the term of this Agreement .
  - C. Undertake such credit , character and prior rental history investigation of prospective tenants , as the MANAGER considers reasonable and practical .
  - D. Not discriminate against any prospective tenant on the basis of

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race , color , creed , religion , natural origin , age , handicap or ancestry .

- E. Comply with all federal , state and local Fair Housing and civil rights laws and with all equal opportunity requirements .
- F. Advertise the space available for rent and arrange for any signs , brochures and any form of electronic media necessary to facilitate the renting process .
- G. Be authorized to pay minor referral fees to advertise and market apartments .
- H. To show the PROPERTY to prospective tenants .
- I. Negotiate leases with prospective tenants including any rent concessions and special accommodations .
- J. Prepare and execute the rental leases with the new tenant , including all necessary supplemental forms .
- K. Cancel and modify existing leases and rental agreements .
- L. Take all reasonable actions to collect and enforce the collection of all rental and other charges due the OWNER from tenants of the PROPERTY.

4.3 The MANAGER shall not :

- A. Have authority to execute on behalf of the OWNER any lease or rental agreement for a period of more than two years .
- B. Be responsible for any false statements or inaccuracies contained in any documents received from tenants or prospective tenants .

4.4 In dealing with tenants , the MANAGER

- A. Will disclose all known material facts about the PROPERTY which could affect a tenant’s use or enjoyment of the PROPERTY.
- B. Disclose information which could have a material impact on either party’s ability to fulfill their obligations under the lease agreement .
- C. Respond honestly and accurately to questions concerning the PROPERTY .

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**ARTICLE 5 - OWNER RESPONSIBILITY**

- 5.1 The OWNER agrees
  - A. To comply with and abide by any ordinance , regulation or law of any federal , state or municipal authority .
  - B. To carry normal fire , liability and earthquake insurance and such other insurance as the OWNER and MANAGER shall mutually agree is necessary for the protection of the interests of OWNER and MANAGER .
  - C. The insurance carrier and the amount of coverage in each policy will be mutually agreed by the OWNER and the MANAGER .
  - D. On all insurance policies , to designate the MANAGER as a co-insured with the OWNER .
  - E. On all insurance policies , to procure an endorsement whereby the insurer waives its rights to subrogation or right of recovery against the MANAGER .
  - F. To comply with all applicable federal and state employment and labor laws and regulations .
  - G. To make available to the MANAGER all data , records and documents pertaining to the PROPERTY which the MANAGER may require to perform its duties .
- 5.2 The OWNER does not have the right to override and decline a prospective tenant that has , in good faith and with reasonable care , been investigated by the MANAGER and accepted as a tenant .
- 5.3 The OWNER understands and agrees to the provisions of Article 7.10 , 7.11 and 7.12 of the Operating Agreement of Professional Investors 23 , LLC.

**ARTICLE 6 - COMPENSATION**

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- 6.1 After the closing date for the purchase of the Property , the compensation will be calculated as six percent ( 6% ) of the scheduled rent roll . The fees will be paid monthly .
- 6.2 The compensation will be terminated as of :
  - February 28 , 2021 , unless thereafter automatically renewed annually - unless terminated by either party with 60 days written notice to the other party , in advance of such termination date .
  - The closing date of the sale of the Property .
  - The dissolution of Professional Investors 23, LLC.
  - The resignation of the MANAGER .
  - The dissolution of Professional Financial Investors , Inc .
- 6.3 The OWNER agrees to reimburse the MANAGER for expenses actually incurred in the performance of the duties of the MANAGER as specified in this Agreement.
- 6.4 All expenses shall be charged to the OWNER at net cost and the OWNER shall be credited with all rebates , refunds , allowances and discounts allowed to the MANAGER .
- 6.5 DAMAGES If a cancellation of this Agreement is without good and reasonable cause where there has been no violation of performance of any Article of this Agreement by the MANAGER , the OWNER agrees to be responsible for damages for early termination of this Agreement. The damages will be the continuation of the six percent ( 6% ) fees as established in Article 6.1 of this Agreement until the maturity date of this Agreement , February 28, 2021 , as established in Article 2.1 of this Agreement . The damages will be paid monthly.

**ARTICLE 7 - INDEMNIFICATION**

- 7.1 The OWNER agrees to hold the MANAGER free and harmless from any liability for damages or injuries to persons or property by reason of any cause whatsoever in or about the PROPERTY or elsewhere when MAN-

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AGER is carrying out the provisions of this Agreement or acting under the express or implied direction of the OWNER .

- 7.2 To reimburse the MANAGER , upon demand , for any monies which the MANAGER is required to pay out for any reason whatsoever , under this Agreement , or as an expense in defense of a claim , civil or criminal action , proceeding , or charge made against the OWNER and MANAGER , jointly or severally , affecting or due to the conditions or use of the PROPERTY or acts or omissions of the MANAGER or employees .
- 7.3 To defend , promptly and diligently , at the sole expense of the OWNER , any claim , action or proceeding brought against the OWNER and MANAGER , jointly or severally arising out of or connected to this Agreement , and to hold harmless and fully indemnify the MANAGER from any judgment , loss or settlement on account thereof .
- 7.4 Shall indemnify the MANAGER for any liability , loss , damages , expenses , suit , judgment , attorney’s fees or other costs and expenses arising out of OWNERS failure to comply with employment and labor laws and regulations .
- 7.5 The MANAGER shall use reasonable care in contracting for utility and maintenance services but the MANAGER shall not be liable to the OWNER for the acts or omissions of any independent contractor with whom the MANAGER enters into a service or maintenance contract on behalf of the OWNER .
- 7.6 The foregoing provisions of this Article shall survive the termination of the Agreement .

**ARTICLE 8 - OTHER PROVISIONS**

- 8.1 The OWNER , or designated persons , shall have the right , during normal business hours , to inspect and audit such records as specified in Article 3.4 ( I ) of this Agreement . Mem-

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bers of Professional Investors 23, LLC agree to be subject to the provisions of Article 14.2 of the Operating Agreement of Professional Investors 23 , LLC , which requires notice and costs of inspection .

8.2 At the request of the OWNER , the MANAGER will perform the following special services for the OWNER :

- Supervise remodeling or rehabilitation .
- Obtain permits from planning , zoning or other governmental agencies .
- Provide special accounting .

8.3 This Property Management Agreement shall be subordinate to any of the provisions of Article 13.15 of the Operating Agreement of Professional Investor 23, LLC .

8.4 This Property Management Agreement will become effective and ratified by a Professional Investor 23 Investor signing of the Operating Agreement of Professional Investor 23, LLC .

8.5 Any notice or communication required or permitted under this Management Agreement shall be considered given when actually delivered or when deposited in the United States mail as certified mail addressed as follows :

TO OWNER & MANAGER :

Professional Financial Investors , Inc .  
 350 Ignacio Blvd – Suite 300  
 Novato , California 94949

Or , such other address , as may be changed from time to time by either party , with written notice .

8.6 All terms and conditions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns .

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- 8.7 This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns , and no other person or entity shall have or acquire any right by virtue of this Agreement .
- 8.8 If suit of action is instituted by the Parties hereto in connection with any controversy arising out of this Agreement , the prevailing Party shall be entitled to recover , in addition to costs , such sum as the court may adjudge reasonable as attorney’s fees in such suit or action and on any appeal from any judgment or decree entered therein .
- 8.9 This Agreement shall be construed and enforced in accordance with the internal laws of the State of California . In the event of litigation hereunder , the venue for any and all actions will be Marin County , California.
- 8.10 If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid , illegal , or unenforceable , the remaining provisions of this Agreement shall remain in effect and shall in no way be affected , impaired or invalidated .
- 8.11 This Agreement may not be modified , amended , altered , replaced or repealed except by written agreement of the Parties .
- 8.12 Each Party represents and warrants to the other Party that they have the capacity and authority to enter into this Agreement .
- 8.13 This Agreement replaces and supersedes all prior written and oral agreements between the MANAGER and the OWNER .
- 8.14 This Management Agreement represents and constitutes the whole and entire agreement between the MANAGER and the OWNER .

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8.15 Time is of the essence of every provision of this Agreement that specifies a time of performance .

MANAGER \_\_\_\_\_ DATE \_\_\_\_\_

OWNER \_\_\_\_\_ DATE \_\_\_\_\_

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**FORM 1**  
**PROFESSIONAL INVESTORS 23 , LLC**  
**NOTICE OF MEMBERSHIP MEETING**

NAME OF THE COMPANY MEMBER \_\_\_\_\_  
 DATE OF THIS NOTICE...../...../..... ( THIS IS THE RECORD DATE )  
 DATE OF THE MEETING...../...../..... TIME OF THE MEETING \_\_\_\_\_  
 FINAL DATE FOR VOTE. .... /...../.....  
 LOCATION OF THE MEETING: \_\_\_\_\_

BUSINESS TO BE DISCUSSED : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MATTER (S) REQUIRING A VOTE :  
 1) \_\_\_\_\_  
 2) \_\_\_\_\_  
 3) \_\_\_\_\_

SIGNATURE OF COMPANY MEMBER  
 (This signature only documents receipt of this Form 1 )  
 \_\_\_\_\_

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**FORM 2**  
**PROFESSIONAL INVESTORS 23 ,LLC**  
**NOTICE OF A VOTE ON A COMPANY ACTION**  
**( WITHOUT A COMPANY MEETING AS PER ARTICLE 9.17 )**

NAME OF THE COMPANY MEMBER \_\_\_\_\_

DATE OF THIS NOTICE...../...../..... ( THIS IS THE RECORD DATE )

FINAL DATE FOR VOTE. .... /...../.....

BUSINESS TO BE VOTED ON : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MATTER (S) REQUIRING A VOTE :

- |          |     |    |
|----------|-----|----|
| 1) _____ | YES | NO |
| 2) _____ | YES | NO |
| 3) _____ | YES | NO |
| 4) _____ | YES | NO |
| 5) _____ | YES | NO |

SIGNATURE OF COMPANY MEMBER

\_\_\_\_\_

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FORM 3  
 PROFESSIONAL INVESTORS 23 , LLC  
 SHIP VOTING ACTION  
 PANY MEETING AS PER ARTICLE 9.17 )

NOTICE OF A MEMBER-  
 ( WITHOUT A COM-

NAME OF THE COMPANY MEMBER \_\_\_\_\_

DATE OF THIS NOTICE...../...../.....

DATE OF AUTHORIZATION OF COMPANY ACTION ...../...../.....

MATTER (S) REQUIRING A VOTE :

	PERCENTAGE VOTE	
1) _____	YES	NO
2) _____	YES	NO
3) _____	YES	NO
4) _____	YES	NO
5) _____	YES	NO

THE FOLLOWING COMPANY ACTIONS WILL BE TAKEN: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THE FOLLOWING COMPANY ACTIONS WILL NOT BE TAKEN: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**FORM 4**  
**PROFESSIONAL INVESTORS 23 , LLC**  
**NOTICE OF ADDITIONAL CAPITAL CONTRIBUTION**

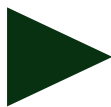
DATE OF NOTICE \_\_\_\_\_  
 NAME OF COMPANY MEMBER \_\_\_\_\_  
 AMOUNT OF ADDITIONAL CONTRIBUTION.....\$ \_\_\_\_\_  
 FUNDS REQUIRED ON OR BEFORE THIS DATE \_\_\_\_\_  
 PURPOSE FOR ADDITIONAL FUNDS :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNATURE OF COMPANY MEMBER  
 (This signature only documents receipt of this Form 4 )

\_\_\_\_\_

Operating Agreement
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**PROFESSIONAL INVESTORS 23 , LLC    FORM 5**

NOTICE OF CAPITAL CONTRIBUTION DEFAULT

DATE OF THIS NOTICE \_\_\_\_\_

NAME OF COMPANY MEMBER \_\_\_\_\_

AMOUNT IN DEFAULT..... \$ \_\_\_\_\_

DATE OF ORIGINAL NOTICE FOR ADDITIONAL CAPITAL CONTRIBUTION ..... \_/ \_/ \_

DATE ADDITIONAL CONTRIBUTION OF FUNDS WAS REQUIRED..... \_/ \_/ \_

DATE OF NOTICE OF CAPITAL CONTRIBUTION DEFAULT..... \_/ \_/ \_

DATE OF EXPIRATION OF 30 DAY PERIOD TO CURE DEFAULT..... \_/ \_/ \_

DATES DURING WHICH NON-DEFAULTING MEMBERS CAN FUND THE ADDITIONAL CAPITAL CONTRIBUTION DEFAULT :

OPEN DATE ..... \_/ \_/ \_

CLOSE DATE .... \_/ \_/ \_





**FORM 6**

**PROFESSIONAL INVESTORS 23 , LLC**

**NOTICE OF REQUEST FOR INSPECTION OF COMPANY RECORDS**  
**( AS PER ARTICLE 14.2 OF THE OPERATING AGREEMENT )**

DATE OF REQUEST \_\_\_/\_\_\_/\_\_\_

NAME OF COMPANY MEMBER MAKING THE REQUEST :

SPECIFIC RECORDS REQUESTED TO BE PROVIDED :

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_

NAME OF AUTHORIZED REPRESENTATIVE ( IF ANY ) :

SIGNATURE OF GENERAL MANAGER

-----  
DATE \_\_\_/\_\_\_/\_\_\_

NOTE : THE COSTS OF INSPECTION AND COPYING OF RECORDS WILL BE THE DIRECT RESPONSIBILITY OF THE MEMBER REQUESTING THE INSPECTION . THESE COSTS WILL BE PAID AT THE TIME THE SERVICES OR MATERIALS ARE PROVIDED .

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**FORM 7**  
**PROFESSIONAL INVESTORS 23 , LLC**  
**NOTICE OF MEMBER WITHDRAWAL**  
**( AS PER ARTICLE 15 OF THE OPERATING AGREEMENT )**

NAME OF WITHDRAWING COMPANY MEMBER

DATE OF THIS NOTICE...../...../.....( THIS IS THE RECORD DATE )

DATE OF WITHDRAWAL...../...../.....( 90 DAYS FROM NOTICE )

THE UNDERSIGNED AGREES AND CONFIRMS TO WITHDRAW , AS A MEMBER OF PROFESSIONAL INVESTORS 23, LLC , A LIMITED LIABILITY COMPANY, THE PERCENTAGE OF MEMBERSHIP INTEREST AS INDICATED ABOVE . THIS WITHDRAWAL IS IN ACCORDANCE WITH ARTICLE 15.1 AND 15.2 OF THE OPERATING AGREEMENT . THERE IS NO COMPENSATION EXPECTED OR REQUIRED FROM THE OTHER MEMBERS , THE GENERAL MANAGER , OR THE COMPANY FOR SUCH WITHDRAWAL .

SIGNATURE OF WITHDRAWING MEMBER

NOTE : WITHDRAWAL SHALL NOT RELEASE A MEMBER FROM ANY OBLIGATIONS AND LIABILITIES UNDER THIS AGREEMENT ACCRUED OR INCURRED BEFORE THE EFFECTIVE DATE OF WITHDRAWAL AS INDICATED ABOVE .

SIGNATURE OF GENERAL MANAGER

DATE \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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**FORM 8**  
**PROFESSIONAL INVESTORS 23,LLC**  
**NOTICE OF INTENT TO SELL OR TRANSFER**  
**A MEMBERSHIP INTEREST**  
**( AS PER ARTICLE 16 OF THE OPERATING AGREEMENT )**

DATE OF THIS NOTICE...../...../..... ( THIS IS THE RECORD DATE )  
 ( THIS DATE MUST BE NO LESS THAN 60 DAYS PRIOR TO THE CLOSING DATE )  
 NAME OF COMPANY MEMBER WHO IS SELLING OR TRANSFERRING

TERMS OF THE “ BONA FIDE OFFER ” :  
 PERCENTAGE OF INTEREST TO BE SOLD OR TRANSFERRED \_\_\_\_\_%

PURCHASER : \_\_\_\_\_

PURCHASE

PRICE.....\$ \_\_\_\_\_

CLOSING DATE..... \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

FINANCING TERMS : \_\_\_\_\_

OTHER PURCHASE TERMS : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

IS THE PURCHASER AFFILIATED WITH THE SELLING MEMBER ?

YES \_\_\_ NO \_\_\_

\_\_\_\_\_ TWENTY BUSINESS DAYS FROM RECEIPT OF THIS FORM 8:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

SIXTY DAYS FROM DATE OF NOTICE INDICATED ABOVE:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

SIGNATURE OF GENERAL MANAGER

-----  
 DATE \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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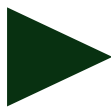
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# PROFESSIONAL INVESTORS 23 , LLC ( A LIMITED LIABILITY COMPANY ) MEMBERSHIP PURCHASE AGREEMENT

PURCHASER \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The Purchaser agrees to purchase \_\_\_\_\_% of the Membership Interests of Professional Investors 23 , LLC.... as follows :

- A) Total Capitalization.....\$ 4,100,00
  - B) Amount of Purchaser Investment.....\_\_\_\_\_
  - C) Purchaser Capitalization Percentage ( B divided byA).....\_\_\_\_\_%
  - D) “Other Member” Total Ownership Percentage.....70.00%
- Purchaser Membership Percentage ( C times .70 ).....\_\_\_\_\_%

This . \_\_\_\_\_% Membership Interest will be purchased for a total price of \$ \_\_\_\_\_.

This Purchaser Membership Percentage will be recorded on Exhibit A, “ Capital Contributions ” , as a part of the Operating Agreement , dated February 1 , 2015 , of Professional Investors 23 , LLC , a California Limited Liability Company .

The Purchaser will receive a “ CERTIFICATE OF MEMBERSHIP INTEREST ” as specified in Article 8 of the Operating Agreement .

\*\*\*\*\*

## ARTICLE 1 - REPRESENTATIONS BY PURCHASER

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The Purchaser represents :

- 1) A review of the “ Investment Memorandum ” and “Legal Documents ” has been conducted .
- 2) Has relied only on the information contained in the Investment Memorandum and the Legal Documents , and , any additional information specifically received from the General Manager .
- 3) That in addition to the Investment Memorandum and Legal Documents ,
  - any additional information that was requested has been provided .
  - any additional documents that were requested have been provided.

That the Purchaser has been afforded all opportunity to ask questions of , and receive answers from , the General Manager as regards :

- The Company ,
  - The terms and conditions of the Investment ,
  - The Financial statements information .
  - Any other matters relating to the Company Investment .
- 4) Such knowledge and experience in business and financial matters to be capable of evaluating the Company and the risks and rewards of the Investment ,
    - or , has consulted advisors who are competent in such financial matters ,
    - or , has decided not to use such advisor or representative .
  - 5) Information which has been provided by the Purchaser regarding this In-

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vestment is true and correct as of the date of the signing of this Purchase Agreement .

6) COMMENTS AND ADJUSTMENTS TO THIS ARTICLE 1 :

Four horizontal lines for writing comments and adjustments.

\*\*\*\*\*

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## **ARTICLE 2 - THE PURCHASER UNDERSTANDINGS**

- 1) No Federal or State of California agency has reviewed the Investment or made any finding or determination as to the fairness or completeness of information contained in the “ Investment Memorandum ”and “ Legal Documents ” .
- 2) The Membership Interests are not registered under the Securities Act of 1933.
- 3) The Membership Interests are ownership percentages in a Limited Liability Company , which , due to the member management provisions , are not considered to be a “security”or “securities”.
- 4) There may be limitations on the sale , assignment , transfer or withdrawal , of part or all , of the Membership Interests , as specified in Article 15, 16 and 17 of the Operating Agreement .
- 5) There is no public market for the Membership Interests and none is expected to develop .
- 6) The Membership Interests may be acquired for investment purposes only and not for the purposes of distribution or resale .
- 7) The investment in the Company is speculative and involves economic and other risks , as specified in the “ Risk Factors ” section of the “ Investment Memorandum ”.
- 8) Any discussions of Federal and State tax matters and consequences related to the Investment and the Company were general in nature and a Members individual circumstances should be reviewed with the Members Tax Advisor.
- 9) Any projections or predictions , financial or otherwise , set forth in the Investment Memorandum are based on estimates , historical data , as-

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sumptions and forecasts which may prove to be incorrect .

10) The Company is a new business entity and has no operating history .

\*\*\*\*\*

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**THE PURCHASER AGREES AND REPRESENTS :**

I (We) HAVE HAD THE OPPORTUNITY TO REVIEW ALL THE PERTINENT FACTS AND INFORMATION REGARDING THE COMPANY AND THE INVESTMENT.

I (WE) HAVE REVIEWED , APPROVED AND SIGNED THE OPERATING AGREEMENT OF PROFESSIONAL INVESTORS 23 , LLC DATED FEBRUARY 1, 2015 .

I (WE) HAVE REVIEWED AND APPROVE THE COMPANY MANAGEMENT AGREEMENT , DATED FEBRUARY 1, 2015 , BETWEEN PROFESSIONAL INVESTORS 23 , LLC AND PROFESSIONAL FINANCIAL INVESTORS , INC .

I (WE) HAVE REVIEWED AND APPROVE THE PROPERTY MANAGEMENT AGREEMENT , DATED FEBRUARY 1, 2015 , BETWEEN PROFESSIONAL INVESTORS 23 , LLC AND PROFESSIONAL FINANCIAL INVESTORS , INC .

\*\*\*\*\*

THE GENERAL MANAGER OF “ PROFESSIONAL INVESTORS 23 , LLC” AGREES AND CONFIRMS THE ADMISSION AND ACCEPTANCE OF THE PURCHASER NAMED ABOVE AS A MEMBER OF “ PROFESSIONAL INVESTORS 23, LLC ” , AS OF THE DATE OF THE SIGNING OF THIS PURCHASE AGREEMENT , WITH ALL THE RIGHTS , BENEFITS AND OBLIGATIONS ASSOCIATED WITH

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SUCH PURCHASE .

---

SIGNATURE OF GENERAL MANAGER OF PROFESSIONAL INVESTORS  
23, LLC PROFESSIONAL FINANCIAL INVESTORS , INC .

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Management  
Agreement**

**Property  
Management  
Agreement**

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Forms**

**Membership  
Purchase  
Agreement**





PROFESSIONAL INVESTORS 23, LLC

MEMBERSHIP WILL BE HELD IN WHAT FORM AND IN WHAT NAME :

SINGLEPERSON..... \_\_\_\_\_

MARRIEDCOUPLE..... \_\_\_\_\_

SEPARATE PROPERTY..... \_\_\_\_\_

RETIREMENTACCOUNT..... \_\_\_\_\_

CORPORATION..... \_\_\_\_\_

LIMITEDLIABILITYCOMPANY..... \_\_\_\_\_

PARTNERSHIP..... \_\_\_\_\_

TRUST..... \_\_\_\_\_

OTHER..... \_\_\_\_\_

\*\*\*\*\*

SIGNATURE OF PURCHASER(S)

\_\_\_\_\_ DATE \_\_\_ / \_\_\_ / \_\_\_

\_\_\_\_\_ DATE \_\_\_ / \_\_\_ / \_\_\_

\_\_\_\_\_ DATE \_\_\_ / \_\_\_ / \_\_\_



