District Court, County of Larimer, State of Colorado Court Address: Larimer County Justice Center, Suite 100 201 La Porte Avenue, Fort Collins, CO 80521 Court Telephone: 970-498-6100 Plaintiff(s): **MCWHINNEY HOLDING COMPANY, LLLP, a Colorado Limited Liability Limited Partnership; MCWHINNEY CENTERRA LIFESTYLE CENTER, LLC, a Colorado Limited Liability Company, derivatively on behalf of CENTERRA LIFESTYLE CENTER, LLC, a nominal defendant; CENTERRA PROPERTIES WEST, LLC, a Colorado Limited Liability Company; SMP4 INVESTMENTS, INC., a Colorado Corporation; CENTERRA RETAIL SALES FEE CORPORATION, a Colorado Nonprofit Corporation,** vs. Defendant(s): **POAG & MCEWEN LIFESTYLE CENTERS-CENTERRA, LLC, a Delaware Limited Liability Company; POAG & MCEWEN LIFESTYLE CENTERS, LLC, a Delaware Limited Liability Company; POAG LIFESTYLE CENTERS, LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive;** and Nominal Defendant: **CENTERRA LIFESTYLE CENTER, LLC, a Delaware Limited Liability Company.**	
Attorneys for Defendants: OTIS, COAN & PETERS, LLC G. Brent Coan, #27592 Jennifer Lynn Peters, #31699 Shannon D. Lyons, #26153 103 W. Mountain Avenue, Suite 2B Fort Collins, CO 80524 Telephone: 970-225-6700 Email: gbcoan@nocolegal.com; jlpeters@nocolegal.com; slyons@nocolegal.com	**COURT USE ONLY** Case Number: **11 CV 1104** Division: **4A**

ANSWER, COUNTERCLAIM AND JURY DEMAND

DEFENDANTS Poag & McEwen Lifestyle Centers-Centerra, LLC (P&M), Poag & McEwen Lifestyle Centers, LLC (PMLC), and Poag Lifestyle Centers, LLC (Poag), by and through their undersigned counsel, Otis, Coan & Peters, LLC, hereby answer Plaintiffs' Verified Complaint, and submit as their counterclaim thereto, as follows:

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ANSWER

1. P&M, PMLC and Poag admit the allegations set forth in the first two sentences of Paragraph 1 of Plaintiffs' Verified Complaint. With regard to the remaining allegations, P&M, PMLC and Poag are without sufficient information to determine the veracity of these statements and therefore deny the same.

2. In response to the allegations set forth in Paragraph 2 of the Complaint, P&M, PMLC and Poag admit that PMLC is a Delaware limited liability company with its principal place of business located in Memphis, Tennessee. P&M, PMLC and Poag further admit that PMLC owns outdoor retail centers known as "lifestyle centers". P&M, PMLC and Poag also admit that as part of its business, PMLC often identifies properties for lifestyle centers and in some, but not all, instances it forms partnerships with landowners for the construction and subsequent operation of a lifestyle center. The structure of each lifestyle center is not always the same nor does PMLC have a specific business model by which each lifestyle center is structured.

3. P&M, PMLC and Poag admit the allegations set forth in the first two sentences of Paragraph 3 of the Complaint. P&M, PMLC and Poag further admit that Centerra Lifestyle Center, LLC (Centerra) was formed in September 2004 and is owned equally by McWhinney Centerra Lifestyle Center, LLC (MCLC) and P&M. P&M, PMLC and Poag also admit that at the time Centerra was formed, P&M was partially owned by PMLC and that MCLC was, and upon information and belief, continues to be wholly owned by McWhinney Holding Company, LLLP (McWhinney). P&M, PMLC and Poag deny that P&M was, at the time of formation, a wholly owned subsidiary of PMLC. P&M, PMLC and Poag further admit that Centerra was formed for the purpose of construction and operation of a lifestyle center known as the Promenade Shops at Centerra in Loveland, Colorado. P&M, PMLC and Poag denies that Centerra was formed pursuant to or for the purposes of carrying out any business plan of PMLC and that any business plan of PMLC has been accurately described in the Complaint.

4. In response to the allegations in Paragraph 4 of the Complaint, P&M, PMLC and Poag admit that P&M is a Delaware limited liability company, that P&M acquired a 50% interest in Centerra, that P&M has been and continues to be a 50% owner of Centerra, and that P&M was designated the manager of Centerra. P&M, PMLC and Poag deny that P&M was a wholly owned subsidiary of PMLC at the time P&M or Centerra were formed. P&M and PMLC affirmatively state that at the time P&M was formed, PMLC was its parent company. P&M and PMLC further affirmatively state that the scope and extent of P&M's duties and powers as manager are set forth in the Operating Agreement signed September 1, 2004 and the First Amended Operating Agreement signed April 23, 2007 (together the "Operating Agreement"). To the extent any allegations in Paragraph 4 of the Complaint are inconsistent with the Operating Agreement, those allegations are denied.

5. P&M, PMLC and Poag admit the allegations in the first two sentences of Paragraph 5 of the Complaint. P&M, PMLC and Poag also admit that MCLC is a 50% owner of Centerra. P&M and PMLC further affirmatively state that MCLC's duties and powers as an owner are set forth in the Operating Agreement. To the extent any allegations in Paragraph 5 of the Complaint are inconsistent with the Operating Agreement, those allegations are denied. P&M and PMLC specifically deny that MCLC was merely a passive owner. With regard to the remaining allegations, P&M, PMLC and Poag are without sufficient information to determine the veracity of these statements and therefore deny the same.

6. In response to the allegations set forth in Paragraph 6 of the Complaint, P&M, PMLC and Poag admit that Poag is a Delaware limited liability company. P&M, PMLC and Poag deny that Poag is a wholly owned subsidiary of PMLC and affirmatively state that PMLC is not an owner of Poag. P&M, PMLC and Poag admit that Poag is, by agreement with the current owner of the Promenade Shops at Centerra, the current manager of the shops.

7. P&M, PMLC and Poag deny the allegations set forth in Paragraph 7 of the Complaint, and specifically deny that they are or have ever been alter egos of each other. P&M, PMLC and Poag affirmatively state that each is a separate and distinct entity with, by way of example only, separate owners, separate bank accounts, and with its own separate business purpose. P&M, PMLC and Poag further specifically deny that they are jointly liable for the acts of the other or that acts of one are attributable to or may properly be considered the acts of the other. P&M, PMLC and Poag deny that Plaintiffs may appropriately plead facts by generically referencing each defendant as if it is one entity or making a sweeping generalization that a reference to any one of the defendant entities should be construed as a reference to all defendants. Such pleading is improper and P&M, PMLC and Poag affirmatively state that having made such sweeping generalizations, Plaintiffs have failed to properly plead their claims against these defendants. In response to the allegations set forth in subparagraphs (a) through (r), P&M, PMLC and Poag state as follows:
    a. P&M, PMLC and Poag admit that PMLC has owned at least a part of P&M since its formation, but deny that PMLC has at all times owned or continues to own all of P&M.
    b. P&M, PMLC and Poag deny that PMLC owns or has ever owned all or a substantial share of Poag, and affirmatively state that PMLC has never owned any interest in Poag.
    c. P&M, PMLC and Poag deny the allegations in Paragraphs 7(c) through 7(r). P&M, PMLC and Poag affirmatively state that P&M and Poag were adequately capitalized when formed. P&M, PMLC and Poag further specifically deny that P&M and Poag were not separate legal entities from PMLC or that PMLC in any way inappropriately controlled or managed P&M. P&M, PMLC and Poag affirmatively state that PMLC is not a manager or owner of Poag. P&M, PMLC and Poag further specifically deny that PMLC at any time directed or otherwise caused P&M or Poag to cause damage to Plaintiffs, and further specifically deny that Plaintiffs suffered any damage or loss as a result of any conduct of any of the Defendants. Rather, Plaintiffs own actions in purposefully and wrongfully attempting to squeeze out P&M from its ownership in

Centerra, improperly interfering and purposely thwarting P&M's management of Centerra, and in acting for their own interests rather than in the interest of Centerra, an entity in which MCLC held a joint interest with P&M, caused their own claimed damages and losses, if any.

8. P&M, PMLC and Poag admit the allegations set forth in the first two sentences of Paragraph 8 of the Complaint. P&M, PMLC and Poag deny that CPW is the developer of the Promenade Shops. With respect to the remaining allegations, P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations and therefore deny the same.

9. P&M, PMLC and Poag admit the allegations set forth in the first two sentences of Paragraph 9 of the Complaint. With respect to the remaining allegations, P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations and therefore deny the same.

10. P&M, PMLC and Poag admit the allegations set forth in the first two sentences of Paragraph 10 of the Complaint. With respect to the remaining allegations, P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations and therefore deny the same.

11. In response to the allegations in Paragraph 11 of the Complaint, P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations and therefore deny the same. P&M, PMLC and Poag further affirmatively state that naming as of yet unknown or unidentified defendants in a complaint is improper procedure.

12. P&M, PMLC and Poag admit that jurisdiction is proper with this Court.

13. P&M, PMLC and Poag admit that venue is proper in this Court.

14. In response to the allegations set forth in Paragraph 14 of the Complaint, P&M, PMLC and Poag admit that an arbitration proceeding was filed by MCLC against P&M on or about September 23, 2009, that the arbitration proceeding was dismissed without prejudice by agreement of the parties on or about November 10, 2010, and that the parties have waived the arbitration clause in the Operating Agreement. P&M, PMLC and Poag further admit that a mediation was held that did not resolve the parties' dispute.

15. In response to the allegations set forth in Paragraph 15 of the Complaint, P&M, PMLC and Poag admit that the referenced lawsuit, Larimer County Case No. 2009 CV 1263, was stayed pending mediation and subsequently dismissed.

16. In response to the allegations set forth in Paragraph 16 of the Complaint, P&M, PMLC and Poag admit that the parties participated in mediation with the Honorable Steve Briggs on January 25, 2011 without success. With regard to the remaining allegations, P&M, PMLC

and Poag state that the claims set forth in the arbitration and in this case speak for themselves. To the extent the claims set forth in this action are inconsistent with the claims set forth in the arbitration proceedings, the remaining allegations in Paragraph 16 are denied. To the extent Plaintiffs intend by this paragraph to assert all of the claims and allegations in the arbitration proceedings in this case by reference, all such allegations and assertions are denied. P&M further incorporates its Answer and Amended Affirmative Defenses in the arbitration proceedings.

17. In response to the allegations set forth in Paragraph 17 of the Complaint, P&M, PMLC and Poag deny that any breach of contract, breach of fiduciary duty, fraudulent concealment, misrepresentation or any wrongdoing occurred. P&M and PMLC further affirmatively state that Plaintiffs have not complied with and do not meet the procedural or substantive requirements necessary to bring a derivative claim. Any such derivative claim should therefore be dismissed.

18. P&M, PMLC and Poag admit that MCLC was and remains, to the best of their knowledge and belief, a 50% owner of Centerra. P&M, PMLC and Poag deny the remaining allegations in Paragraph 18. P&M and PMLC further affirmatively state that to the extent Centerra has suffered damages and losses, it is because of the wrongful actions of MCLC and its parent and affiliates and related entities, and not Defendants. MCLC is therefore not in the best position to represent the interests of Centerra.

19. With regard to the allegations in Paragraph 19 of the Complaint, P&M, PMLC and Poag deny that futility is a consideration in meeting the requirements of bringing a derivative claim and further deny that any basis for any lawsuit against P&M exists. P&M and PMLC further affirmatively state that at all times P&M complied with the Operating Agreement, has acted in good faith and exercised its best business judgment in managing Centerra. P&M and PMLC further affirmatively state that to the extent Centerra has suffered damages and losses, it is because of the wrongful actions of MCLC and its parent and affiliates and related entities, and not Defendants.

20. P&M, PMLC and Poag admit the allegations set forth in the second sentence of Paragraph 20 of the Complaint. With regard to the remaining allegations, P&M, PMLC and Poag admit that this case arises from a real estate project of Centerra, which was jointly owned by P&M and MCLC. P&M, PMLC and Poag further admit that MCLC is, to the best of their knowledge and belief, a wholly owned subsidiary of McWhinney, but deny that P&M is a wholly owned subsidiary of PMLC. P&M and PMLC further deny that the real estate project "failed" and affirmatively state that MCLC and McWhinney received over $22 million on the project and additionally were able to finance public improvements for adjacent property.

21. P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations in Paragraph 21 of the Complaint, and therefore deny the same.

22. In response to the allegations set forth in Paragraph 22 of the Complaint, P&M, PMLC and Poag admit that negotiations between McWhinney and PMLC were ongoing in 2004 regarding the Promenade Shops at Centerra project. P&M, PMLC and Poag further admit that the discussions between McWhinney and PMLC included discussions about the formation of a metropolitan district to help fund public improvements necessary for the project and surrounding property owned and planned for development by McWhinney and its related entities. P&M, PMLC and Poag admit that the formation of this metropolitan district was an integral part of the joint project, but deny there was a formal business plan. P&M, PMLC and Poag are without sufficient information to determine the veracity of the remaining allegations in Paragraph 22, and therefore deny the same.

23. P&M, PMLC and Poag are without sufficient information to determine the veracity of the remaining allegations in Paragraph 23, and therefore deny the same.

24. P&M, PMLC and Poag are without sufficient information to determine the veracity of the remaining allegations in Paragraph 24, and therefore deny the same.

25. In response to the allegations set forth in Paragraph 25 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations in Paragraph 26 are inconsistent with the referenced agreement, those allegations are denied.

26. In response to the allegations set forth in Paragraph 26 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations in Paragraph 26 are inconsistent with the referenced agreement, those allegations are denied.

27. P&M, PMLC and Poag are without sufficient information to determine the veracity of the remaining allegations in Paragraph 27, and therefore deny the same.

28. In response to the allegations set forth in Paragraph 28 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations in Paragraph 28 are inconsistent with the referenced agreement, those allegations are denied.

29. P&M, PMLC and Poag are without sufficient information to determine the veracity of the remaining allegations in Paragraph 29, and therefore deny the same.

30. In response to the allegations set forth in Paragraph 30 of the Complaint, P&M, PMLC and Poag state that the referenced agreements speaks for themselves. To the extent the allegations in Paragraph 30 are inconsistent with the referenced agreements, those allegations are denied. P&M, PMLC and Poag deny the allegation that understanding of the metropolitan district formation and funding is necessary to understand any harm to Plaintiffs, and further deny that any such harm occurred or that any claimed harm was caused by any of the Defendants.

31. In response to the allegations set forth in Paragraph 31 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations in Paragraph 31 are inconsistent with the referenced agreement, those allegations are denied.

32. In response to the allegations set forth in Paragraph 32 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations in Paragraph 32 are inconsistent with the referenced agreement, those allegations are denied.

33. P&M, PMLC and Poag are without sufficient information to determine the veracity of the allegations in Paragraph 33 of the Complaint and therefore deny the same. P&M, PMLC and Poag specifically deny the allegations in subparagraph (a) that there were any intended third party beneficiaries of the Operating Agreement. P&M, PMLC and Poag further affirmatively state that the Operating Agreement speaks for itself. To the extent any allegations in Paragraph 33, including any subparagraph thereof, is inconsistent with the Operating Agreement, those allegations are denied. With regard to the allegations set forth in subparagraphs to Paragraph 33, P&M, PMLC and Poag specifically state as follows:
    a. P&M, PMLC and Poag deny that the metropolitan district or any related entity is an intended third party beneficiary of the Centerra Operating Agreement.
        i. P&M, PMLC and Poag admit that the Centerra Operating Agreement is the document that describes and governs the joint venture between MCLC and P&M.
        ii. The Centerra Operating Agreement speaks for itself. To the extent any allegations in this subparagraph are not consistent with the Operating Agreement, those allegations are denied.
        iii. The Centerra Operating Agreement speaks for itself. To the extent any allegations in this subparagraph are not consistent with the Operating Agreement, those allegations are denied. P&M, PMLC and Poag deny that at the time the Centerra Operating Agreement was prepared PMLC knew what McWhinney believed or thought about any specific provision, including the referenced one. P&M and PMLC affirmatively state that the referenced section 6.2(m) is as stated in the Operating Agreement, and its intended purpose and effect is as stated in the agreement.
    b. P&M, PMLC and Poag deny that Plaintiffs or any affiliated or related entity is an intended third party beneficiary of the Centerra Operating Agreement. The Operating Agreement is between MCLC and P&M and speaks for itself. To the extent any allegations in this subparagraph (b) are inconsistent with that agreement, those allegations are denied.
        i. In response to the allegations set forth in Paragraph 33(b)(i), P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations in this subparagraph and therefore deny the same. P&M and PMLC specifically further affirmatively state that how McWhinney, as the developer of the entire Centerra property of which the Promenade Shops at Centerra was just one piece, intended to finance or construct necessary improvements was known to and handled by

McWhinney, not Centerra and not P&M or PMLC or Poag, the latter of which did not exist at the time. P&M, PMLC and Poag deny that they knew McWhinney would make short-term loans to any other entity for purposes of constructing improvements, or that any such loans or repayment of those loans was part of or contemplated as part of the joint venture for the Promenade Shops at Centerra.

1. P&M, PMLC, and Poag admit that timely construction of infrastructure improvements to the overall project were understood to be important to the timely construction of the Promenade Shops at Centerra.

ii. P&M, PMLC and Poag state that the Centerra Operating Agreement speaks for itself. To the extent the allegations in this subparagraph are inconsistent with the Operating Agreement, those allegations are denied. P&M, PMLC and Poag deny that section 6.2(m) of the Operating Agreement was included or understood by P&M or PMLC to be a means of insuring the metropolitan district, not a party to the Operating Agreement, could repay loans to McWhinney or its related entities. P&M and PMLC further affirmatively state that they were not aware such loans would be made. P&M, PMLC and Poag further deny that any loans that were made were short-term loans. P&M, PMLC and Poag admit that section 6.2(m) was intended to protect the metropolitan district to allow it to repay its bonds.

iii. P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations in this subparagraph and therefore deny the same. P&M, PMLC and Poag further affirmatively state that they are unaware of what McWhinney would or would not have done.

c. P&M, PMLC, and Poag are without sufficient information from which to determine the accuracy of the allegations in Paragraph 33(c) and all subparts thereto and therefore deny the same. P&M, PMLC and Poag further affirmatively state that they are unaware of what McWhinney or its related entities would or would not have done or what they may or may not have relied upon in deciding to make loans to the metropolitan district or among the various McWhinney entities. P&M and PMLC further affirmatively state that to the extent McWhinney or any of its related entities made loans to the metropolitan district or to each other in reliance on any provision of the Centerra Operating Agreement, such reliance was not communicated to P&M or PMLC and is not a basis for any claim against the Defendants.

34. In response to the allegations set forth in Paragraph 34 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent any allegations in this paragraph are inconsistent with the referenced agreement, those allegations are denied.

35. In response to the allegations set forth in Paragraph 35 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent any allegations in this paragraph are inconsistent with the referenced agreement, those allegations are denied.

P&M, PMLC and Poag further state that they are without sufficient information from which to determine the accuracy of the allegations in Paragraph 35(c) and therefore deny the same.

36. In response to the allegations set forth in Paragraph 36 of the Complaint, including any subparts thereto, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent any allegations in this paragraph are inconsistent with the referenced agreement, those allegations are denied. P&M, PMLC and Poag further state that they are without sufficient information from which to determine the accuracy of the allegations in Paragraph 36 and all subparts thereto and therefore deny the same.

37. In response to the allegations set forth in Paragraph 37 of the Complaint, including any subparts thereto, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent any allegations in this paragraph are inconsistent with the referenced agreement, those allegations are denied. P&M and PMLC further affirmatively state that they are without sufficient information from which to determine the accuracy of the allegations in Paragraph 37(c) and therefore deny the same. P&M and PMLC also state that the express provisions of the MFA, and specifically section 17.11, refute any claim by Plaintiffs to be a third party beneficiary.

38. In response to the allegations set forth in Paragraph 38 of the Complaint, P&M, PMLC and Poag state that they are without sufficient information from which to determine the accuracy of the allegations in Paragraph 38 and therefore deny the same.

39. P&M, PMLC and Poag admit the allegations set forth in the first sentence of Paragraph 39 of the Complaint. P&M, PMLC and Poag further affirmatively state that the referenced Operating Agreement speaks for itself. To the extent the allegations in Paragraph 39 are inconsistent with the Operating Agreement, those allegations are denied. P&M, PMLC and Poag admit that McWhinney and PMLC signed the Centerra Operating Agreement for the purpose of evidencing each's agreement to sections 7.4 and 8.3 of that agreement only. P&M and PMLC further affirmatively state that the quoted portion of the referenced Operating Agreement are not the parties' entire agreement and as such, the allegations containing the quoted portions of the agreement are denied insofar as Plaintiffs allege those portions accurately state the parties' agreement. The agreement of the parties is set forth in the Operating Agreement. P&M, PMLC and Poag admit that in Section 8.3 of the Operating Agreement, McWhinney and PMLC agreed that each would not "not sell, assign, transfer or otherwise dispose of its ownership interest in MCLC and P&M, respectively, except to an Affiliate of MCLC or P&M, respectively; provided, however, that McWhinney Holding and PMLC may pledge its ownership interest in MCLC and P&M, respectively, to a third party financial institution for any purpose."

40. In response to the allegations set forth in Paragraph 40 of the Complaint, P&M, PMLC and Poag admit that the Centerra Operating Agreement, including all exhibits thereto, sets forth the terms of the joint venture between MCLC and P&M. The Operating Agreement speaks for itself. To the extent any allegations in this paragraph are inconsistent with the Operating Agreement, those allegations are denied.

41. In response to the allegations set forth in Paragraph 41 of the Complaint, P&M, PMLC and Poag deny that only specific provisions of the Operating Agreement are relevant to this dispute. The Operating Agreement speaks for itself and should be read and interpreted in its entirety. P&M, PMLC and Poag further state that to the extent the allegations in Paragraph 41 and any subpart thereto are inconsistent with the Operating Agreement, those allegations are denied.

42. P&M, PMLC and Poag admit the allegations in Paragraph 42 of the Complaint.

43. P&M, PMLC and Poag admit the allegations in Paragraph 43 of the Complaint.

44. In response to the allegations set forth in Paragraph 44 of the Complaint, P&M, PMLC and Poag deny that MCLC "repeatedly encouraged" P&M to find permanent financing. P&M, and PMLC further affirmatively state that P&M at all times complied with its obligations and duties as the manager of Centerra, and specifically complied and acted in good faith in trying to obtain permanent financing. P&M and PMLC further affirmatively state that MCLC and its related entities, including McWhinney, repeatedly interfered with and unreasonably refused to cooperate or consent to permanent financing proposed by P&M, including a proposal first made by MCLC and then later rejected by it. With regard to the allegations set forth in subparagraphs to Paragraph 44, P&M, PMLC and Poag state as follows:

    a. P&M, PMLC and Poag state that the referenced email communications speak for themselves. To the extent the allegations in this subparagraph are inconsistent with or expand upon the referenced written communications, those allegations are denied. P&M and PMLC admit that Josh Poag laid out a plan for MCLC to place additional leverage on the property when it leased up. P&M and PMLC further affirmatively state that MCLC and McWhinney, through their representative Chad McWhinney, understood and agreed to this plan.

        i. P&M and PMLC specifically deny that any statement made by Josh Poag was false or reckless or that any statement made by Josh Poag at the time it was made was known or could have been known to be false or reckless.

        ii. P&M and PMLC specifically deny that any statement made by Josh Poag was false or reckless or that any statement made by Josh Poag at the time it was made was known or could have been known to be false or reckless. P&M, and PMLC further affirmatively state that P&M at all times acted in good faith, exercised business judgment in all decisions made, and at all times complied with its duties and obligations under the Operating Agreement.

    b. P&M, PMLC and Poag deny that P&M at any time had a "risky" plan to refinance the Construction Loan or deviated from the terms of the Operating Agreement.

P&M, PMLC and Poag state that as used herein "Construction Loan" refers to the Construction Loan t obtained for construction of the lifestyle center known as the Promenade Shops at Centerra and secured by a mortgage on the Centerra real property. P&M and PMLC further affirmatively state that P&M at all times acted in good faith, exercised business judgment in all decisions made, and at all times complied with its duties and obligations under the Operating Agreement. P&M, and PMLC further deny that Plaintiffs urged P&M to obtain permanent financing. Rather, MCLC and its related entities, in violation of MCLC's express duty to act in good faith, repeatedly thwarted efforts to obtain permanent financing, unreasonably withheld consent to proposed permanent financing submitted by P&M pursuant to the terms of the Operating Agreement, and otherwise acted to further its own interests and those of its related entities over the interests of Centerra and its business partner, P&M.

45. In response to the allegations set forth in Paragraph 45 of the Complaint, P&M, PMLC and Poag admit that MCLC repeatedly acted in a manner that unreasonably interfered with P&M's management of Centerra and with P&M's efforts to obtain a Permanent Loan (refinancing), and that such actions were in violation of MCLC's duties and obligations under the Operating Agreement. P&M, PMLC and Poag further admit that MCLC's interference was unacceptable and constituted a breach of the parties' Operating Agreement, and that MCLC's unreasonable interference with P&M's management of Centerra continued. P&M, PMLC and Poag deny that P&M or PMLC failed to "live up" to their obligations under the Operating Agreement. P&M and PMLC further affirmatively state that P&M, as manager, at all times complied with its obligations under the Operating Agreement, acted in good faith, and exercised its best business judgment. With regard to the allegations set forth in the subparagraphs to Paragraph 45, P&M, PMLC and Poag state as follows:

a. P&M, PMLC and Poag deny that they "implicitly" threatened to sue MCLC but admit that MCLC improperly interfered with P&M's management of Centerra. P&M, PMLC and Poag further deny that the extension agreements of the Construction Loan were "unilateral" or in any way improper. P&M, PMLC and Poag admit that MCLC consented to the extension agreements. P&M and PMLC further affirmatively state that MCLC was at all times involved in and participated in attempts to obtain permanent financing and to resolve the default of the Construction Loan.

b. P&M, PMLC and Poag do not have sufficient information from which to determine the accuracy of the allegations in Paragraph 45(b) and the subparts thereto, and therefore deny the same. P&M, PMLC and Poag further affirmatively state that the allegations appear to state a legal conclusion, to which no response is required. Additionally, P&M, PMLC and Poag state that the referenced Operating Agreement speaks for itself and should be read and interpreted in its entirety. To the extent the subparts of Paragraph 45(b) are inconsistent with the Operating Agreement, those allegations are denied. P&M, PMLC and Poag further specifically deny any allegation in Paragraph 45 and all subparts that P&M breached or otherwise failed to comply with the Operating Agreement. P&M and PMLC further affirmatively state that

P&M at all times acted in good faith, exercised business judgment in all decisions made, and at all times complied with its duties and obligations under the Operating Agreement.

46. P&M, PMLC and Poag deny the allegations in Paragraph 46 of the Complaint. P&M and PMLC affirmatively state that prior to January 23, 2009, MCLC and P&M were actively discussing proposed terms for a Permanent Loan (refinancing) and that term sheets for the same were exchanged that included the maximum loan amount, maturity date, interest rate, fees to the lender, repayment terms and other material terms. P&M, PMLC and Poag further state that as used herein "Permanent Loan (refinancing)" refers to "the refinancing of the Construction Loan at or prior to the maturity date of the Construction Loan or any subsequent refinancing" thereof.

47. P&M, PMLC and Poag deny the allegations in Paragraph 47 of the Complaint. P&M, PMLC and Poag deny that P&M failed to timely seek permanent financing or failed to perform its obligations under the Operating Agreement. P&M and PMLC further affirmatively state that after MCLC rejected previously Permanent Loan (refinancing) offers, P&M continued to try to negotiate a Permanent Loan (refinancing), and sent two formal notices of Permanent Loan (refinancing) terms, both of which were unreasonably rejected by MCLC. P&M and PMLC further affirmatively state that P&M, in accordance with the Operating Agreement, attempted to secure a Permanent Loan (refinancing) on terms acceptable to MCLC, but was unable to do so because MCLC refused to comply with a mandatory capital call necessary to obtain the same, even though it was MCLC that initially proposed the structure of the Permanent Loan (refinancing) that required the capital call. The inability to obtain a Permanent Loan (refinancing) was thus due to no fault of P&M but rather was due to the actions of MCLC. P&M and PMLC further state that in 2008, the United States economy severely declined and real estate values plummeted. As was true for virtually all real estate projects in the United States in this time period, the value of Centerra's property dropped sharply. As a result, this crash in the United States economy made obtaining permanent financing extremely difficult, if not virtually impossible.

48. In response to the allegations set forth in Paragraph 48 of the Complaint, P&M, PMLC and Poag admit that J.P. Morgan Chase declared the Construction Loan in default on January 26, 2009.

49. In response to the allegations in Paragraph 49 of the Complaint, P&M, PMLC and Poag admit that through no fault of Defendants, the Construction Loan went into default on January 26, 2009. P&M, PMLC and Poag state that the balance due on the Construction Loan at the time of default is as stated in the Notice of Default sent by J.P. Morgan Chase. To the extent the allegations in Paragraph 49 are inconsistent with that notice, those allegations are denied. P&M, PMLC and Poag are without sufficient information to determine the accuracy of the allegation that the approximate value of the Promenade Shops at Centerra on January 26, 2009 was $75 million and therefore deny the same. P&M, PMLC and Poag deny that P&M "allowed" the loan to go into default or any implication that such

default was due to any wrongful conduct on the part of P&M or PMLC. P&M, PMLC and Poag admit that at the time the Construction Loan matured, the value of the property had declined and that permanent financing or long-term financing was difficult if not virtually impossible to obtain due to the economic crisis experienced by the United States during 2008 and thereafter. With regard to the allegations in the subparagraph to Paragraph 49, P&M, PMLC and Poag state as follows:

a. P&M, PMLC, and Poag admit that due to the nationwide economic downturn, which hit the real estate markets especially hard, the value of the property owned by Centerra dropped significantly and that as a result, a Permanent Loan (refinancing) was difficult to obtain. P&M, PMLC and Poag deny that the drop in value of the Centerra property was reasonably foreseeable or due to any action or inaction on the part of P&M, PMLC or Poag.

50. In response to the allegations in Paragraph 50 of the Complaint, P&M, PMLC and Poag deny any allegation or implication that the Construction Loan was not a non-recourse loan. P&M, PMLC and Poag further admit that P&M represented the loan was non-recourse, and affirmatively state that such representation was true. P&M, PMLC and Poag are without sufficient information to know what Plaintiffs "believed" and thus deny any such allegations. P&M, PMLC and Poag admit that after the Construction Loan was declared in default, P&M continued to diligently and in good faith try to find a Permanent Loan (refinancing), as did MCLC, who participated in the negotiations with the Construction Loan lender. With regard to the allegations in the subparagraphs to Paragraph 50, P&M, PMLC and Poag state as follows:

a. P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations in Paragraph 50(a) and therefore deny the same. P&M, PMLC and Poag do not know what Plaintiffs "understood". P&M, PMLC and Poag admit that P&M attempted to negotiate financing in good faith and utilized all points available to it to try to do so, including that the property value had declined and was now worth less than the balance due on the loan.

b. P&M, PMLC and Poag are without sufficient information to determine the veracity of the allegations made in Paragraph 50(b) and therefore deny the same. P&M, PMLC and Poag do not know what MCLC "assumed". P&M, PMLC and Poag specifically deny that any harm was caused to MCLC, or that any claimed harm was due to any conduct of P&M or PMLC. P&M, PMLC and Poag admit that P&M at all times acted in good faith and used its best efforts and best business judgment to try to find a Permanent Loan (refinancing) but was unable to do so because of the collapse of the economy and MCLC's improper interference and failure to abide by its mandatory capital call requirements.

51. P&M, PMLC and Poag deny the allegations set forth in Paragraph 51 of the Complaint. P&M and PMLC further affirmatively state that at no time did P&M or PMLC breach any obligation to MCLC, and that at all times, P&M acted in good faith, complied with its obligations and duties as the manager of Centerra, and at all times exercised its business

judgment appropriately. With regard to the allegations set forth in the subparagraphs to Paragraph 51, P&M, PMLC and Poag state as follows:

a. P&M, PMLC and Poag deny the allegations set forth in Paragraph 51(a) and specifically deny that P&M or PMLC ever fraudulently or otherwise concealed the existence of what is referred to as the $40 million mezzanine loan in the Complaint. P&M and PMLC further specifically state that MCLC and its related entities including McWhinney were aware of and consented to the mezzanine loan before it was made. P&M and PMLC further affirmatively state that MCLC's consent to the mezzanine loan and the loan itself led to the First Amendment to the Centerra Operating Agreement and was the reason for the amendment.

i. In response to the allegations in Paragraph 51(a)(i), P&M, PMLC and Poag admit the purpose of the mezzanine loan was, in part, to buy out Terry McEwen but deny the remaining allegations in this paragraph.

ii. In response to the allegations in Paragraph 51(a)(ii), P&M, PMLC and Poag admit that in 2007, after acquiring 100% ownership of P&M, PMLC conveyed its interest in P&M to Centerra & Dos Lagos Ventures, LLC, which was wholly owned by PMLC at the time. P&M, PMLC and Poag also admit that PMLC conveyed its interest in Poag & McEwen Lifestyle Centers – Corona, LLC to Centerra & Dos Lagos Ventures, LLC.

iii. P&M, PMLC and Poag admit the allegations in the first sentence of Paragraph 50(a)(iii), but are without sufficient information to determine the veracity of the remaining allegations and therefore deny the same. P&M, PMLC and Poag admit, however, that P&M and PMLC understood the lender on the mezzanine loan was an affiliate of JP Morgan Chase Bank, NA.

iv. P&M, PMLC and Poag admit the allegations in Paragraph 51(a)(iv) and all subparts thereto.

v. In response to the allegations in Paragraph 51(a)(v), P&M, PMLC and Poag admit that P&M pledged its interest Centerra & Dos Lagos Ventures, LLC and in Poag & McEwen Lifestyle Centers – Corona, LLC as collateral for the mezzanine loan. P&M, PMLC and Poag deny the remaining allegations in this subparagraph.

vi. In response to the allegations in Paragraph 51(a)(vi), P&M, PMLC and Poag state that the referenced loan documents speak for themselves. To the extent any allegations set forth in this subparagraph are inconsistent with those loan documents, those allegations are denied.

vii. In response to the allegations in Paragraph 51(a)(vii), P&M, PMLC and Poag do not have sufficient information from which to determine the veracity of the allegations in the first part of this paragraph and therefore deny the same. P&M, PMLC and Poag do not know the exact relationship between the lender on the mezzanine loan and JP Morgan Chase Bank NA. P&M, PMLC and Poag admit, however, that P&M and PMLC understood that the lender was somehow related to JP Morgan Chase. P&M, PMLC and Poag further admit that JP Morgan Chase, after buying out Bank One, was the lead lender on the Construction Loan and that P&M was negotiating with

representatives of JP Morgan Chase regarding the Construction Loan until Key Bank took over the lead lender role. P&M and PMLC further affirmatively state that the representatives of JP Morgan Chase negotiating on the Construction Loan were not involved with the mezzanine loan and that the mezzanine loan at no time played any role or part in the negotiations of the Construction Loan.

viii. P&M, PMLC and Poag deny the allegations set forth in Paragraph 51(a)(viii). P&M, PMLC and Poag specifically deny that P&M or PMLC ever concealed, fraudulently or otherwise, any information from MCLC or ever "misled" MCLC. P&M and PMLC further affirmatively state that MCLC was aware of and consented to the mezzanine loan, and was involved in and aware of the negotiations on the Construction Loan. P&M, PMLC and Poag further specifically deny that P&M was compromised or otherwise did not act at all times in the best interests of Centerra. P&M and PMLC affirmatively state that P&M complied with its obligations under the Operating Agreement, and acted in good faith and appropriately when negotiating the Construction Loan.

b. P&M, PMLC and Poag deny the allegations in Paragraph 51(b) and specifically deny that P&M or PMLC made any misrepresentations, fraudulent or otherwise, or concealed any information from MCLC. P&M and PMLC further affirmatively state that negotiations to refinance the Construction Loan were done, not in secret, but with MCLC and McWhinney at the table.

c. P&M, PMLC and Poag deny the allegations in Paragraph 51(c). P&M and PMLC further affirmatively state that any exposure or liability P&M or PMLC had was discussed openly with MCLC and McWhinney.

d. P&M, PMLC and Poag deny the allegations in Paragraph 51(d), and specifically deny that there was any "conflict of interest" or any circumstances that required P&M to "recuse" itself from negotiations.

e. P&M, PMLC and Poag deny the allegations in Paragraph 51(e), and specifically deny that P&M or PMLC failed to disclose any information to the Construction Loan lender or attempted to "prop up" or "overstate" the value of the Centerra property. P&M and PMLC further specifically deny that they acted to further their own self-interest and affirmatively state that P&M and PMLC at all times acted in good faith and in the best interests of Centerra and P&M's business partner, MCLC.

f. P&M, PMLC and Poag deny the allegations in Paragraph 51(f).

g. P&M, PMLC and Poag deny the allegations in Paragraph 51(g), and specifically deny that there was any "conflict of interest".

h. P&M, PMLC, and Poag deny the allegations in Paragraph 51(h), and specifically deny that P&M or PMLC ever made false statements or acted in bad faith. Rather, P&M and PMLC affirmatively state that at all times P&M and PMLC acted in good faith and in the best interests of Centerra. P&M and PMLC further affirmatively state that Plaintiffs' misrepresent the nature of what they call the "Permanent Loan." As defined in the Operating Agreement, the "Permanent Loan" refers to a refinancing of the Construction Loan and not a loan or any given length or term.

52. In response to the allegations in Paragraph 52 of the Complaint, P&M, PMLC and Poag admit that on February 9, 2009, a letter was sent to MCLC proposing terms of financing. The letter speaks for itself. To the extent the allegations in this paragraph are inconsistent with the letter, those allegations are denied. P&M, PMLC and Poag deny that the letter was sent to give notice of "belated performance" and deny that P&M ever failed to perform its duties or obligations under the Operating Agreement.

53. In response to the allegations in Paragraph 53 of the Complaint, P&M, PMLC and Poag admit that MCLC rejected the proposal dated February 9, 2009. P&M, PMLC and Poag deny the remaining allegations in this paragraph.

54. P&M, PMLC and Poag deny the allegations set forth in Paragraph 54 of the Complaint. Specifically, P&M and PMLC deny that the proposed financing was a "high-cost, short term extension", and deny that the proposal was the result of anything other than good faith negotiations. With respect to the last sentence of Paragraph 54, P&M, PMLC and Poag are without sufficient information to determine the veracity of this allegation and therefore deny the same.

55. P&M, PMLC and Poag deny the allegations in Paragraph 55 of the Complaint. P&M and PMLC specifically deny that P&M caused the default of the Construction Loan, or that there was any improper leverage or bargaining power by the construction lender over Centerra as a result of any actions by P&M or PMLC. P&M, PMLC and Poag further specifically deny that P&M or PMLC breached any obligation or fiduciary duty, if any, to any of the Plaintiffs or Centerra. P&M, PMLC and Poag also specifically deny that the mezzanine loan was concealed. P&M and PMLC affirmatively state that MCLC and its related entities knew about the loan and consented to it prior to its being made.

56. In response to the allegations in Paragraph 56 of the Complaint, P&M, PMLC and Poag admit that on March 13, 2009, a letter was sent to MCLC again proposing terms of financing. The letter speaks for itself. To the extent the allegations in this paragraph are inconsistent with the letter, those allegations are denied. P&M, PMLC and Poag deny that the letter was sent to give notice of "belated performance" and deny that P&M ever failed to perform its duties or obligations under the Operating Agreement.

57. In response to the allegations in Paragraph 57 of the Complaint, P&M, PMLC and Poag admit that MCLC rejected the proposal dated March 13, 2009. P&M, PMLC and Poag deny the remaining allegations in this paragraph. P&M, PMLC and Poag further state that the referenced March 25, 2009 letter speaks for itself. To the extent the allegations are inconsistent with the letter, those allegations are denied.

58. In response to the allegations in Paragraph 58 of the Complaint, P&M, PMLC and Poag state that the referenced letter speaks for itself. To the extent the allegations are inconsistent with the letter, those allegations are denied.

59. In response to the allegations set forth in Paragraph 59 of the Complaint, P&M, PMLC and Poag admit that a meeting occurred between representations of JP Morgan Chase, MCLC and P&M in Chicago on April 9, 2009. P&M, PMLC and Poag deny the remaining allegations in this paragraph. P&M and PMLC specifically deny that there was any discussion about an alleged "conflict of interest" or that any such claimed "conflict of interest" existed.

60. In response to the allegations set forth in Paragraph 60 of the Complaint, P&M, PMLC and Poag are without sufficient information to determine the veracity of the allegations and therefore deny the same. P&M, PMLC and Poag do not know when MCLC "learned" of the change in the lead lender. P&M, PMLC and Poag admit that following the meeting in Chicago on April 9, 2009, the lead lender on the Construction Loan changed from JP Morgan Chase to Key Bank.

61. P&M, PMLC and Poag admit that at all times P&M and PMLC represented the mezzanine loan did not create a "conflict of interest" and repeatedly told MCLC the same. P&M and PMLC further affirmatively state that the mezzanine loan did not create any improper conflict of interest. P&M, PMLC and Poag deny that MCLC or McWhinney were told the mezzanine loan was non-recourse. P&M and PMLC affirmatively state that MCLC and McWhinney were told that there was limited recourse on the mezzanine loan. With regard to the allegations set forth in the subparagraphs to Paragraph 61, P&M, PMLC and Poag state as follows:
    a. P&M, PMLC and Poag deny that the mezzanine loan was non-recourse and deny that Josh Poag said this to Chad McWhinney and/or Joshua Kane.
    b. P&M, PMLC and Poag admit that the mezzanine loan was not a factor or an issue in P&M's negotiations with JP Morgan Chase, and P&M, PMLC and Poag admit that Josh Poag said this to Chad McWhinney and/or Joshua Kane.
    c. P&M, PMLC and Poag deny that there was a conflict of interest preventing P&M from negotiating favorable financing terms for Centerra.
    d. P&M, PMLC and Poag admit that the proposed financing outlined in the letters dated February 9, 2009 and March 13, 2009 were the best terms available at the time and further admit that Josh Poag said this to Chad McWhinney and/or Joshua Kane.

62. In response to the allegations set forth in Paragraph 62 of the Complaint, P&M, PMLC and Poag state that the allegations contain legal conclusions which are incorrect and to which no response is required. P&M, PMLC and Poag deny that the proposed Permanent Loan (refinancing) referenced in Paragraph 62 did not comply with the requirements of the Operating Agreement. P&M and PMLC further affirmatively state that Plaintiffs misrepresent the requirements of the Operating Agreement and confuse the defined term Permanent Loan therein with a "permanent loan", which Plaintiffs appear to believe means a fixed, long-term loan. P&M, PMLC and Poag admit that P&M made a capital call to Centerra's members on April 10, 2009. P&M, PMLC and Poag deny the capital call was "defective". P&M, PMLC and Poag admit that MCLC, without authority to do so, rejected the capital call and failed to comply with its obligations to honor the capital call. P&M,

PMLC and Poag further admit that P&M did not withdraw or otherwise withdraw the capital call. P&M, PMLC and Poag further state that the allegations reference terms of the Operating Agreement, which speaks for itself. To the extent the allegations are inconsistent with the Operating Agreement, those allegations are denied.

63. P&M, PMLC and Poag deny the allegations in Paragraph 63 of the Complaint.

64. In response to the allegations in Paragraph 64 of the Complaint, P&M, PMLC and Poag admit that the construction lender agreed to resolve the default of the Construction Loan if additional capital was contributed to pay down the debt and that P&M requested MCLC make the additional contribution. P&M and PMLC further state that this proposal was first made by MCLC. P&M, PMLC and Poag deny the remaining allegations in this paragraph. P&M and PMLC specifically deny that any threat of a lawsuit was made by them.

65. P&M, PMLC and Poag deny the allegations in Paragraph 65 of the Complaint. P&M and PMLC specifically deny that P&M breached any fiduciary duties or otherwise acted improperly as the manager of Centerra. P&M and PMLC further specifically deny that any threat of a lawsuit was made by them.

66. P&M, PMLC and Poag deny the allegations in Paragraph 66 of the Complaint, and specifically deny that any of them ever threatened "frivolous" lawsuits. P&M, PMLC and Poag further deny that MCLC was ever deprived of information to which it was entitled. P&M, PMLC and Poag admit that MCLC continued to thwart P&M's efforts to try to resolve the defaulted Construction Loan and instead made threats and demands for financial documentation of unrelated entities to which MCLC was not entitled, continued to feign concern over an alleged "conflict of interest" arising from the mezzanine loan MCLC had previously been aware of and consented to, and otherwise interfered with P&M's good faith efforts to salvage the parties' joint venture. P&M, PMLC and Poag further admit that the Centerra property was foreclosed.

67. In response to the allegations set forth in Paragraph 67 of the Complaint, P&M, PMLC and Poag admit that a meeting occurred between representatives of MCLC and Key Bank on September 16, 2009. P&M and PMLC affirmatively state that they attended this meeting by phone, having only learned of the meeting just prior to it occurring when called by MCLC. P&M, PMLC and Poag deny the remaining allegations in this paragraph. P&M and PMLC specifically deny that the mezzanine loan was a "major inhibiting factor" in prior negotiations about the Construction Loan.

68. In response to the allegations set forth in Paragraph 68 of the Complaint, P&M, PMLC and Poag deny that there was any harm caused to Centerra as a result of their actions, and deny that P&M or PMLC ever acted recklessly or that there was any misconduct on their part. P&M, PMLC and Poag admit that after the September 16, 2009 meeting, MCLC demanded that P&M make the entire $9 million contribution necessary to secure the financing necessary to resolve the Construction Loan default and that P&M refused this unfair request.

P&M, PMLC and Poag further admit that MCLC improperly interfered and undermined the negotiations between P&M and Key Bank. P&M, PMLC and Poag deny the remaining allegations in this paragraph. P&M and PMLC specifically deny that negotiations were "effectively over".

69. In response to the allegations in Paragraph 69 of the Complaint, P&M, PMLC and Poag admit that on or about September 22, 2009, Key Bank's Senior Vice President (Asset Recovery Group) Mark Wright sent the referenced email. P&M, PMLC and Poag state that the referenced email speaks for itself. To the extent the allegations are inconsistent with this document, those allegations are denied. P&M, PMLC and Poag admit that a teleconference was scheduled for September 28, 2009 and that prior to that conference, on or about September 23, 2009, MCLC filed a complaint in arbitration against P&M. P&M, PMLC and Poag deny that the arbitration was filed "to protect" Centerra.

70. In response to the allegations set forth in Paragraph 70 of the Complaint, P&M, PMLC and Poag admit that a teleconference occurred between representatives of Key Bank, P&M and MCLC on September 28, 2009. P&M, PMLC and Poag are without sufficient information from which to determine the veracity of the allegations in the second sentence of this paragraph and therefore deny the same. P&M, PMLC and Poag do not know what MCLC "learned" or when. P&M and PMLC specifically deny that P&M had "unilaterally" or otherwise improperly continued to negotiate a resolution to the default of the Construction Loan with Key Bank, and affirmatively state that P&M continued to negotiate in good faith and in an attempt to save the joint venture, which was in the best interest of Centerra and its members. P&M and PMLC further affirmatively state that the proposed refinancing P&M discussed with Key Bank prior to the teleconference was a proposal for a zero pay down and 100% cash going to the lender for five years, which proposal was agreed to by MCLC prior to the teleconference. P&M and PMLC further affirmatively state that during this conference call, MCLC, instead of agreeing to the proposal agreed upon prior to the conference, raised four partnership points it insisted be resolved as part of the deal. P&M and PMLC further state that the following day, Chad McWhinney raised the number of alleged partnership issues from four to fifteen, which issues he insisted be resolved as part of any refinancing, effectively killing the deal. P&M, PMLC and Poag admit that Key Bank expressed frustration at MCLC's refusal to consider the proposal MCLC had previously made to P&M and which P&M had conveyed to Key Bank. P&M, PMLC and Poag deny the remaining allegations in this paragraph, and specifically deny that MCLC was not kept reasonably informed.

71. In response to the allegations in Paragraph 71 of the Complaint, P&M, PMLC and Poag note that the referenced email communication speaks for itself. To the extent the allegations are inconsistent with the document, those allegations are denied. With regard to the allegations in the subparagraphs to Paragraph 71, P&M, PMLC and Poag state as follows:
    a. P&M, PMLC and Poag deny the allegations in Paragraph 71(a). P&M and PMLC affirmatively state that MCLC and/or its related entities knew and participated in the referenced tax appeals.

b. In response to the allegations in Paragraph 71(b), P&M, PMLC and Poag state that the referenced tax appeals speak for themselves. To the extent the allegations in this subparagraph are inconsistent with those tax appeals, those allegations are denied. P&M, PMLC and Poag deny the remaining allegations in this subparagraph. P&M and PMLC further affirmatively state that MCLC and/or its related entities knew and participated in the referenced tax appeals. P&M and PMLC further state that the tax appeals have been dismissed and thus any issue pertaining to them is now moot. P&M and PMLC specifically deny that they "attempted to thwart" withdrawal of the tax appeals.

72. In response to the allegations in Paragraph 72 of the Complaint, P&M, PMLC and Poag state that the referenced email communication speaks for itself. To the extent the allegations are inconsistent with the document, those allegations are denied.

73. In response to the allegations in Paragraph 73 of the Complaint, P&M, PMLC and Poag state that the referenced letter speaks for itself. To the extent the allegations are inconsistent with the document, those allegations are denied.

74. P&M, PMLC and Poag deny the allegations in Paragraph 74 of the Complaint. P&M, PMLC and Poag specifically deny that there was ever any attempt to "blackmail" MCLC. P&M and PMLC affirmatively state that the referenced communications, which are inaccurately described, were an attempt to resolve contested issues brought by MCLC against P&M. P&M and PMLC further affirmatively state that once the receiver was appointed, P&M did not have the ability to withdraw or otherwise affect the tax appeals.

75. In response to the allegations set forth in Paragraph 75 of the Complaint, P&M, PMLC and Poag admit that on or about October 13, 2009, Key Bank issued a notice of default. The notice speaks for itself. To the extent the allegations are inconsistent with the referenced notice, those allegations are denied.

76. In response to the allegations set forth in Paragraph 76 of the Complaint, P&M, PMLC and Poag state that the referenced letter speaks for itself. To the extent the allegations are inconsistent with the letter, those allegations are denied. P&M, PMLC and Poag admit that they advised MCLC that P&M would object to MCLC purchasing the Construction Loan from Key Bank and further admit that such purchase would constitute a violation of MCLC's duty of loyalty and obligation to act in good faith and deal fairly with its business partner, P&M. P&M, PMLC and Poag further admit that MCLC's purchase of the Construction Loan would have created an improper conflict of interest. P&M, PMLC and Poag deny that P&M or PMLC made statements it didn't agree with, that P&M or PMLC "stalled" or tried to "cut their own deal", or that either ever acted duplicitously or with an intent to conceal anything from MCLC. P&M, PMLC and Poag further deny that MCLC acted in any way based on statements made by P&M or PMLC.

77. P&M, PMLC and Poag admit the allegations in Paragraph 77 of the Complaint.

78. In response to the allegations set forth in Paragraph 78 of the Complaint, P&M, PMLC and Poag admit that the referenced lawsuit was filed and deny the remaining allegations in this paragraph.

79. In response to the allegations set forth in Paragraph 79 of the Complaint, P&M, PMLC and Poag admit that in a continued effort to resolve the defaulted Construction Loan and to save the parties' joint venture, P&M sought out additional investors for the project. P&M, PMLC and Poag further admit that Gary Dragul was an investor who was interested in the project and that P&M discussed a possible deal with Mr. Dragul that included provisions keeping MCLC as an equal partner to P&M, a proposal which MCLC rejected despite the fact that the proposal offered MCLC an opportunity to do what it had proposed several times previously – a write down of the loan, no additional equity required from the members of Centerra, and continued upside in the project. P&M, PMLC and Poag deny the remaining allegations in this paragraph, and specifically deny that P&M or PMLC had "taken advantage" of MCLC or improperly acted "unilaterally". P&M, PMLC and Poag also deny that P&M ever acted or pursued a deal beneficial only to P&M and detrimental to Centerra or MCLC. P&M, PMLC and Poag further state that it appears from the allegations in the following Paragraph 80 that the allegations in Paragraph 79 are an attempt to restate statements made in a letter dated January 27, 2010. To the extent this is the case, such letter speaks for itself, and to the extent the allegations are inconsistent with this letter, those allegations are denied.

80. In response to the allegations set forth in Paragraph 80, P&M, PMLC and Poag state that the referenced January 29, 2010 letter speaks for itself. To the extent the allegations are inconsistent with this letter, those allegations are denied. P&M, PMLC and Poag further state that the reference to the January 29, 2010 letter being in response to the January 27, 2009 letter appears to be a typographical error.

81. P&M, PMLC and Poag admit the allegations in Paragraph 81 of the Complaint. P&M and PMLC further affirmatively state that P&M did not have control over the continued prosecution of the tax appeals once the receiver was appointed.

82. In response to the allegations set forth in Paragraph 82 of the Complaint, P&M, PMLC and Poag admit that during discovery in the arbitration proceedings, documents were produced. P&M, PMLC and Poag further state that the referenced mezzanine loan documents speak for themselves. To the extent the allegations are inconsistent with these documents, those allegations are denied.

83. In response to the allegations set forth in Paragraph 83 of the Complaint and all subparts thereto, P&M, PMLC and Poag state that the referenced mezzanine loan documents speak for themselves. To the extent the allegations are inconsistent with these documents, those allegations are denied.

84. In response to the allegations set forth in Paragraph 84 of the Complaint, P&M, PMLC and Poag state that the referenced mezzanine loan documents speak for themselves. To the extent the allegations are inconsistent with these documents, those allegations are denied.

85. In response to the allegations set forth in Paragraph 85 of the Complaint, P&M, PMLC and Poag state that the referenced letter speaks for itself. To the extent the allegations are inconsistent with that letter, those allegations are denied.

86. In response to the allegations set forth in Paragraph 86 of the Complaint, P&M, PMLC and Poag state that the referenced letter speaks for itself. To the extent the allegations are inconsistent with that letter, those allegations are denied.

87. P&M, PMLC and Poag deny the allegations set forth in Paragraph 87 of the Complaint.

88. In response to the allegations set forth in Paragraph 88 of the Complaint and all subparts thereto, P&M, PMLC and Poag state that the referenced email communication speaks for itself. To the extent the allegations are inconsistent with that email, those allegations are denied.

89. P&M, PMLC and Poag deny the allegations in Paragraph 89 of the Complaint.

90. In response to the allegations set forth in Paragraph 90 of the Complaint, P&M, PMLC and Poag admit that the foreclosure sale of the Centerra property was continued several times. P&M, PMLC and Poag also admit that P&M was continuing to discuss options with Walton Street, but deny the remaining allegations in this paragraph.

91. In response to the allegations set forth in Paragraph 91 of the Complaint, P&M, PMLC and Poag do not have sufficient information from which to determine the veracity of the allegations in this paragraph and therefore deny the same. P&M, PMLC and Poag do not know what MCLC "learned". P&M, PMLC and Poag admit that an assignee of Key Bank submitted a pre-foreclosure bid, but deny that the submission of the bid renders any statements by Josh Poag or Bob Rogers untrue or "contrary".

92. In response to the allegations in Paragraph 92 of the Complaint, P&M, PMLC and Poag admit that the Centerra property was sold at foreclosure sale on or about June 30, 2010 to an assignee of Key Bank. The purchase price and exact details are as set forth in the foreclosure documents on file with the Public Trustee, which documents speak for themselves. To the extent the allegations are inconsistent with the documents, those allegations are denied.

93. P&M, PMLC and Poag deny the allegations in Paragraph 93 of the Complaint, and specifically deny that the property was lost through foreclosure due to any wrongdoing on the part of P&M or PMLC.

94. P&M, PMLC and Poag admit the allegations in Paragraph 94 of the Complaint.

95. In response to the allegations set forth in Paragraph 95 of the Complaint, P&M, PMLC, and Poag admit that a settlement was reached effective December 1, 2010 that resolved the tax appeals and lawsuits related to the same. The settlement agreement speaks for itself. To the extent the allegations are inconsistent with the settlement agreement, those allegations are denied.

96. In response to the allegations set forth in Paragraph 96 of the Complaint, P&M, PMLC and Poag admit that the receiver filed a motion with the Larimer County District Court. That motion speaks for itself. To the extent the allegations are inconsistent with the motion, those allegations are denied. P&M and PMLC further state that the motion was prepared by the receiver and not by P&M or PMLC. P&M and PMLC specifically deny that either "engaged in a litigation strategy designed to prevent" the tax appeals from being withdrawn. P&M and PMLC further affirmatively state that they did not threaten to sue the receiver; rather, P&M advised the receiver that if MCLC filed suit against P&M related to the tax appeals, P&M would have to add the receiver as a necessary party.

97. P&M, PMLC and Poag deny the allegations in Paragraph 97 of the Complaint and all subparts thereto. P&M, PMLC and Poag specifically deny that the filing of the tax appeals was the cause of any failure of the metropolitan district to pay its debts.

98. P&M, PMLC and Poag deny the allegations in Paragraph 98 of the Complaint. P&M and PMLC further affirmatively state that the 2009 audit of the metropolitan district states that the district did not anticipate issuing any bonds in 2010.

99. P&M, PMLC and Poag do not have sufficient information from which to determine the veracity of the allegations in Paragraph 99 of the Complaint, and therefore deny the same. P&M, PMLC and Poag specifically deny that the inability to repay the metropolitan district's loans to McWhinney or its affiliates or subsidiaries or related entities was in any way as a result of the filing of the tax appeals.

100. P&M, PMLC and Poag do not have sufficient information from which to determine the veracity of the allegations in Paragraph 100 of the Complaint and all subparts thereto, and therefore deny the same. P&M, PMLC and Poag specifically deny that the inability of the Plaintiffs to pay each other or to repay loans to McWhinney or its affiliates or subsidiaries or related entities was in any way as a result of the filing of the tax appeals.

101. P&M, PMLC and Poag deny the allegations in Paragraph 101 of the Complaint and all subparts thereto. With regard to the allegations in the subparagraphs to Paragraph 101 of the Complaint, P&M, PMLC and Poag state as follows:

a. P&M, PMLC and Poag deny that the delay in the receiver withdrawing the tax appeals was the cause of the failure of the Plaintiffs' to repay its debts including the

$12 million loan and thus a cause of McWhinney not being able to submit a post-foreclosure bid to purchase the Centerra property.

b. P&M, PMLC and Poag deny that the delay in the receiver withdrawing the tax appeals was the cause of the failure of the Plaintiffs' to repay its debts including the $12 million loan and thus a cause of McWhinney's or its affiliates or subsidiaries or related entities speculative claim of revenue they might have obtained through subsequent ownership of or a sale of the Centerra property had they been able to make a successful post-foreclosure bid.

c. P&M, PMLC and Poag deny that the delay in the receiver withdrawing the tax appeals was the cause of the failure of the Plaintiffs' to repay its debts including the $12 million loan and thus "enabling" an unrelated third-party entity, G&I VI Promenade, LLC ("G&I"), to purchase the Centerra property from the foreclosing lender. P&M, PMLC and Poag admit that G&I is a Delaware limited liability company.

i. P&M, PMLC and Poag admit that after its purchase of the Centerra property, G&I contracted with Poag to manage the Promenade Shops at Centerra located on the property.

ii. P&M, PMLC and Poag deny that G&I is related to the lender of the mezzanine loan or that G&I's purchase of the Centerra property was in any way related to the mezzanine loan. P&M, PMLC and Poag further deny that there was any "connection" between G&I's purchase of the Promenade Shops and "resolution" of the "reported default" on the mezzanine loan.

A
Response to First Cause of Action
(Breach of Centerra Operating Agreement)

102. In response to the allegations set forth in Paragraph 102 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

103. P&M, PMLC and Poag admit the allegations set forth in Paragraph 103 of the Complaint.

104. In response to the allegations set forth in Paragraph 104 of the Complaint, P&M, PMLC and Poag state that the referenced Operating Agreement speaks for itself. To the extent the allegations are inconsistent with the Operating Agreement, those allegations are denied.

105. P&M, PMLC and Poag deny the allegations set forth in Paragraph 105 of the Complaint, and specifically deny that MCLC fully performed its obligations under the Operating Agreement and deny that any failure of MCLC to perform was excused.

106. P&M, PMLC and Poag deny the allegations set forth in Paragraph 106 of the Complaint.

107. P&M, PMLC and Poag deny the allegations set forth in Paragraph 107 of the Complaint and all subparts thereto, and specifically deny that P&M or PMLC breached the Operating

Agreement. P&M, PMLC and Poag specifically deny each and every allegation set forth in Paragraphs 107(a) through (n). P&M, PMLC and Poag further specifically deny that Plaintiffs have suffered any general, special or consequential damages or that any claimed damages were caused by any conduct of P&M, PMLC or Poag.

B
Response to Second Cause of Action
(Fraudulent Concealment)

108. In response to the allegations set forth in Paragraph 108 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

109. P&M, PMLC and Poag deny the allegations set forth in Paragraph 109 of the Complaint and all subparts thereto. P&M, PMLC and Poag specifically deny that P&M or PMLC concealed or failed to disclose any material fact, and further specifically denies each and every allegation in Paragraphs 109(a) through (f).

110. P&M, PMLC and Poag deny the allegations set forth in Paragraph 110 of the Complaint, and specifically deny that there was any facts concealed, and that any alleged concealed fact was material.

111. P&M, PMLC and Poag state that the allegations in Paragraph 111 are really a legal conclusion to which no response is required. To the extent a response is required, P&M, PMLC and Poag deny the allegations set forth in Paragraph 111 of the Complaint. P&M, PMLC and Poag specifically deny that PMLC is the alter ego, co-conspirator or agent of P&M.

112. P&M, PMLC and Poag state that the allegations in Paragraph 112 are a legal conclusion to which no response is required. To the extent a response is required, P&M, PMLC and Poag deny the allegations set forth in Paragraph 112 of the Complaint.

113. P&M, PMLC and Poag deny the allegations in Paragraph 113 of the Complaint. P&M, PMLC and Poag specifically deny that P&M or PMLC concealed any facts, and deny that P&M or PMLC ever acted contrary to the best interests of Centerra. P&M and PMLC further affirmatively state that P&M at all times acted in good faith and in compliance with its obligations under the Operating Agreement.

114. P&M, PMLC and Poag deny the allegations set forth in Paragraph 114 of the Complaint.

115. P&M, PMLC and Poag deny the allegations set forth in Paragraph 115 of the Complaint. P&M, PMLC and Poag specifically deny that MCLC was merely a passive investor in Centerra.

116. P&M, PMLC and Poag deny the allegations set forth in Paragraph 116 of the Complaint.

117. P&M, PMLC and Poag deny the allegations set forth in Paragraph 117 of the Complaint. P&M and PMLC further affirmatively state that MCLC and the other Plaintiffs are also sophisticated businesses familiar with financing and development.

118. P&M, PMLC and Poag deny the allegations in Paragraph 118 of the Complaint. P&M, PMLC and Poag specifically deny that MCLC acted in good faith or in reliance on P&M or PMLC.

119. P&M, PMLC and Poag deny the allegations in Paragraph 119 of the Complaint.

120. In response to the allegations in Paragraph 120 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

C
Response to Third Cause of Action
(Breach of Fiduciary Duties)

121. In response to the allegations set forth in Paragraph 121 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

122. P&M, PMLC and Poag state that the allegations in Paragraph 122 are really a legal conclusion to which no response is required. To the extent a response is required, P&M and PMLC admit that each had a fiduciary duty to Centerra, MCLC and McWhinney, as outlined in the Centerra Operating Agreement.

123. P&M, PMLC and Poag deny the allegations in Paragraph 123 of the Complaint and all subparts thereto. P&M, PMLC and Poag specifically deny that P&M or PMLC breached any fiduciary or other duty. P&M, PMLC and Poag further specifically deny each and every allegation in Paragraph 123(a) through (o).

124. P&M, PMLC and Poag deny the allegations in Paragraph 124 of the Complaint and all subparts thereto. P&M, PMLC and Poag specifically deny that P&M or PMLC breached any fiduciary or other duty. P&M, PMLC and Poag further specifically deny each and every allegation in Paragraph 124(a) through (d).

125. P&M, PMLC and Poag deny the allegations in Paragraph 125 of the Complaint.

126. In response to the allegations in Paragraph 126 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

D
Response to Fourth Cause of Action
(Indemnity)

127. In response to the allegations set forth in Paragraph 127 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

128. In response to the allegations set forth in Paragraph 128 of the Complaint, P&M, PMLC and Poag admit that P&M was the managing member of Centerra. P&M, PMLC and Poag deny the remaining allegations in this paragraph.

129. P&M, PMLC and Poag deny the allegations set forth in Paragraph 129 of the Complaint and all subparts thereto. P&M, PMLC and Poag specifically deny each and every allegation in Paragraph 129(a) through (b), and in particular, any allegation that P&M or PMLC committed fraud or breached any contractual or fiduciary duty, or that P&M, PMLC or Poag committed fraud, gross negligence, or willful misconduct. P&M, PMLC and Poag further affirmatively state that Plaintiffs' claimed damages, if any, were caused, at least in part, by Plaintiffs' own actions and not the actions of P&M, PMLC or Poag.

130. P&M, PMLC and Poag state that the allegations in Paragraph 130 state a legal conclusion to which no response is required. To the extent a response is required, P&M, PMLC and Poag deny the allegations in Paragraph 130 of the Complaint. P&M, PMLC and Poag specifically deny that MCLC or any other Plaintiff is entitled to indemnification from any of the Defendants, and that the allegations in Paragraphs 127-130 adequately state any such claim.

E
Fifth Cause of Action
(Intentional Interference with Contractual Obligations)

131. In response to the allegations set forth in Paragraph 131 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

132. In response to the allegations in Paragraph 132 of the Complaint, P&M, PMLC and Poag state that they do not have sufficient information from which to determine the veracity of the allegations and therefore deny the same. P&M, PMLC and Poag further state that it is impossible for P&M, PMLC and Poag to state whether they were aware of certain contracts between the Plaintiffs and third parties, when such contracts are not identified.

133. In response to the allegations set forth in Paragraph 133 of the Complaint, P&M, PMLC and Poag state as follows:
    a. P&M, PMLC and Poag admit that P&M and PMLC are aware of the MFA. P&M, PMLC and Poag further state that the referenced agreement speaks for itself. To the extent the allegations are inconsistent with the referenced agreement, those allegations are denied.
    b. P&M, PMLC and Poag admit that P&M and PMLC, at some point in 2010, became aware of loans to the metropolitan district, but deny any knowledge prior to 2010. P&M, PMLC and Poag further state that they do not have sufficient information from which to determine the veracity of the remaining allegations and therefore deny the same.
    c. P&M, PMLC and Poag admit that P&M and PMLC, at some point in 2010, became aware of loans to the metropolitan district, but deny any knowledge prior to 2010. P&M, PMLC and Poag further state that they do not have sufficient information from which to determine the veracity of the remaining allegations and therefore deny the same.

134. P&M, PMLC and Poag deny the allegations set forth in Paragraph 134 of the Complaint.

135. P&M, PMLC and Poag deny the allegations set forth in Paragraph 135 of the Complaint. P&M, PMLC and Poag further state that there was no interference, and deny that any alleged interference was improper.

136. P&M, PMLC and Poag deny the allegations set forth in Paragraph 136 of the Complaint.

137. P&M, PMLC and Poag state that the allegations in Paragraph 137 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations are inconsistent with the referenced agreement, those allegations are denied.

138. In response to the allegations set forth in Paragraph 138 of the Complaint, P&M, PMLC and Poag state that the referenced agreement speaks for itself. To the extent the allegations are inconsistent with the referenced agreement, those allegations are denied. P&M, PMLC and Poag further specifically deny that the referenced attorney fee provision applies in this case or that this case or this claim involves a dispute over the referenced agreement referred to as the MFA.

139. In response to the allegations in Paragraph 139 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that

any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

F
Response to Sixth Cause of Action
(Intentional Inducement of Breach of Contract)

140. In response to the allegations set forth in Paragraph 140 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

141. In response to the allegations set forth in Paragraph 141 of the Complaint, P&M, PMLC and Poag state that the referenced contracts speak for themselves. To the extent the allegations are inconsistent with the referenced contracts, those allegations are denied.

142. P&M, PMLC and Poag deny the allegations set forth in Paragraph 142 of the Complaint.

143. P&M, PMLC and Poag deny the allegations set forth in Paragraph 143 of the Complaint.

144. P&M, PMLC and Poag deny the allegations set forth in Paragraph 144 of the Complaint. P&M, PMLC and Poag specifically deny that it was a rationally or reasonably foreseeable consequence of the alleged wrongful conduct that an unrelated third party would not pay its debts to related entities controlled by the same individual(s).

145. P&M, PMLC and Poag deny the allegations set forth in Paragraph 145 of the Complaint.

146. In response to the allegations in Paragraph 146 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

G
Response to Seventh Cause of Action
(Fraud in the Inducement)

147. In response to the allegations set forth in Paragraph 147 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

148. P&M, PMLC and Poag deny the allegations set forth in Paragraph 148 and all subparts thereto.

149. P&M, PMLC and Poag deny the allegations set forth in Paragraph 149 of the Complaint.

150. P&M, PMLC and Poag deny the allegations set forth in Paragraph 150 of the Complaint.

H
Response to Eighth Cause of Action
(Fraudulent Concealment)

151. In response to the allegations set forth in Paragraph 151 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

152. P&M, PMLC and Poag deny the allegations set forth in Paragraph 152 of the Complaint. P&M, PMLC and Poag further affirmatively state that the referenced agreement speaks for itself. To the extent the allegations are inconsistent with the agreement, those allegations are denied. P&M, PMLC and Poag further specifically deny that P&M or PMLC breached or ignored its contractual obligations, or that the agreement does not accurately state the parties' intention. P&M, PMLC and Poag further deny that P&M or PMLC every concealed or failed to disclose any material fact.

153. P&M, PMLC and Poag deny the allegations in Paragraph 153 of the Complaint and all subparts thereto. P&M, PMLC and Poag further specifically deny that the alleged fact was material.

154. P&M, PMLC and Poag deny the allegations set forth in Paragraph 154 of the Complaint.

155. P&M, PMLC and Poag deny the allegations set forth in Paragraph 155 of the Complaint.

156. P&M, PMLC and Poag deny the allegations set forth in Paragraph 156 of the Complaint.

157. P&M, PMLC and Poag deny the allegations set forth in Paragraph 157 of the Complaint.

158. P&M, PMLC and Poag deny the allegations set forth in Paragraph 158 of the Complaint.

159. In response to the allegations in Paragraph 159 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

I
Response to Ninth Cause of Action
(Civil Conspiracy)

160. In response to the allegations set forth in Paragraph 160 of the Complaint, P&M, PMLC and Poag incorporate all of the preceding paragraphs as if set forth fully herein.

161. P&M, PMLC and Poag deny the allegations set forth in Paragraph 161 of the Complaint.

162. P&M, PMLC and Poag deny the allegations set forth in Paragraph 162 of the Complaint and all subparts thereto. P&M, PMLC and Poag further specifically deny that the alleged wrongful acts constitute an unlawful goal sufficient to support a conspiracy claim.

163. P&M, PMLC and Poag deny the allegations set forth in Paragraph 163 of the Complaint.

164. In response to the allegations in Paragraph 164 of the Complaint, P&M, PMLC and Poag note that such allegations are improper under the statute referenced in the allegations. The stated "intention" to amend to seek exemplary damages is simply a way of asserting a claim for exemplary damages prohibited by Colorado law. P&M, PMLC and Poag specifically deny that there is a basis for any exemplary damages claim in this case and further deny that any of the Defendants engaged in any conduct that was fraudulent, willful and wanton, or malicious.

165. P&M, PMLC and Poag deny any allegation set forth in the Complaint or any attachment thereto not specifically admitted herein.

166. P&M, PMLC and Poag deny that Plaintiffs are entitled to any of the relief they seek in their prayer for relief, that Plaintiffs have suffered any real and non-speculative damages, and that any claimed damages were caused by any conduct on the part of the Defendants. P&M, PMLC and Poag further state that Plaintiffs have not adequately plead any cause of action against Defendants and have specifically failed to adequately plead special or consequential damages.

167. P&M, PMLC and Poag further state that Plaintiffs' claims are groundless, frivolous and/or brought in bad faith in violation of section 13-17-102, C.R.S.

168. P&M, PMLC and Poag hereby demand a trial by jury on all issues so triable.

WHEREFORE, P&M, PMLC and Poag pray that the Plaintiffs take nothing by their Complaint, that their claims be dismissed with prejudice forthwith, and that Defendants be awarded their actual attorney fees and costs in having to respond to and defend the Plaintiffs' claims under the parties' agreement, common law and statutory indemnification, and/or applicable statutes including without limitation section 13-17-102, C.R.S.

II
AFFIRMATIVE DEFENSES

P&M, PMLC and Poag hereby state as follows for their affirmative defenses to Plaintiffs' claims:

1. Plaintiffs' claims fail to state a claim upon which relief may be granted.

2. Plaintiffs' claims are barred due to their failure to properly plead fraud with particularity.

3. Plaintiffs' claims are barred by the business judgment rule.

4. Plaintiffs' claims are barred by the express terms of the Operating Agreement.

5. Plaintiffs' claims are barred by the express terms of any referenced agreement, including without limitations, the MFA.

6. Plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose.

7. Plaintiffs' claims are barred by the statute of frauds.

8. Plaintiffs' claims are barred and/or their claimed damages must be reduced by the doctrines of waiver, laches, estoppel, ratification, accord and satisfaction and/or setoff.

9. Plaintiffs' claims are barred and/or their claimed damages must be reduced by the doctrine of assumption of risk.

10. Plaintiffs' claims are barred by their own prior breach of contract or other wrongful conduct, or the wrongful conduct of their affiliates, subsidiaries or related entities, employees or agents, including without limitation breach of the duty of good faith and fair dealing and breach of the duty of loyalty.

11. Plaintiffs' claims are barred and/or reduced by their own negligence or fault.

12. Plaintiffs' claims are barred by the doctrine of unclean hands.

13. Plaintiffs' claims are barred by their own wrongful conduct, or the wrongful conduct of their affiliates, subsidiaries or related entities, employees or agents, including without limitation, such parties' fraud and/or negligent misrepresentation.

14. Plaintiffs' claims are barred by the doctrine of impossibility of performance, commercial frustration, acts of God, and/or because of a lack of reasonable foreseeability.

15. Plaintiffs' claims are barred as the claimed damages or losses were the result of an intervening or unforeseeable cause.

16. Plaintiffs' claims are barred as the claimed damages are due to an unexpected and unforeseeable market collapse and not the conduct of any of the Defendants.

17. Plaintiffs' claims are barred due to their failure to name indispensable parties.

18. Plaintiffs' claims are barred due to a failure or lack of consideration.

19. Plaintiffs' claims are barred by the economic loss doctrine.

20. Plaintiffs' claims are barred as the alleged false representations upon which they rely are statements of opinion, not fact.

21. Plaintiffs' claims are barred as the alleged false representations are true and/or are not material.

22. Plaintiffs' claimed damages are barred and/or not recoverable because they are speculative and/or uncertain.

23. Plaintiffs' damages are barred and/or not recoverable as the claimed damages were caused by third parties or nonparties over which Defendants had no control.

24. Plaintiffs' damages are barred and/or not recoverable as Plaintiffs, or Plaintiffs' affiliates, parents or related entities, caused their own claimed damages or losses.

25. Plaintiffs' damages are barred and/or must be reduced due to their failure to mitigate damages.

26. Plaintiffs' damages are barred and/or not recoverable as Plaintiffs have failed to properly plead special and/or consequential damages.

27. Plaintiffs' claims are, in whole or in part, groundless, frivolous or vexatious. Defendants are therefore entitled to recoup the actual attorney fees and costs incurred in having to defend against such claims under section 13-17-102, C.R.S. and other applicable law.

28. Plaintiffs' claims are brought, in whole or in part, against P&M in its capacity as manager of Centerra, LLC entitling P&M to be indemnified against any and all claims, damages, or costs of defense under the parties' agreements and/or other applicable law.

29. Plaintiffs' claimed damages are subject to the limitations in sections 13-21-102.5, 13-21-111, 13-21-111.5, 13-21-111.6, 13-21-111.7, C.R.S., the comparative or similar statutory limitations under Delaware law, and other applicable law.

These affirmative defenses are pled here in the alternative and based upon the knowledge and information currently known to Defendants and their counsel. Pursuant to Rule 8, C.R.C.P., Defendants will withdraw and/or amend these defenses as further information is discovered. Defendants reserve the right to amend this Answer to assert additional affirmative defenses that may be deemed applicable at a later date.

P&M, PMLC and Poag hereby demand a trial by jury on all issues so triable.

WHEREFORE, P&M, PMLC and Poag pray that the Plaintiffs take nothing by their Complaint, that their claims be dismissed with prejudice forthwith, and that Defendants be awarded their actual attorney fees and costs in having to respond to and defend the Plaintiffs' claims under the parties' agreement, common law and statutory indemnification, and/or applicable statutes including without limitation section 13-17-102, C.R.S.

III
COUNTERCLAIM

Defendants Poag & McEwen Lifestyle Centers-Centerra, LLC ("P&M"), Poag & McEwen Lifestyle Centers, LLC ("PMLC"), and Poag Lifestyle Centers, LLC ("Poag"), as their counterclaim against Plaintiffs, hereby state and allege as follows:

A
Parties, Jurisdiction and Venue

1. P&M is a Delaware limited liability company in good standing that did business in Larimer County, Colorado. P&M is a 50% owner in Centerra Lifestyle Centers, LLC ("Centerra"), a joint venture with Plaintiff McWhinney Centerra Lifestyle Centers, LLC ("MCLC"). P&M is also the manager of Centerra, and a named Defendant in this lawsuit.

2. PMLC is a Delaware limited liability company in good standing. PMLC is part owner of P&M and a signator to the Centerra Operating Agreement executed by P&M and MCLC. PMLC is also a named Defendant in this lawsuit.

3. Poag is a Delaware limited liability company in good standing. Poag is a named Defendant in this lawsuit.

4. Plaintiff and Counterclaim Defendant McWhinney Holding Company, LLLP ("McWhinney") is a Colorado limited liability partnership doing business in Larimer County, Colorado. McWhinney is the sole owner of MCLC.

5. Plaintiff and Counterclaim Defendant MCLC is a Colorado limited liability company doing business in Larimer County, Colorado.

6. Plaintiff and Counterclaim Defendant Centerra Properties West, LLC, is a Colorado limited liability company doing business in Larimer County, Colorado.

7. Plaintiff and Counterclaim Defendant SMP4 Investments, LLC, is a Colorado limited liability company doing business in Larimer County, Colorado.

8. Plaintiff and Counterclaim Defendant Centerra Retail Sales Fee Corporation is a Colorado non-profit corporation doing business in Larimer County, Colorado.

9. Counterclaim Defendants are all Colorado entities doing business in Larimer County, Colorado. Jurisdiction is therefore proper in this Court.

10. The subject matter of this counterclaim concerns real property and acts that occurred in Larimer County, Colorado. Venue is therefore proper in this Court.

B
General Allegations

11. P&M, PMLC and Poag hereby incorporate by reference all of the affirmative statements of fact set forth in their Answer to Plaintiff's Complaint set forth in Section I herein.

12. In 2001, PMLC, in partnership with McWhinney, began planning the development, ownership and management of a lifestyle shopping center to be located on real property located east and north of Interstate 25 on Colorado Highway 34 in Loveland, Colorado.

13. This lifestyle shopping center eventually became known as the Promenade Shops at Centerra.

14. The Promenade Shops are one piece of a much larger planned development project by McWhinney, which owns, either directly or indirectly through various affiliates or subsidiaries, the surrounding real property.

15. The Promenade Shops were constructed and owned by Centerra, an entity owned 50% each by P&M and MCLC, entities formed by PMLC and McWhinney respectively.

16. PMLC was sought out by McWhinney for this project based on PMLC's national reputation.

17. By May 2004, P&M, in anticipation of and reliance upon the joint venture with McWhinney, began signing up and negotiating leases with tenants for the Promenade Shops. These tenants included big box retail stores like Foley's and Dick's Sporting Goods.

18. On or about October 28, 2005, the Promenade Shops were partially leased and open for business.

19. On September 29, 2004, P&M and MCLC jointly formed Centerra and executed an operating agreement setting forth the respective duties and obligations and rights of each member. A true and correct copy of the Centerra Operating Agreement, without exhibits, is attached hereto as Exhibit A.

20. On or about October 22, 2004, Centerra entered into a Construction Loan Agreement with a group of lenders whose lead agent was JP Morgan Chase Bank, NA ("Construction Loan").

21. Centerra was the borrower on the Construction Loan, which was secured by a deed of trust on the Promenade Shops and an assignment of rents and profits.

22. The original aggregate principal loan amount of the Construction Loan was $116 million.

23. The Construction Loan was amended three times on or about the following dates: January 31, 2005; October 23, 2007; and October 23, 2008.

24. The Construction Loan, as amended, matured on January 23, 2009.

25. For several months prior to the January 23, 2009 maturity date, P&M, on behalf of Centerra, diligently and in good faith undertook efforts to refinance the Construction Loan, which, as defined in the Centerra Operating Agreement, was referred to as the Permanent Loan.

26. The efforts described in Paragraph 25 of this Counterclaim were made in conjunction with and with input from MCLC.

27. Prior to the January 23, 2009 maturity date, MCLC also made efforts to obtain refinancing of the Construction Loan, referred to as the Permanent Loan.

28. None of the various proposals or terms for the Permanent Loan (refinancing) obtained by P&M or MCLC was acceptable to either P&M or MCLC.

29. In the fall of 2008, the United States economy severely declined and real estate values plummeted.

30. This decline was not reasonably foreseeable or expected.

31. As was true for virtually all real estate projects in the United States in this time period, the Promenade Shops' value dropped sharply.

32. As a result, this crash in the United States economy made obtaining the Permanent Loan (refinancing) extremely difficult, if not virtually impossible.

33. Both MCLC and P&M agreed that the terms of the various proposals for the Permanent Loan (refinancing) that were available prior to January 23, 2009 were unreasonable and unacceptable.

34. Despite diligent and good faith efforts, Centerra was not able to obtain the necessary Permanent Loan (refinancing) prior to the maturity date of January 23, 2009.

35. After the maturity date, P&M continued its good faith efforts to try to obtain a Permanent Loan (refinancing) or otherwise resolve the default of the Construction Loan.

36. MCLC continually obstructed and thwarted P&M's efforts to obtain a Permanent Loan (refinancing) or to otherwise resolve the default of the Construction Loan.

37. Specifically, MCLC unreasonably withheld consent to the terms of a Permanent Loan (refinancing) proposed by P&M on February 9, 2009, and rejected such terms after only 11 days.

38. MCLC also unreasonably withheld its consent to additional terms of a Permanent Loan (refinancing) proposed by P&M on March 13, 2009, and rejected such terms after only 12 days.

39. MCLC and McWhinney refused to share with P&M the various Permanent Loan (refinancing) proposals MCLC was pursuing and/or offered.

40. On April 9, 2009, P&M and MCLC met with JP Morgan Chase in Chicago, IL to discuss the default of the Construction Loan.

41. MCLC was a very active participant in the meeting with JP Morgan Chase, asking numerous questions and suggesting numerous alternatives.

42. In the April 9, 2009 meeting, MCLC made a verbal, ten point proposal.

43. Both MCLC and P&M knew each would have to compromise in order to succeed at obtaining a Permanent Loan (refinancing).

44. On July 31, 2009, MCLC proposed a Permanent Loan (refinancing) where MCLC and P&M would each contribute $4.5 million to fund a $9 million payment on the Construction Loan in exchange for which the Construction Loan would be extended for three years.

45. Despite being a proponent of this $9 million Permanent Loan (refinancing) proposal, MCLC subsequently reversed its position while in a meeting with Key Bank on September 16, 2009.

46. MCLC thereafter refused to agree to contribute the $4.5 million and improperly rejected and refused to comply with a mandatory capital call issued by P&M, as manager of Centerra, in compliance with the Centerra Operating Agreement.

47. Despite MCLC's involvement in the negotiations with JP Morgan Chase and Key Bank, MCLC failed to recognize that it was in the best interests of Centerra and each member of Centerra to work together to try to find Permanent Loan (refinancing) to avoid foreclosure, and refused to work with P&M on such efforts.

48. Instead, MCLC, without justification, openly accused P&M of acting in bad faith and other wrongful conduct and communicated such false accusations to JP Morgan Chase Bank and Key Bank.

49. MCLC also, without justification and contrary to the plain terms of the Centerra Operating Agreement, insisted P&M pay the entire $9 million necessary to obtain the Permanent Loan (refinancing) and treat such contribution as a Member Loan to Centerra rather than an increase in P&M's ownership interest.

50. MCLC's unjustifiable rejection of its previously proposal to pay down the Construction Loan by $9 million and false accusations about P&M to Key Bank hurt Centerra and P&M's credibility with the Construction Loan lenders, including Key Bank, and made it even more difficult for P&M to obtain reasonable terms for a Permanent Loan (refinancing).

51. MCLC thereafter continued to refuse to cooperate with P&M and to hinder and delay P&M's efforts to obtain a Permanent Loan (refinancing).

52. MCLC threatened P&M and eventually sued P&M over unsupported accusations related to a $40 million mezzanine loan obtained by an affiliate of P&M.

53. MCLC's accusations regarding the mezzanine loan were unfounded, as MCLC (a) knew of the mezzanine loan before it was made and did not object to it, (b) knew the mezzanine loan was entered into by an affiliate of P&M, (c) knew that the mezzanine loan was nonrecourse to PMLC and Centerra, and (d) knew that the securing of the mezzanine loan by P&M's interest in Centerra was permitted under the terms of the Centerra Operating Agreement.

54. MCLC further obstructed the ability of P&M to enter into a Permanent Loan (refinancing) by misstating lenders' requirements for Permanent Loan (refinancing).

55. Specifically, MCLC claimed the Construction Loan lenders would not enter into a Permanent Loan (refinancing) until "certain partnership issues" were resolved; "partnership issues" created by false and unfounded accusations made by MCLC to those lenders.

56. MCLC used this purported lender requirement to insist that P&M agree to unreasonable and unfair terms in order for MCLC to consider the "partnership issues" resolved. These included, without limitation:
    a. That P&M acknowledge that all of its previously Permanent Loan (refinancing) proposals did not constitute the proposal for a Permanent Loan as contemplated by the Operating Agreement;
    b. That P&M acknowledge that the exclusivity agreement with respect to certain tenants in the Promenade Shops had expired;
    c. That P&M execute an amendment to the Operating Agreement to narrow what is considered a "prospective tenant" which would have reduced the restrictions on MCLC and McWhinney from diverting tenants away from the Promenade Shops and putting them in a competing shopping center owned by MCLC and/or McWhinney or their affiliates or related entities, thereby resulting in a deteriorated value of the Promenade Shops;
    d. That P&M reduce its management fee from 5% to 3.5%;
    e. That P&M guaranty and indemnify MCLC with respect to the damage it claimed it incurred as a result of the inability to obtain Permanent Loan (refinancing); and
    f. That P&M grant MCLC a right of first refusal on any proposed sale of the Promenade Shops by either Centerra or its lenders, thus hindering the resale of the Promenade Shops and deteriorating its value.

57. MCLC, sensing it now had leverage over P&M, greatly expanded the so-called "partnership issues" over the span of less than twenty-four hours from four to fifteen.

58. Upon information and belief, MCLC made the demands listed in Paragraph 53 herein, among others, not to resolve partnership issues it created but instead to try to minimize its responsibility and obligations to Centerra and P&M so it and its parent company, McWhinney, could develop a competing shopping center on adjacent property or otherwise get out of the joint venture with P&M and PMLC.

59. Upon information and belief, MCLC and McWhinney blamed P&M for the collapse of the real estate market and economic crisis experienced by the United States beginning in 2008, and instead of working with P&M to try to find a resolution to the defaulted Construction Loan and save the parties' joint venture, hindered, delayed, undermined and intentionally interfered with P&M's efforts to obtain a Permanent Loan (refinancing).

60. Upon information and belief, MCLC and McWhinney were not interested in obtaining a Permanent Loan (refinancing), but instead looked to create hyper-technical disputes and partnership issues to take advantage of the inability to obtain a Permanent Loan (refinancing) so it could get out of an "underwater" project and instead focus on a new project.

61. Upon information and belief, MCLC and McWhinney, despite having received over $22 million from the project, were not satisfied with the Centerra project.

62. Upon information and belief, MCLC and McWhinney decided they wanted to compete with Centerra by developing an adjacent retail center known as Grand Station.

63. To further their goal of competing with Centerra, MCLC and McWhinney acted, in bad faith, to prevent refinancing of the Construction Loan and the purchase of the Construction Loan by at least three prospective buyers.

64. Upon information and belief, MCLC and McWhinney preferred foreclosure of the Centerra property because it furthered their goal of getting P&M and PMLC out of the picture and of getting MCLC and McWhinney out of the joint venture with P&M and PMLC.

65. MCLC further obstructed P&M efforts to salvage the parties' joint venture and acted in bad faith by failing to consider or reasonably discuss possible outside investors for the project who could contribute the necessary capital MCLC was refusing to contribute and instead accusing P&M of self-dealing because P&M was searching for possible alternatives that would enable P&M and MCLC to retain some ownership of the Promenade Shops.

66. MCLC and McWhinney further acted in bad faith by contending, on the one hand, that the Centerra property had dropped significantly in value because rents, taxes and extra were too high and/or because of the market collapse, and also objecting, on the hand, to efforts taken by P&M, with MCLC's assistance and consent, to appeal the tax assessments.

67. Upon information and belief, MCLC and McWhinney took these, and other, inconsistent and contrary positions because after taking one position or making one claim, it discovered that position or claim hurt its overall goals of squeezing P&M out, obtaining title to the Centerra property by purchasing it at a foreclosure sale, competing with the Promenade Shops at Centerra by developing their own competing shopping center site on adjacent property, and/or to increase revenues to the metropolitan district so inter-company loans made by and between the Plaintiffs, and potentially others, could be repaid.

68. In other words, MCLC and McWhinney routinely contradicted themselves when it suited their own needs or when necessary to obtain a personal advantage to P&M's or Centerra's detriment or without regard for the affect upon P&M or Centerra.

C
First Claim for Relief
Breach of Contract
P&M v. MCLC

69. P&M, PMLC and Poag hereby incorporate the allegations set forth in Paragraph 1 through 68 of this Counterclaim as if set forth fully herein.

70. On or about September 29, 2004, P&M and MCLC entered into a valid, binding Operating Agreement governing the rights and obligations of each in Centerra.

71. A true and correct copy of the parties' Operating Agreement, without exhibits, is attached hereto as Exhibit A.

72. The Operating Agreement was amended on April 23, 2007. A true and correct copy of the First Amended Operating Agreement, without exhibits, is attached hereto as Exhibit B.

73. Under Colorado and Delaware law, the Operating Agreement, like any contract, includes an obligation to act in good faith and to deal fairly with the other contracting party.

74. Pursuant to the express terms of the Operating Agreement, MCLC, as a member, was obligated to exercise its best efforts and owed a duty of good faith and fair dealing to Centerra and to each other member.

75. The common law duty of good faith and fair dealing as well as the express provisions of the Operating Agreement thus required MCLC to use its best efforts and act in good faith and deal fairly with P&M on specific member-approved decisions, including without limitation, approving the terms of any Permanent Loan (refinancing).

76. On April 10, 2009, P&M, as manager of Centerra, issued a mandatory capital call.

77. The capital call required each member to contribute $4.5 million.

78. The $4.5 million was necessary to obtain a Permanent Loan (refinancing) to resolve the defaulted Construction Loan, according to terms proposed by MCLC.

79. The capital call was made in compliance with the requirements of the Operating Agreement.

80. Despite demand, MCLC failed and refused to honor the capital call and rejected the same.

81. This rejection constituted an anticipatory breach of the Operating Agreement.

82. Further, as described in the General Allegations of this Counterclaim, MCLC repeatedly and continually thwarted P&M's efforts to obtain a Permanent Loan (refinancing), undermined P&M's efforts in this regard, damaged P&M's and Centerra's credibility with the Construction Loan lenders, and otherwise acted in bad faith and unfairly with regard to P&M.

83. MCLC also filed unsupported and false claims against P&M, requiring P&M to expend funds to defend itself. These claims are in direct violation of the express provisions of the Operating Agreement, which expressly states that a member is not liable to another member for actions taken on behalf of Centerra in good faith and reasonably believed to be in the

best interests of Centerra except for actions involving actual fraud, gross negligence or willful misconduct from which the member derived an improper personal benefit.

84. P&M at all times acted in good faith and reasonably believing such action or inaction was in the best interests of Centerra.

85. P&M at no time committed actual fraud, was not grossly negligent (nor accused of being grossly negligent), and did not at any time improperly derive a personal benefit from any alleged wrongdoing.

86. MCLC's actions described in Paragraphs 74 and 75 and elsewhere in this Counterclaim constitute a breach of MCLC's contractual obligations.

87. As a direct and proximate result of MCLC's breaches of contract, P&M has suffered actual, incidental and consequential damages and losses, the extent and amount of which will be proven at trial.

88. P&M is therefore entitled to judgment against MCLC for all damages and losses sustained as a result of MCLC's breaches of contract, plus pre and post judgment interest, attorney fees, and costs as allowed by law.

D
Second Claim for Relief
Breach of Contract - Duty of Good Faith and Fair Dealing
P&M and PMLC v. MCLC and McWhinney

89. P&M, PMLC and Poag hereby incorporate the allegations set forth in Paragraph 1 through 88 of this Counterclaim as if set forth fully herein.

90. On or about September 29, 2004, P&M and MCLC entered into a valid, binding Operating Agreement governing the rights and obligations of each in Centerra.

91. A true and correct copy of the parties' Operating Agreement, without exhibits, is attached hereto as Exhibit A.

92. The Operating Agreement was amended on April 23, 2007. A true and correct copy of the First Amended Operating Agreement, without exhibits, is attached hereto as Exhibit B.

93. Under Colorado and Delaware law, the Operating Agreement, like any contract, includes an obligation to act in good faith and to deal fairly with the other contracting party.

94. By its express terms, PMLC and McWhinney are also parties to the Operating Agreement.

95. MCLC and McWhinney therefore both owe a duty of good faith and fair dealing to P&M and PMLC.

96. MCLC has violated the covenant of good faith and fair dealing as outlined in the preceding Paragraphs 1 through 87.

97. McWhinney has, as described in this Counterclaim, also breached its duty of good faith and fair dealing to PMLC.

98. McWhinney has breached the covenant of good faith and fair dealing by, among other things, undermining and interfering with P&M's efforts to obtain a Permanent Loan (refinancing), making false accusations against P&M and PMLC, manufacturing a partnership dispute to further their own agenda, and filing false and unsupported claims against P&M and PMLC.

99. As a direct and proximate result of MCLC and McWhinney's breaches of the covenant of good faith and fair dealing, P&M and PMLC have suffered actual, incidental and consequential damages and losses, the extent and amount of which will be proven at trial.

100. P&M and PMLC are therefore entitled to judgment against MCLC and McWhinney, jointly and severally, for all damages and losses sustained as a result of their breaches of the covenant of good faith and fair dealing, plus pre and post judgment interest, attorney fees, and costs as allowed by law.

E
Third Claim for Relief
Breach of Fiduciary Duty
P&M and PMLC v. MCLC and McWhinney

101. P&M, PMLC and Poag hereby incorporate the allegations set forth in Paragraph 1 through 100 of this Counterclaim as if set forth fully herein.

102. P&M, PMLC, MCLC and McWhinney jointly formed a business for the purpose of constructing and operating the Promenade Shops at Centerra.

103. As business partners, P&M, PMLC, MCLC and McWhinney owed a fiduciary duty to each other.

104. MCLC, as a 50% owner of Centerra with veto power over numerous significant decisions and actions affecting management and operation of Centerra, owed a duty of loyalty and due care and a fiduciary duty to Centerra and P&M.

105. As described in this Counterclaim, MCLC and McWhinney breached their fiduciary duties to P&M and PMLC.

106. As a direct and proximately result of MCLC and McWhinney's breaches of fiduciary duty, P&M and PMLC have sustained actual, incidental and consequential damages and losses, the extent and amount of which will be proven at trial.

107. P&M and PMLC are therefore entitled to judgment against MCLC and McWhinney, jointly and severally, for all damages and losses sustained as a result of their breaches of fiduciary duty, plus pre and post judgment interest, attorney fees, and costs as allowed by law.

Fourth Claim for Relief
Abuse of Process
P&M, PMLC and Poag v. All Plaintiffs

108. P&M, PMLC and Poag hereby incorporate the allegations set forth in Paragraph 1 through 107 of this Counterclaim as if set forth fully herein.

109. On or about September 23, 2009, while P&M and MCLC were engaged in continued negotiations with the Construction Loan lenders regarding resolving the default of the Construction Loan and obtaining a Permanent Loan (refinancing), MCLC filed a Complaint in Arbitration against P&M making unsupported and false claims of breach of contract, breach of fiduciary duty, and fraud relating to efforts to obtain a Permanent Loan (refinancing) and regarding the mezzanine loan.

110. The filing of the arbitration was not for a proper purpose, but instead was motivated by an ulterior purpose of manufacturing a partnership dispute that would hold up refinancing and force P&M to assent to MCLC's unfair demands as described in this Counterclaim.

111. Upon information and belief, the arbitration proceedings were also motivated, not by a legitimate dispute and claim, but instead by the desire to terminate the partnership between P&M, PMLC, MCLC and McWhinney so that MCLC and McWhinney, and its related entities, could develop a competing shopping center on adjacent property.

112. The arbitration proceedings were also motivated, not by a legitimate dispute and claim, but instead by the desire to terminate the partnership between P&M, PMLC, MCLC and McWhinney so that MCLC and McWhinney, and its related entities, could purchase the Centerra property out of foreclosure.

113. The claims in the arbitration proceeding lacked merit.

114. After voluntarily dismissing the arbitration proceedings without resolution, Plaintiffs refilled the same meritless claims and added other unsupported claims against not only P&M but also PMLC and Poag, an entity not even in existence until after the events complained of, in this Court.

115. The claims filed in this Court also lack merit.

116. The claims filed in this Court were also filed for an ulterior purpose of, upon information and belief, terminating the partnership between P&M, PMLC, MCLC and McWhinney so that MCLC and McWhinney, and its related entities, could develop a competing shopping center on adjacent property.

117. The claims filed in this Court were also filed for an ulterior purpose of, upon information and belief, terminating the partnership between P&M, PMLC, MCLC and McWhinney so that MCLC and McWhinney, and its related entities, could purchase the Centerra property out of foreclosure.

118. The claims filed in this Court were also filed for an ulterior purpose of, upon information and belief, finding alternative funding to repay a $12 million loan made by and between the various Plaintiffs, the inability to repay stems not from actions of the Defendants but rather from the decline in real estate values, among other factors.

119. The arbitration proceeding and this lawsuit are thus willfully being used for an improper purpose and not the usual and regular course of a legal proceeding.

120. As a direct and proximate result of Plaintiffs' misuse of the legal system for an improper purpose, P&M, PMLC and Poag have sustained actual, incidental and consequential damages and losses, the extent and scope of which will be proven at trial.

121. P&M, PMLC and Poag are therefore entitled to entry of judgment against the Plaintiffs, jointly and severally, for all damages and losses sustained as a result of their abuse of process, plus pre and post judgment interest, attorney fees, and costs as allowed by law.

WHEREFORE, P&M, PMLC and Poag pray for entry of judgment in their favor as requested in this Counterclaim, for pre and post judgment interest, attorney fees and costs as allowed by law, and for such other and further relief as the court deems proper.

P&M, PMLC and Poag hereby demand a trial by jury on all issues so triable.

Dated this 30th day of January, 2012.

OTIS, COAN & PETERS, LLC
Attorneys for Defendants

s/ Jennifer Lynn Peters

By: G. Brent Coan, #27592
Jennifer Lynn Peters, #31699
Shannon D. Lyons, #26153

McWhinney Holding Company, LLLP, et al., Plaintiffs, vs. **Poag & McEwen Lifestyle Centers-Centerra, LLC, et al.,** Defendants.	Case No. **11 CV 1104** Division **4A**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of January, 2012, a true and correct copy of the foregoing **Answer, Counterclaim and Jury Demand** was served electronically, via LexisNexis File and Serve, upon the following:

Charles E. Norton, Esq.
J. Michael Keane, Esq.
Norton, Smith & Keane, P.C.
1331 17th Street, Suite 500
Denver, CO 80202

The undersigned hereby further certifies that on this 30th day of January, 2012, a true and correct copy of the foregoing **Answer, Counterclaim and Jury Demand** was served electronically, via electronic mail, to the following:

David A. Robinson, Esq. (drobinson@enterprisecounsel.com)
David E. Libman, Esq. (dlibman@enterprisecounsel.com)
Enterprise Counsel Group
3 Park Plaza, Suite 1400
Irvine, CA 92614

s/ Jennifer Lynn Peters

By: Kimberly Tregoning, Senior Paralegal

EXECUTION COPY

LIMITED LIABILITY COMPANY AGREEMENT

OF

CENTERRA LIFESTYLE CENTER, LLC

A Delaware Limited Liability Company

LIMITED LIABILITY COMPANY AGREEMENT
OF
CENTERRA LIFESTYLE CENTER, LLC
A Delaware Limited Liability Company

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EXHIBITS

SCHEDULES

LIMITED LIABILITY COMPANY AGREEMENT

OF

CENTERRA LIFESTYLE CENTER, LLC

A Delaware Limited Liability Company

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement"), is made as of the 29th day of September, 2004, by and between MCWHINNEY CENTERRA LIFESTYLE CENTER, LLC, a Colorado limited liability company, having an address at 2725 Rocky Mountain Avenue, Suite 200, Loveland, Colorado 80538 ("MCLC"), and POAG & McEWEN LIFESTYLE CENTERS – CENTERRA, LLC, a Delaware limited liability company having an address at 6410 Poplar Avenue, Suite 850, Memphis, TN 38119 ("P&M"), as members (MCLC and P&M are sometimes referred to herein as the "Members" or individually as a "Member").

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq., as amended, or any corresponding provision or provisions of any succeeding law.

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

(a) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

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

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

"Affiliate" means, with respect to any Member, (i) any person or entity that directly or indirectly controls, is controlled by, or is under common control with, a Member or (ii) any entity of which a Member owns more than fifty percent (50%) of the outstanding voting power. As used in this definition of "Affiliate," the term "control" means possessing, directly or indirectly, the power for any reason whatsoever to direct or cause the direction of the management and policies of an entity.

"Assignee" shall mean a person who has acquired a beneficial interest in the Company, but who is not a Substitute Member.

"Binding Arbitration" shall mean that any dispute arising under this Agreement that is specifically required to be resolved by Binding Arbitration shall be settled by binding arbitration in accordance with the current Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

"Buy-Out Closing Date" shall have the meaning given such term in Section 7.4(c) hereof.

"Buy-Out Price – A" shall have the meaning given such term in Section 7.4(a) hereof.

"Buy-Out Price – B" shall have the meaning given such term in Section 7.4(a) hereof.

"Capital Account" means, as to any Member, the account maintained for such Member pursuant to Section 3.7.

"Capital Contribution" means the amount of cash and the agreed upon fair market value of any property contributed to the Company by each Member (or the Member's predecessor) pursuant to Article III hereof for completing, developing, expanding, owning or operating the Property and/or the Improvements. The current Capital Contributions of the Members as of the date hereof are set forth on Exhibit A attached hereto.

"Capital Contribution Account" means the account established for each Member pursuant to Section 3.9 hereof.

"Capital Income Account" means the account established for each Member pursuant to Section 3.8 hereof.

"Capital Proceeds" shall mean the cash proceeds (net of costs, expenses, any amounts required to be paid into escrow and any debts required to be paid pursuant to the transaction generating such proceeds or pursuant to any Company financing and net of any funds set aside by mutual agreement of the Members for property rehabilitation reserves) from:

(i) the sale, exchange or other disposition of any portion of the Property, including Outlots, other than those resulting in, or in the course of, the liquidation and dissolution of the Company, which shall be governed by Article IX hereof;

(ii) any mortgage financing or refinancing of any mortgage loans on the Property (including the Permanent Loan), but not including any advances borrowed by the Company under the terms of the Construction Loan;

(iii) any condemnation, casualty insurance or any other nonrecurring proceeds not used for the restoration of the Property; or

(iv) any tenant chargebacks or other tenant reimbursements for items previously capitalized on the Company's books and records.

"Cash Flow" shall mean an amount of cash equal to all gross income received from the operation of the Property, other than Capital Proceeds, determined in accordance with the cash method of accounting, including but not limited to minimum and percentage rent, and expense contributions (including but not limited to CAM, property taxes, insurance, property management fees, on-site personnel, administrative fees, structural reserve and other structural cost contributions, marketing funds and any sales tax or other rebates paid or reimbursed to the Company by any governmental authority), less the sum of (i) Operational Expenses, (ii) interest paid (except interest paid from an interest impound account as required by the Construction Loan) and scheduled principal payments paid by the terms of Company debt owed to third parties and Member Loans, and (iii) reasonable reserves for taxes, insurance, structure and maintenance reserves and working capital needs, all of which shall be paid and/or reserved prior to the distribution of Cash Flow. There shall be no deduction for depreciation or other non-cash charges. The structural reserve described in the definition of Operational Expenses shall be funded based only on improvements owned by the Company and not on owner-occupied stores or on ground leased pads with respect to which the lessee or owner-occupant has full responsibility for maintenance of improvements.

"Cause" shall have the meaning given such term in Section 6.5 hereof.

"Center" means the Centerra retail shopping center owned by the Company and located in Larimer County in Loveland, Colorado.

"Code" means the Internal Revenue Code of 1986, as amended or superseded from time to time.

"Commencement Date" means the date on which construction of Improvements on the Property commences.

"Company" means Centerra Lifestyle Center, LLC, a Delaware limited liability company.

"Construction Loan" means the construction loan to be obtained for construction of the Center on the Property and secured by a mortgage on the Property.

"Construction Budget" means the budget prepared by the Manager for the construction of the Center that is acceptable to the lender who is to provide the Construction Loan, including a rent roll and any estimate of Total Net Project Cost.

"Construction Loan Closing" means the date of the closing of the Construction Loan.

"Continuation Event" has the meaning given such term in Section 9.3 hereof.

"Contribution Adjustment Date" shall have the meaning given such term in Section 3.6 hereof.

"Contribution Agreement" means the Contribution Agreement among the Company, P&M and MCLC, substantially in the form attached hereto as Exhibit B.

"Cost Overruns" means cost overruns in the construction of Improvements on the Property and the build-out of the tenants' premises (to the extent that the Company is responsible for such build-out) over the amounts set forth in the Construction Budget.

"Deposit" shall have the meaning given such term in Section 7.4(e) hereof.

"Development Agreements" mean the P&M Development Agreement and the MCLC Development Agreement.

"Dissolution Event" has the meaning given such term in Section 9.2 hereof.

"Effective Date" means September 29th, 2004, which is the date of execution of this Agreement.

"Failed Contribution" shall have the meaning set forth in Section 3.4 hereof.

"Fair Value-Company" shall mean the Fair Value-Property computed as of the Contribution Adjustment Date (i) plus the Company's cash on hand as of the Contribution Adjustment Date, (ii) plus or minus the accrued liabilities, accrued receivables and unpaid expenses of the Company as of the Contribution Adjustment Date, (iii) less any mortgage indebtedness or other Company indebtedness, including Member Loans.

"Fair Value-Property" shall mean the following process for determining the value of the Property as of the Contribution Adjustment Date. The Fair Value-Property shall be the value determined by (i) applying a nine percent (9.0%) capitalization rate to Stabilized Cash Flow (i.e., by dividing Stabilized Cash Flow by .09), and then adding thereto the Outlot Value for each Outlot not sold, ground leased or leased as of the Contribution Adjustment Date.

"Financing Equity" shall have the meaning given such term in Section 3.2(c) hereof.

"Financing Support" shall have the meaning given such term in Section 7.2(b) hereof.

"Improvements" shall mean any addition to or enhancement of the Property, including, but not limited to, the construction of buildings and other structures and the development of streets, sidewalks, sewers and utilities thereon.

"Improvements Agreement" means that agreement setting forth the Off-Property Improvements to be constructed by MCLC or an Affiliate of MCLC, in form reasonably satisfactory to P&M.

"IRS" means the Internal Revenue Service.

"Lifestyle Center" shall mean an open-air retail shopping center that includes upscale specialty retailers and dine-in restaurants.

"Liquidator" shall have the meaning given such term in Section 9.4 hereof.

"Majority in Interest" means Members holding at least a majority of all Percentage Interests.

"Management Agreement" means the Management Agreement between the Company and P&M, substantially in the form attached hereto as Exhibit F.

"Manager" means P&M.

"Mandatory Capital Call" shall have the meaning given such term in Section 3.2(d) hereto.

"McWhinney Holding" means McWhinney Holding Company, LLLP, a Colorado limited liability limited partnership, and the parent of MCLC.

"Member" or *"Members"* means any Person executing this Agreement as of the Effective Date as a member of the Company or hereafter admitted to the Company as a Substitute Member as provided in this Agreement, but does not include any Assignee or any Person who has ceased to be a Member of the Company.

"Member Loan" means a loan to the Company for additional funds made by a Member pursuant to Section 3.1(a) hereof.

"Member Nonrecourse Debt" means a debt or liability of the Company (including a debt or liability of any subsidiary pursuant to Regulation Section 1.704-2(k)(5)) which would be a Nonrecourse Liability, except that a Member bears the economic risk of loss because, for example, the Member is the creditor or guarantor as described in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means "partner nonrecourse debt minimum gain," as such term is defined in Regulations Section 1.704-2(i)(2).

"Member Nonrecourse Deductions" means any item of partnership loss, deduction, or expenditure under Section 705(a)(2)(B) of the Code that is attributable to a Member Nonrecourse Debt, as determined pursuant to Regulations Section 1.704-2(i)(2).

"Member Offeree" shall have the meaning given such term in Section 8.2(a) hereof.

"Membership Interest" means, with respect to any Member, such Member's total ownership interest in the Company, including such Member's Percentage Interest and percentage voting rights interest in the Company.

"MCLC Development Agreement" means the Development Agreement between the Company and MCLC, substantially in the form attached hereto as Exhibit E.

"Minimum Gain" means the amount determined by (a) computing for each Nonrecourse Liability of the Company any gain the Company would realize if it disposed of the property

subject to that liability for no consideration other than full satisfaction of the liability and (b) aggregating separately computed gains, increased by any minimum gain assigned to the Company from a subsidiary pursuant to Regulation Section 1.704-2(k). If, pursuant to Regulations Sections 1.704-1(b)(2)(iv)(d) or 1.704-1(b)(2)(iv)(f), Company property is properly reflected on the books of the Company at a value different from the adjusted tax basis of such property, the calculation of Minimum Gain pursuant to the preceding sentence shall be made by reference to such book value.

"Net Capital Gain" means, for each Year or other applicable period, the excess of the Company's gains realized from sales or exchanges of capital assets over the losses realized during such Year from such sales or exchanges and expenses incurred in connection with the transactions. For a Year in which "section 1231 gains" exceed "section 1231 losses," as those terms are defined in section 1231(a)(3) of the Code, such gains and losses from sales and exchanges of property used in the trade or business shall be treated as gains and losses from sales or exchanges of capital assets and shall be included in the determination of Net Capital Gain. For a Year in which "section 1231 gains" do not exceed "section 1231 losses," such gains and losses from sales and exchanges of property used in the trade or business shall not be treated as gains and losses from sales or exchanges of capital assets and shall not be included in the determination of Net Capital Gain.

"Net Capital Loss" means, for each Year, the excess of the Company's losses realized from sales or exchanges of capital assets and expenses incurred in connection with the transactions over gains realized during such Year from such sales and exchanges. For a Year in which "section 1231 gains" exceed "section 1231 losses," as those terms are defined in Section 1231(a)(3) of the Code, such gains and losses from sales and exchanges of property used in the trade or business shall be treated as gains and losses from sales or exchanges of capital assets and shall be included in the determination of Net Capital Loss. For a Year in which "section 1231 gains" do not exceed "section 1231 losses," such gains and losses from sales and exchanges of property used in the trade or business shall not be treated as gains and losses from sales or exchanges of capital assets and shall not be included in the determination of Net Capital Loss.

"Net Profit" or *"Net Loss"* means, for each Year, an amount equal to the Company's taxable income or loss (after the adjustments described below) for each Year or other applicable period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Expenditures described in Section 705(a)(2)(B) of the Code, not otherwise taken into account in determining Net Profit or Net Loss, shall be included as an expense in the determination of Net Profit and Net Loss;

(b) Gross revenue allocated pursuant to Section 4.1 hereof shall be subtracted or otherwise eliminated in the determination of Net Profit and Net Loss;

(c) Income exempt from taxation shall be included in the determination of Net Profit and Net Loss; and

(d) Items which are specially allocated pursuant to Section 4.5 hereof (except for Nonrecourse Deductions) shall be eliminated by adding them or subtracting them, as the case may be, in the determination of Net Profit and Net Loss.

"Non-Contributing Member" shall have the meaning set forth in Section 3.4 hereof.

"*Non-Defaulting Member*" shall have the meaning set forth in Section 3.4 hereof.

"Non-Mandatory Capital Call" shall have the meaning given such term in Section 3.3(a) hereof.

"Nonrecourse Deduction" means losses, deductions and items described in Section 705(a)(2)(B) of the Code attributable to Nonrecourse Liabilities of the Company as described in Regulations Sections 1.704-2(b)(1) and 1.704-2(c), including nonrecourse deductions of any subsidiary allocated to the Company and treated as described in Regulation Section 1.704-2(k)(4).

"Nonrecourse Liability" means a debt or liability of the Company or any subsidiary, to the extent that no Member or related person bears the economic risk of loss for that liability within the meaning of Regulations Sections 1.752-2 and 1.752-4(a).

"Off-Property Improvements" means off-Property road improvements and other off-Property work, such as utility work, all of which may benefit the Property, as agreed to by the Members pursuant to the Improvements Agreement.

"Offer" shall have the meaning given such term in Section 8.2(a) hereof in connection with the right of first refusal.

"Opening Date" means the date on which a majority of the tenants at the Center open to the public for business.

"Operating Budget" means the annual budget for the operation and management of the Property from and after the Opening Date prepared by the Manager pursuant to Section 6.4(b)(vi) hereof.

"Operational Expenses" means all expenses paid in operating the Property, including but not limited to, actual CAM, taxes, insurance, actual property management fees charged to the Company, on-site personnel, legal expenses, marketing and administrative expenses, other expenses not reimbursed by the tenants and a structural reserve equal to fifteen cents ($.15) per square foot or greater amount as required by any lender; provided, however, that Operational Expenses shall not include any payments made or amounts owed for principal or interest on any Company debt.

"Option Period" means the 30-day period following receipt by the Member Offeree of notice of an Offer in connection with the right of first refusal pursuant to Section 8.2 hereof.

"Outlot" or *"Outlots"* shall mean that part of the Property then owned by the Company that is identified as an "Outlot" outside the Center on the Site Plan and which may be sold or ground leased rather than leased to retail tenants.

"Outlot Value" shall mean the value assigned to each unsold and unleased Outlot as determined on the Contribution Adjustment Date (i) by mutual agreement of the Members or (ii) if the Members are unable to agree, pursuant to an appraisal by a qualified appraiser mutually selected by the Members.

"P&M" means Poag & McEwen Lifestyle Centers – Centerra, LLC, a Delaware limited liability company.

"P&M Development Agreement" means the Development Agreement between the Company and P&M, substantially in the form attached hereto as Exhibit D.

"Parameters" shall have the meaning given such term in Section 7.2 hereof.

"Percentage Interest" means the Member's percentage share of profits, losses and distributions (excluding the Preferred Return) as set forth on Exhibit A under the heading "Percentage Interest."

"Permanent Loan" means the refinancing of the Construction Loan at or prior to the maturity date of the Construction Loan or any subsequent refinancing of the Permanent Loan.

"Permanent Loan Impasse" means an impasse with respect to the terms of the Permanent Loan, as determined pursuant to Section 7.3(a).

"Permanent Loan Impasse Notice" means the written notice delivered by the Manager to the other Member that the Manager intends to close the Permanent Loan on terms no less favorable than those contained in the Permanent Loan Notice.

"Permanent Loan Notice" means the written notice delivered by the Manager to the other Member containing the proposed terms of the Permanent Loan.

"Person" means any individual, partnership, firm, limited liability company, corporation, trust, association or other legal entity.

"PMLC" means Poag & McEwen Lifestyle Centers, LLC, a Delaware limited liability company and the parent of P&M.

"Pre-Construction Cost Budget" means the pro forma estimate of pre-construction costs determined by P&M.

"Pre-Construction Expenses" shall have the meaning given such term in Section 3.2(b) hereof.

"Preferred Distribution" means the distribution of the Preferred Return to a Member pursuant to Sections 5.2(a) and 5.3(a) hereof. The Term "Preferred Distribution" shall not include a distribution representing the return of Capital Contributions.

"Preferred Return" means an amount computed as if the Members were earning a rate of interest equal to ten percent (10%) per annum, calculated monthly and compounded annually, on the outstanding balance of a Member's Undistributed Capital Contributions. The Preferred Return shall be calculated from and after the later of the date on which the Capital Contribution is made and the Commencement Date until the date of distribution to the Members.

"Prime" means the rate of interest published from time to time in the Money Rate Section of *The Wall Street Journal*, eastern edition, as the U.S. Prime Rate.

"Property" means the real property, including both tangible and intangible property and rights relating thereto, contributed by MCLC pursuant to the Contribution Agreement. The Property shall consist of approximately 85.588 usable acres of real property located near the northeast intersection of Interstate 25 and US Highway 34 in Loveland, Colorado, including Outlots, net of the square footage of public roads and rights of way, water detention (including forebays used for detention), wetlands and areas inhabited by species protected by law, as such Property is more particularly described on Exhibit C hereto.

"Purchasing Member" means a Member obligated to purchase another Member's entire interest in the Company pursuant to Section 7.4 hereof.

"Regulations" means the federal income tax regulations promulgated under the Code, as such regulations may be amended from time to time, including proposed, temporary and final regulations.

"Selling Member" means a Member obligated to sell its entire interest in the Company pursuant to Section 7.4 hereof.

"Site Plan" means the plan for the development of the Center to be negotiated in good faith between the parties as promptly as possible.

"Specified Value" shall have the meaning given such term in Section 7.4(a) hereof.

"Stabilization Date" means the date on which 95% of the gross leasable area of the Center is leased to third parties (provided that construction of not less than 640,000 square feet has been completed).

"Stabilized Cash Flow" means the result obtained by deducting the aggregate accrued Operational Expenses for the twelve (12) month period ending on the Contribution Adjustment Date from Revenue (as defined herein) as of the Contribution Adjustment Date. "Revenue" means the actual annualized gross income under bona fide, executed leases which are in good standing as of the Contribution Adjustment Date, including but not limited to, minimum base rent (i.e., the actual monthly minimum base rental income payable as of the Contribution Adjustment Date, together with any increases in the minimum base rent scheduled to occur within one (1) year thereafter, and annualized for the following twelve (12) month period), plus

seventy-five percent (75%) of percentage rent (which for purposes hereof shall mean the annual percentage rent payable (or accruable if determined as of the Contribution Adjustment Date in lieu of any other date set forth in the applicable tenant lease by a tenant for the twelve (12) month period (or applicable portion thereof) ending on the Contribution Adjustment Date), accrued expense contributions (including, but not limited to, CAM, property taxes, insurance, property management fees, management office rent, on-site personnel, administrative fees, structural reserve and other structural cost contributions, marketing contributions, and all other payments received from tenants in occupancy during the twelve (12) month period prior to the Contribution Adjustment Date), provided that a minimum of ninety percent (90%) of the total leasable square footage of the Property has been leased (i.e., a ninety percent [90%] minimum occupancy rate). If a minimum occupancy rate of ninety percent (90%) does not exist as of the Contribution Adjustment Date, Stabilized Cash Flow shall not be used as a basis to determine the value of the Center and any valuation of the Center shall be based on the appraised value of the Center as determined by one (1) or more appraisers determined by mutual agreement of the Members.

"Substitute Member" means any Person not a Person executing this Agreement as of the Effective Date to whom a Membership Interest in the Company has been transferred and who has been admitted to the Company as a Substitute Member pursuant to and in accordance with the provisions of Article VIII hereof.

"Tax Matters Partner" has the meaning given such term in Section 2.11 hereof.

"Taxes" means the federal income tax.

"Total Net Project Cost" means all costs to the Company attributable to the development, construction, and lease-up of the Property, including, without limitation, all land, site, hard and soft construction costs, development and leasing fees and costs (including but not limited to impact fees, financing costs, construction interest, the Preferred Return, costs of the Construction Loan and like costs and expenses associated therewith).

"Transferring Member" shall have the meaning given such term in Section 8.2(a) hereof in connection with the right of first refusal.

"Undistributed Capital Contributions" means, as of any date of its calculation, the excess of the Capital Contributions of a Member at that time over total previous distributions of Capital Contributions to that Member.

"Undistributed Preferred Return" means, as of any date of its calculation, the excess of the Preferred Return to a Member at that time over total previous Preferred Distributions to that Member.

"Year" means the fiscal year of the Company, which shall be the calendar year unless another fiscal period is selected by the Manager.

"Year of Liquidation" means the Year in which the Company is liquidated and final distributions are made to Members.

ARTICLE II
ORGANIZATION

2.1 Formation. The Members hereby enter into this Agreement for the purpose of setting forth their mutual rights and obligations for conducting the affairs of the Company. The Members shall forthwith execute and cause to be filed any assumed or fictitious name certificates as may be required by applicable law, as well as any other documents and instruments as may be necessary or appropriate in connection with the transaction of business by the Company. The Company shall be treated as a partnership for income tax purposes, but not for any other purpose.

2.2 Name. The name and style under which the business of the Company will henceforth be conducted is "Centerra Lifestyle Center, LLC."

2.3 Purpose and Character of Business, and Powers. The Company is formed and organized under the Act for the purpose of (a) acquiring, financing, developing, leasing, maintaining, owning, operating, managing, enhancing and selling the Property, which Property is more fully described in Exhibit C hereto, (b) borrowing funds for the Construction Loan and refinancing of such indebtedness (the "Permanent Loan"), and making and issuing notes, obligations and evidences of indebtedness consistent therewith, (c) doing any and all things necessary or incidental to any of the foregoing, and (d) engaging in any other lawful business that may be engaged in by a limited liability company organized under the Act, as such business activities may be determined by the Members from time to time.

2.4 Principal Business Office. The principal business office of the Company shall be at 6410 Poplar Avenue, Suite 850, Memphis, Tennessee 38119, or at such other place as may be designated by all of the Members.

2.5 Effective Date; Term. The Effective Date of this Agreement is September 29, 2004, and the term of the Company shall be perpetual, unless earlier dissolved and terminated (and not reconstituted by at least a Majority in Interest of the remaining Members, as provided for in this Agreement) pursuant to the Act or any provision of this Agreement.

2.6 Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is National Registered Agents, Inc., 9 East Loockerman Street, Suite 1B, Dover, County of Kent, Delaware 19901.

2.7 Members. Each of the Members named in the preamble to this Agreement has been admitted to the Company as a Member. The names and the mailing address of the Members and their respective representatives are set forth in Section 10.6 of this Agreement.

2.8 Limited Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

2.9 Scope of Members' Authority. Unless otherwise expressly provided in this Agreement, no Member shall have any authority to act for, or assume any obligations or responsibility on behalf of, the Company or any other Member. The management of the

Company shall be reserved to the Manager; provided, however, that certain decisions described in Section 6.2 hereof shall require the consent of all Members, as provided in Section 6.2. Nothing contained herein shall constitute the Members as partners with one another in any matter (other than for federal income tax purposes) or render any of them liable for the debts or obligations of any other Member.

2.10 Manager. P&M shall be the Manager with all of the rights, duties and obligations of the Manager as expressly set forth herein.

2.11 Tax Matters Partner. P&M shall be the "Tax Matters Partner," as defined in Section 6231(a)(7) of the Code and shall, on or before April 1st of each year, (i) prepare and file or cause to be prepared and filed all tax returns and tax filings for the Company and (ii) make all elections required or permitted by the Code with respect to the Company's federal income tax returns after consultation with the Members of the Company.

2.12 Officers. The Manager may designate officers for the Company, as reasonably necessary for the administration and business of the Company.

ARTICLE III
CAPITAL CONTRIBUTIONS; LOANS; CAPITAL ACCOUNTS

3.1 Additional Required Funds.

(a) In the event that additional funds are needed by the Company (or otherwise agreed to by the Members), the Manager shall use good faith efforts to obtain third-party financing on commercially reasonable terms within the time constraints caused by the exigencies of the need for additional funds; and if such third-party financing on commercially reasonable terms is not available, either Member may loan such amounts to the Company, or both Members may make such loans in proportion to their respective Percentage Interests, but neither Member shall be obligated to make any such loan. Any such loan (a "Member Loan") shall earn interest at a floating rate of interest equal to Prime plus three percent (3.0%) per annum, calculated monthly, in the same manner as the Preferred Return. The maturity date for any Member Loan made prior to the Permanent Loan shall be the earlier of December 31, 2007 or the closing of the Permanent Loan. The maturity date for any Member Loan made after the Permanent Loan shall be two (2) years after the date of such Member Loan or such earlier date as shall be agreed upon by the Members. Any such Member Loan shall be unsecured and shall be subject to acceleration in the event that the Member holding the Member Loan is thereafter required or requested to make a Capital Contribution pursuant to Section 3.2 or Section 3.3 below.

(b) If third-party financing is not available on commercially reasonable terms and if neither Member is willing to make a Member Loan as provided in Section 3.1(a) hereof, the Manager may make a Mandatory Capital Call as provided in Section 3.2 hereof or a Non-Mandatory Capital Call as provided in Section 3.3 hereof.

3.2 Mandatory Capital Contributions.

(a) MCLC shall contribute to the Company, pursuant to a Contribution Agreement substantially in the form attached hereto as Exhibit B, upon the Closing Date set forth therein, the Property, free and clear of all liens, claims and encumbrances not permitted under the terms of the Contribution Agreement. The contribution of the Property by MCLC will be treated as a Capital Contribution to the Company by MCLC in the amount of $16,776,960 which will accrue a Preferred Return. In connection with the contribution of the Property, MCLC agrees to designate the Company the "Primary RSF Recipient" as described in the Contribution Agreement. MCLC, its Affiliate, one (1) or more metropolitan districts created by MCLC or its Affiliate and/or other private or governmental entities shall be responsible for all Off-Property Improvements in a timely manner, subject to force majeure events, for the benefit of the Property and the Company as more fully set forth in the Improvements Agreement.

(b) Any costs and expenses reasonably incurred by P&M in accordance with the Pre-Construction Budget prior to the Effective Date shall be treated as a Capital Contribution to the Company by P&M and shall accrue a Preferred Return. From and after the Effective Date, P&M shall contribute funds to the Company, at times and in amounts necessary (as reasonably determined by the Manager), to pay for those costs and expenses prior to the closing of the Construction Loan as set forth in the Pre-Construction Cost Budget (together with those costs and expenses incurred by P&M prior to the Effective Date, the "Pre-Construction Expenses"). The contribution of all such Pre-Construction Expenses by P&M will be treated as a Capital Contribution to the Company by P&M and will accrue a Preferred Return. The Pre-Construction Expenses shall be distributed to P&M upon the Construction Loan Closing pursuant to Section 5.4.

(c) No later than the date of the Construction Loan Closing and subject to the Parameters described in Section 7.2 below, MCLC shall either provide the Financing Support described in Section 7.2(b) below or contribute to the Company (in addition to the Property) the equity required by the lender providing the Construction Loan sufficient to obtain the Construction Loan and secure the mortgage associated therewith, but no greater than $10,000,000 (the "Financing Equity"). Except as described in Section 7.2(b) below, neither P&M, MCLC nor any of their members, principals or Affiliates shall be required to guarantee the Construction Loan. The contribution of such Financing Equity by MCLC, if contributed, will be treated as a Capital Contribution to the Company by MCLC and will accrue a Preferred Return. The completion of the Financing Support pursuant to Section 7.2(b) below will serve as a substitute for the obligation to contribute the Financing Equity.

(d) A "Mandatory Capital Call" shall mean a capital call by the Manager (unless otherwise specified below) to the Member or Members designated below to contribute funds to the Company as a Capital Contribution for any of the following purposes:

(i) by MCLC to P&M to fund the Pre-Construction Expenses;

(ii) to MCLC to fund the Financing Equity in accordance with the Parameters set forth in Section 7.2 below (unless the Financing Support is completed) on or before the Construction Loan Closing;

(iii) to both Members to fund Cost Overruns;

(iv) to both Members to fund tenant improvements not in the Construction Budget (or not in the Operating Budget after the Opening Date);

(v) to both Members to fund any deficit in the Operating Budget;

(vi) to both Members to fund any deficit in Cash Flow; or

(vii) to both Members to fund any required repairs or capital improvements needed to maintain the quality, income, and long-term productivity of the Center or the public improvements located on the Property.

Except as provided for funding by one Member of those particular expenses described in clauses (i) and (ii) above, each Member shall contribute its share (based on each Member's Percentage Interest) of funds required by a Mandatory Capital Call.

(e) The Manager shall send notice of a Mandatory Capital Call to all Members, including an explanation of the purpose of the Mandatory Capital Call and proposed use of the funds to be contributed; and the applicable Member(s) shall contribute the amount required pursuant to this Section 3.2 within (i) ten (10) days from the date of such notice if the amount of the Mandatory Capital Call is less than Two Hundred Fifty Thousand Dollars ($250,000.00); (ii) thirty (30) days from the date of such notice if the amount of the Mandatory Capital Call is Two Hundred Fifty Thousand Dollars ($250,000.00) or more but less than Five Hundred Thousand Dollars ($500,000.00); and (iii) sixty (60) days from the date of such notice if the amount of the Mandatory Capital Call is Five Hundred Thousand Dollars ($500,000.00) or more.

(f) Provided that all Members advance their appropriate share of the additional funds required pursuant to a Mandatory Capital Call, and unless the Members unanimously agree otherwise, all such advances shall be treated as Capital Contributions that will accrue a Preferred Return and not as Member Loans.

3.3 Non-Mandatory Capital Contributions.

(a) For purposes of this Agreement, a "Non-Mandatory Capital Call" shall mean a capital call by the Manager for any of the following purposes:

(i) to expand, develop or modify the Property in a materially different manner than set forth in the Site Plan and Construction Budget; or

(ii) for any purpose other than the subject of a Mandatory Capital Call.

(b) If the efforts described in Section 3.1(a) are unsuccessful, the Manager may send notice of a Non-Mandatory Capital Call to all Members explaining the need for such additional funds and each Member shall have twenty (20) days to advance a percentage of the requested funds equal to the Member's Percentage Interest, or to notify the Company in writing that it declines to contribute the requested funds, in which case the other Member may advance the deficit in the total funds requested. The failure by either Member to advance funds following a Non-Mandatory Capital Call shall not constitute a default under this Agreement.

(c) Unless the Members making advances in response to a Non-Mandatory Capital Call unanimously agree otherwise, such advances shall be treated as Capital Contributions that will accrue a Preferred Return and not as Member Loans.

(d) Except as expressly described in this Agreement, no costs or expenses incurred by MCLC or its affiliates in connection with the Property or the surrounding area will be deemed Capital Contributions hereunder, and MCLC will be entitled to credit for Capital Contributions hereunder only when property or cash is received by the Company as a contribution to capital.

3.4 Failure to Make Mandatory Capital Contributions. If either Member (the "Non-Contributing Member") fails to make its share of the Capital Contribution or any portion thereof required by Section 3.2 in response to a Mandatory Capital Call within the permitted time period following written notice of the request therefor from the Manager (a "Failed Contribution"), the other Member that made its share of such Capital Contribution (the "Non-Defaulting Member") may exercise any or all of the following remedies on behalf of itself and the Company, as the case may be, but no other remedies:

(a) take any action or enforce any remedies permitted by applicable law to enforce the Member's or the Company's security interests granted pursuant to Section 3.5;

(b) setoff the amount of the Failed Contribution against any amounts which would otherwise be payable by the Company to the Non-Contributing Member;

(c) make an additional Capital Contribution in an amount equal to the Failed Contribution and adjust the Percentage Interests as provided in Section 3.6;

(d) offer the Non-Defaulting Member the opportunity to make a Capital Contribution in an amount equal to the Failed Contribution without adjusting the Percentage Interests, in which case such Capital Contribution shall earn a Preferred Return, except the rate shall be twenty percent (20%) per annum, compounded monthly.

The Non-Defaulting Member or the Company, as the case may be, may exercise any one or more of the remedies contained in this Section 3.4 by written notice to the Non-Contributing Member within fifteen (15) days of the expiration of the time period allowed for making payment as specified in Section 3.2(e), followed by payment of the amount required by the applicable subpart of this Section 3.4, if any payment is required, within fifteen (15) days thereafter.

3.5 Security Interest. Each Member hereby grants to the other Member and to the Company a security interest in the Membership Interest of the Member to secure the Member's obligation to make a Capital Contribution in response to a Mandatory Capital Call as set forth in Section 3.2; provided, however, that, in the event that a Member pledges its Membership Interest to a third party financial institution pursuant to Section 8.1(d) herein, the security interest granted by such Member to the other Member and the Company pursuant to this Section 3.5 shall be and hereby is subordinated to that of the third party financial institution.

3.6 Percentage Interest Adjustment. If the Non-Defaulting Member elects to make an additional Capital Contribution and adjust the Percentage Interests as provided in Section 3.4(c), then, effective as of the Contribution Adjustment Date (as defined below), the Percentage Interest of the Non-Defaulting Member will be increased, and the Percentage Interest of the Non-Contributing Member will be decreased, by the number of percentage points equal to the product of 100 percentage points and a fraction, the numerator of which will equal the additional Capital Contributions made by the Non-Defaulting Member on behalf of itself and the Non-Contributing Member pursuant to the Mandatory Capital Call, and the denominator of which will equal the aggregate Undistributed Capital Contributions made by both Members, including such additional Capital Contributions made by the Non-Defaulting Member; provided, however, that if the additional Capital Contributions made by the Non-Defaulting Member are made after the Opening Date (the date such Capital Contributions are made being the "Contribution Adjustment Date"), the denominator of the foregoing fraction shall equal the greater of (i) the aggregate Undistributed Capital Contributions made by both Members as of the Contribution Adjustment Date (including the additional Capital Contributions made by the Non-Defaulting Member on the Contribution Adjustment Date) or (ii) the Fair Value-Company determined as of the Contribution Adjustment Date. The Manager will endeavor to promptly give to the other Member written notice of the Percentage Interests, as adjusted, each time an adjustment occurs; provided, that failure to give such notice shall not in any way affect or otherwise nullify any adjustment made pursuant to this Section 3.6.

3.7 Capital Accounts. The Company shall maintain for each Member an account designated as such Member's Capital Account. Each such Capital Account shall be credited with (a) the fair market value of contributions of property by the respective Members (net of liabilities secured by such contributed property), (b) the cash contributions of the respective Members, and (c) the respective Member's share, determined as provided herein, of Net Profit. Each Member's Capital Account shall be debited with (x) the fair market value of distributions of property to the respective Members (net of liabilities secured by such distributed property), (y) the cash distributed to the respective Members (including Preferred Distributions and return of Capital Contributions), and (z) the respective Member's share, determined as provided herein, of Net Loss. The Capital Accounts shall be maintained in accordance with Section 1.704-1(b)(2)(iv) of the Regulations, and the items of income, profit, gain, expenditures, deductions and losses which increase or decrease such Capital Accounts shall be those items which, pursuant to such Regulations, affect the balance of capital accounts. Subject to the preceding sentence which controls all adjustments to the Capital Accounts, it is intended that the balance of each Member's Capital Account shall be equal to the algebraic sum of that Member's Capital Income Account balance and Capital Contribution Account balance.

3.8 Capital Income Accounts. The Company shall maintain for each Member an account designated as such Member's Capital Income Account (which shall be a portion of the Member's Capital Account). Each such Capital Income Account shall be credited with (a) the respective Member's allocation of gross revenue pursuant to Section 4.1 and (b) the respective Member's share, determined as provided in Section 4.3 herein, of Net Profit. Each Member's Capital Income Account shall be debited with (x) cash distributed to the respective Member pursuant to Sections 5.2(a), 5.2(b), 5.3(a) and 5.3(c) hereof and (y) the respective Member's share, determined as provided in Section 4.2 herein, of Net Loss.

3.9 Capital Contribution Accounts. The Company shall maintain for each Member an account designated as such Member's Capital Contribution Account (which shall be a portion of the Member's Capital Account). Each such Capital Contribution Account shall be credited (increased) with the Member's Capital Contributions to the Company (including the agreed upon fair market value of contributions of property by the respective Members [net of liabilities secured by such contributed property]), as and when made and debited (reduced) by (i) amounts distributed to such Member, including the fair market value of distributions of property to the respective Members (net of liabilities secured by such distributed property), pursuant to Section 5.3(b) hereof, representing a return of the Member's Capital Contributions and (ii) distributions to Members treated as a return of Capital Contributions pursuant to Section 5.4 hereof. The balance of a Member's Capital Contribution Account shall equal the Undistributed Capital Contributions.

3.10 Attorney-in-Fact. Each Member, upon the failure to make a Capital Contribution required to be made under Section 3.2, hereby irrevocably appoints the other Member its attorney-in-fact, coupled with an interest, with full power to prepare and execute any documents, instruments and agreements as may be appropriate to perfect, continue and enforce that security interest in favor of the other Member.

ARTICLE IV
ALLOCATION OF PROFITS AND LOSSES FOR FEDERAL INCOME TAX PURPOSES

As of the end of each Year, the Company's Net Profit or Net Loss, including Net Capital Gain or Net Capital Loss, and each item of income, gain, loss and deduction related thereto, as well as other items of income, gain, loss or deduction which are subject to special allocation provisions, shall be allocated to the Capital Accounts of the Members and for federal income tax purposes pursuant to the following Sections of this Article IV.

4.1 Allocation Matching Preferred Distribution. After giving effect to the special allocations set forth in Section 4.5 hereof, gross revenues shall be allocated to each Member that received a Preferred Distribution pursuant to Section 5.2(a) or Section 5.3(a) in proportion to and to the extent of, for each Member, such Preferred Distribution (including any Preferred Distribution during prior years which has not been matched by an allocation of gross revenue).

4.2 Allocation of Net Loss. After giving effect to the special allocations set forth in Section 4.5 hereof, and after the allocations of gross revenue pursuant to Section 4.1, if there is a

Net Loss for the Year, such Net Loss shall be allocated to all Members in proportion to their Percentage Interests.

Notwithstanding the foregoing, no allocation of Net Loss shall be allocated to any Member if such allocation would cause such Member to have an Adjusted Capital Account Deficit. The amount of the allocation of Net Loss which would otherwise have caused a Member to have an Adjusted Capital Account Deficit shall instead be allocated to those Members who would not have an Adjusted Capital Account Deficit as a result of the allocation, first to Members in proportion to the balances of their Capital Contribution Accounts as of the end of the Year, then to other Members who would not have an Adjusted Capital Account Deficit, in proportion to their Percentage Interests.

4.3 Allocation of Net Profit. After giving effect to the special allocations set forth in Section 4.5 hereof, and after the allocations of gross revenue pursuant to Section 4.1 hereof, if there is a Net Profit for the Year, such Net Profit shall be allocated in the following manner:

(a) First, to the Members who received an allocation of Net Loss pursuant to the last sentence of Section 4.2 hereof (i.e., which would have been allocated to another Member but for the creation of an Adjusted Capital Account Deficit for that Member), an amount of Net Profit equal to the allocations of Net Loss previously made pursuant to such last sentence of Section 4.2 hereof (without duplication) in reverse order to which such prior Net Losses were allocated;

(b) Second, to all Members in proportion to their Percentage Interests.

4.4 Net Capital Gain and Net Capital Loss. Except as otherwise required for special allocations pursuant to Section 4.5 hereof and allocations in the Year of Liquidation pursuant to Section 4.7 hereof, each allocation of Net Profit or Net Loss pursuant to this Article IV shall consist of pro rata portions of Net Capital Gain and/or Net Capital Loss and other separately stated items pursuant to Section 703(a)(1) of the Code.

4.5 Special Allocations. Prior to the allocations pursuant to Section 4.1, Section 4.2 and Section 4.3 hereof, items of income, gain, loss and deduction for the Year shall be allocated in accordance with the following provisions of this Section 4.5 to the extent such provisions are applicable, and any items so allocated (except Nonrecourse Deductions) shall not be taken into account in determining Net Profit, Net Loss, Net Capital Gain or Net Capital Loss.

(a) Minimum Gain Chargeback. If there is a net decrease in the Minimum Gain of the Company during any Year, each Member shall be specially allocated items of Company income and gain for such year equal to that Member's share of the net decrease in Minimum Gain, within the meaning of Regulation Section 1.704-2(g)(2). The provisions of this Section 4.5(a) are intended to comply with the minimum gain chargeback requirement of Regulation Section 1.704-2(f) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(b) Member Nonrecourse Debt Minimum Gain Chargeback. If there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Year, each Member that has a share of such Member Nonrecourse Debt Minimum Gain, determined in

accordance with Regulation Section 1.704-2(i)(5), as of the beginning of such Year shall be specially allocated items of income and gain for such Year (and, if necessary, for succeeding Years) equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. The provisions of this Section 4.5(b) are intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Regulation Section 1.704-2(i)(4) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(c) Deficit Capital Account. In the event that any Member, after all allocations pursuant to this Article IV and distributions pursuant to Article V hereof, disregarding this Section 4.5(c), would have a deficit balance in such Member's Capital Account at the end of any Year which deficit would be in excess of the sum of (i) the amount that such Member is obligated to restore to the Company under Regulation Section 1.704-1(b)(2)(ii)(c), and (ii) such Member's share of Minimum Gain (which is also treated as an obligation to restore in accordance with Regulation Section 1.704-1(b)(2)(ii)(d)), the Capital Account of such Member shall be specially credited with items of Company income (including gross income) and gain for such year in a manner to eliminate such excess as quickly as possible.

(d) Qualified Income Offset. If any Member unexpectedly receives any adjustment, allocation or distribution described in clauses (4), (5) and (6) of Regulations Section 1.704-1 (b)(2)(ii)(d), which create or increase an Adjusted Capital Account Deficit for that Member, such Member shall be allocated items of income and gain (consisting of a pro rata portion of each item of income, including gross income, and gain for such Year) in an amount and manner sufficient to eliminate, as quickly as possible, the Adjusted Capital Account Deficit of such member, if any, to the extent required by the relevant Regulations. The provisions of this Section 4.5(d) are intended to comply with the "qualified income offset" requirement of Regulation Section 1.704-1(b)(2)(ii)(d)(3) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(e) Nonrecourse Deductions. For any Year in which there are allocations of Nonrecourse Deductions, such Nonrecourse Deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Net Profit or Net Loss for that year. Member Nonrecourse Deductions of the Company for any Year shall be specially allocated to the Member who bears the economic risk of loss for the Member Nonrecourse Debt in question. The provisions of this Section 4.5(e) are intended to satisfy the requirements of Regulation Sections 1.704-2(e)(2) and 1.704-2(i)(l) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(f) Allocations to Reflect Contributed Property. If a Member contributes property to the Company which has a difference between its tax basis and its fair market value on the date of its contribution, then all items of income, gain, loss, and deduction with respect to such contributed property shall be shared among the Members, pursuant to Section 704(c)(1)(A) of the Code, solely for federal income tax purposes, so as to take account of the variation between the basis of such property and its fair market value at the time of contribution. Such allocations shall be made in accordance with the traditional

method with reasonable curative allocations described in Regulation Section 1.704-3(c). Any elections or other decisions relating to such curative allocations shall be made by the Tax Matters Partner after consulting with the accountants for the Partnership, in any manner that reasonably reflects the intention of this Agreement. Allocations pursuant to this Section 4.5(f) are solely for purposes of federal income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or distributions pursuant to any provision of this Agreement. A Member who contributes property to the Company shall provide to the Tax Matters Partner such information as may be required to establish such Member's tax basis in the contributed property.

4.6 Section 706(d) Restriction. In the case of a Member who has contributed capital to the Company during the Year or who became (or ceased to be) a Member during the Year, the allocation of federal income tax items to such Member shall not exceed the maximum allocation permitted under Section 706(d) of the Code to limit retroactive allocations.

4.7 Allocations for Year of Liquidation. After giving effect to the special allocations set forth in Section 4.5 hereof, and after the allocations of gross revenue pursuant to Section 4.1 hereof, the amount of Net Profit or Net Loss for the Year of Liquidation, and each item of income, gain, loss and deduction related thereto, shall be allocated to all Members in such manner as to produce, as nearly as possible, a Capital Account balance for each Member immediately prior to the final distribution of assets to such Member upon liquidation pursuant to Section 5.5 hereof, that will permit the final liquidating distribution (if any) which must be made in accordance with final Capital Account balances, after distributions as set forth in Sections 5.3(a) and (b) hereof, to be made to Members in proportion to their Percentage Interests. The foregoing allocations for the Year of Liquidation may include special allocations of Net Capital Gain or Net Capital Loss, or other items that are separately stated pursuant to Section 704(a)(1) of the Code, as may be necessary to produce the prescribed Capital Account balance for each Member immediately prior to the final distribution. To the extent that allocations for the Year of Liquidation cannot be made to satisfy the foregoing provisions, these allocations shall be made in accordance with the Members' respective Percentage Interests in the Company (taking into account all facts and circumstances) pursuant to Regulation Section 1.704(b)-1(b)(1)(i), as determined by the accountants for the Company.

4.8 Adjustment Upon Transfer of Member's Interest or Change in Percentage Interests. For any Year during which a Member transfers all or part of its Membership Interest, or during which there is a change in the Percentage Interest assigned to any Member, the adjustment for allocation of (i) Net Profit or Net Loss, (ii) Net Capital Gain or Net Capital Loss, and (iii) other items of income, gain, loss and deduction between the transferor and transferee Members, or regarding a Member having a different Percentage Interest during portions of the Year, shall be made in the following manner:

(a) For purposes of the allocations pursuant to this Article IV, the transferee Member shall inherit a pro-rata portion of the historical allocations of Net Profit and Net Loss to the transferor Member, including Preferred Distributions; and

(b) Unless the Manager determines to use another method, allocations pursuant to this Article IV shall be adjusted between the transferor and transferee

Members, or between each Member having different Percentage Interests during different portions of the Year, according to the "pro-rata method" described in Regulations Section 1.706-1(c)(2)(ii); that is, all such items for the entire Year shall be allocated between the transferor and transferee Members according to the number of days in the Year that the Membership Interest was held by each, or between each Member having different Percentage Interests according to the number of days in the Year that each Percentage Interest was assigned to that Member.

ARTICLE V
DISTRIBUTIONS

5.1 Distribution Procedure. Except as otherwise provided in Section 5.5 hereof for final distributions upon liquidation of the Company, the Manager shall determine, in its sole discretion, when distributions shall be made to Members and the total amount to be distributed.

5.2 Distributions of Cash Flow. Except as otherwise provided in Section 5.5 hereof, distributions of all or any portion of Cash Flow shall be apportioned among the Members as follows:

(a) First, a Preferred Distribution in proportion to and to the extent of each Member's Undistributed Preferred Return attributable to that Member's Capital Contribution Account balance; and

(b) Second, any remaining amount shall be apportioned to all Members in proportion to their Percentage Interests.

5.3 Distributions of Capital Proceeds. Except as otherwise provided in Section 5.5 hereof, distributions of all or any portion of Capital Proceeds shall be made within thirty (30) days of the event giving rise to the Capital Proceeds, and shall be apportioned among the Members as follows:

(a) First, a Preferred Distribution in proportion to and to the extent of each Member's Undistributed Preferred Return attributable to that Member's Capital Contribution Account balance;

(b) Second, a return of the balance of each Member's Capital Contribution Account, until such balances are reduced to zero; and

(c) Third, any remaining amount to all Members in proportion to their Percentage Interests.

5.4 Advances Under Construction Loan. Advances of funds to the Company borrowed under the terms of the Construction Loan shall be applied to pay the costs for which such advances are earmarked by the lender. If such costs have previously been paid by the Company with Capital Contributions made by a Member for the purpose of paying such costs, or on the Company's behalf by a Member, such advance (or portion thereof) earmarked by the lender to pay such costs shall be distributed to the Member that made such Capital Contributions,

or that paid such costs directly, and the distribution thereof shall be treated as a return of Capital Contributions to such Member.

5.5 Distributions Upon Liquidation. Upon liquidation of the Company pursuant to Section 9.2 hereof, assets remaining after payment of all Company debts and obligations in accordance with Section 18-804 of the Act shall be distributed in the same order of priority as set forth in Section 5.3. In determining the final balance of the Capital Accounts, any assets which are distributed in kind shall be treated as if they were sold at their fair market value, with an allocation to the Capital Accounts of the deemed profit or loss on such sale pursuant to Article IV hereof, and with the distribution reducing the recipient Members' Capital Accounts in an amount equal to the fair market value of the assets distributed.

ARTICLE VI
MANAGEMENT

6.1 Management of Company. The overall management and control of the business and affairs of the Company and the Property shall be vested in the Manager; provided, however, that the decisions described in Section 6.2 shall require the consent of all Members. The Manager will owe a duty in carrying out its duties and responsibilities under this Agreement of good faith, loyalty and fair dealing to the Company.

6.2 Unanimous Decisions. Except with respect to a Member who is adjudged bankrupt or against whom an involuntary petition in bankruptcy has been filed where such petition is not vacated or dismissed within thirty (30) days after the filing thereof, the following matters must be unanimously approved by the Members:

(a) the Site Plan for the Property, including the location of the Center and any material modifications thereof;

(b) intentionally omitted;

(c) the annual Operating Budget for the Company and any material modifications thereof;

(d) the Construction Budget and any material modifications thereof;

(e) any material increase in the Construction Budget (defined as an aggregate increase of one percent (1%) or more in the Construction Budget, provided that changes to individual line items do not require such approval if the net effect of all such changes does not increase the overall Construction Budget by such amount);

(f) if the terms of the Construction Loan secured by the Manager do not meet or exceed, in the aggregate, the Parameters, the terms of the Construction Loan;

(g) the terms of the Permanent Loan (except as otherwise provided in Section 7.3 upon delivery of a Permanent Loan Impasse Notice);

(h) the admission of an additional Member (except upon a sale to a third party pursuant to Section 8.4(b));

(i) any material change from the distribution procedure specified in Article V (except as otherwise permitted herein);

(j) selling ten percent (10%) or more of the total square footage of the improved property;

(k) acquiring any additional real property (other than the Property);

(l) causing the Company to enter into any transaction involving the transfer, by operation of law or otherwise, of ten percent (10%) or more of the total square footage of the improved property (except the Outlots);

(m) causing the Company to contest or seek to lower the assessed value of improved real property owned by the Company to a value less than One Hundred Ninety Dollars ($190.00) per square foot;

(n) the refinancing of the Permanent Loan (except as otherwise provided in Section 7.3) or the granting of any second mortgages or second deeds of trust upon the Property subordinate to the lien securing payment of the Permanent Loan;

(o) the sale of all or substantially all of the Company's assets;

(p) causing a fundamental change in the nature of the Company's business;

(q) approving a transaction between the Company and a Member or any other entity in which a Member has more than a ten percent (10%) ownership interest or otherwise entering into a transaction which would involve an actual conflict of interest between a Member or any of its Affiliates and the Company, except for the Contribution Agreement, the Management Agreement, the Development Agreements, the Improvements Agreement and any other arrangement between a Member and the Company contemplated by this Agreement; or

(r) the termination of the Manager (except as provided in Section 6.5 for removal of the Manager) and the filling of a vacancy in the position of Manager.

6.3 Authorized Decisions. Subject to the unanimous decision requirements set forth in Section 6.2, P&M, as Manager, shall have the sole right, power and authority to:

(a) Execute all documents and instruments on behalf of the Company with respect to the purchase, improvement, mortgaging, financing or refinancing, sale, transfer, exchange or other disposition or encumbrance of all or any portion of the Property and any other assets and properties of the Company; the borrowing of funds and issuance of notes and other evidences of indebtedness for the benefit of the Company (including, without limitation, construction and permanent and secondary financing for

the Property); and the execution of agreements, contracts, guarantees, notes, mortgages, security agreements and any other instruments to effect the foregoing;

(b) Execute all such documents or instruments necessary or appropriate for the operation, maintenance, repair, expansion, enhancement, renovation and reconstruction of the Property;

(c) Enter into the Contribution Agreement, Management Agreement, Development Agreements, the Improvements Agreement and the Improvements Acquisition Agreement (with Centerra Metropolitan District No. 1) on behalf of the Company;

(d) Except as set forth in Section 6.2 hereof, make all decisions on behalf of the Company, including, but not limited to, determining if the conditions to the Company's obligation to close in Section 11 of the Contribution Agreement have been satisfied;

(e) Lease the retail space at the Property, provided that the Manager may delegate any of such duties pursuant to the Management Agreement;

(f) Sell, ground lease, transfer or assign all or any portion of the Outlots, and execute all documents and instruments on behalf of the Company in connection with such sale, ground lease, transfer or assignment;

(g) Manage or cause the Company and the Property to be managed, and employ such persons, firms and corporations as may be necessary or advisable for the conduct of the business of the Company and the development of the Property, including contracts with such contractors, subcontractors, managers, consultants, brokers, attorneys and accountants as the Manager shall select, on such terms and for such compensation as the Manager shall determine; and

(h) Prosecute, defend, adjust, compromise, refer to mediation or otherwise deal with any claims in favor of or against the Company, including, but not limited to, claims to enforce the Contribution Agreement, the MCLC Development Agreement and the Improvements Agreement and the Improvements Acquisition Agreement.

Notwithstanding subparagraph (h), MCLC shall have the sole right, power and authority to prosecute, defend, adjust, compromise, refer to mediation or arbitration or otherwise deal with any claims in favor of or against the Company arising from the Management Agreement or the P&M Development Agreement.

6.4 Duties of Manager. Except to the extent otherwise performed pursuant to the terms of the Management Agreement:

(a) The Manager shall manage or cause the affairs of the Company to be managed in a prudent and businesslike manner and shall devote such portion of its time to the Company's affairs as is reasonably necessary for the conduct of such affairs; provided, however, that it is expressly understood and agreed that the Manager shall not

be required to devote its entire time or attention to the business of the Company and, subject to Section 6.9 hereof, shall not be restricted in any manner from participating in any other business activities, notwithstanding the fact that the same may be competitive with the business of the Company.

(b) In carrying out its obligations hereunder, the Manager shall:

(i) prepare the Site Plan;

(ii) prepare any changes or updates to the Pre-Construction Cost Budget;

(iii) prepare the Construction Budget and any changes to such Construction Budget;

(iv) obtain a commitment for the Construction Loan as provided in Section 7.2 hereof and close the Construction Loan in accordance with such commitment;

(v) obtain a commitment for the Permanent Loan as provided in Section 7.3 hereof and close the Permanent Loan in accordance with such commitment;

(vi) prepare an annual business plan and Operating Budget (subject to approval of the Members, which shall not be unreasonably withheld), including leasing guidelines for all space leases;

(vii) prepare monthly financial statements for the Company, including balance sheets, income statements, statements of cash flow and rent rolls, and provide copies of the same to the Members within twenty (20) days following the end of each calendar month;

(viii) cause one or more accounts (including the building loan trust account to be opened in connection with the Construction Loan) to be maintained in the Company's name at one or more banks, each of which shall be a member of the FDIC being "well capitalized" under FDIC rules for purposes of accepting brokered deposits. All such amounts shall be and remain the property of the Company, shall be held in the name of the Company, and shall be received, held and disbursed by the Manager solely for the purposes of the Company. Withdrawals from such accounts shall be made with such required signatures as the Manager shall determine from time to time;

(ix) cause such certificates to be filed and do such other acts as may be required by applicable law to qualify and maintain the Company as a limited liability company in good standing in the states where the Company does business, including, without limitation, the State of Colorado;

(x) obtain and maintain such public liability and other insurance as shall be required by the terms of the Construction Loan and the Permanent Loan (naming each of the Members as additional insureds), the premiums for which shall be a cost and expense of the Company;

(xi) upon the request of any Member, provide access during regular business hours to originals, and deliver photocopies, of all contracts, agreements, leases, records and other documentation affecting or otherwise relating to the Company or the Property;

(xii) have prepared and distributed to all Members within thirty (30) days after the end of the Company's Year, a preliminary unaudited balance sheet, income statement, and statement of cash flow for the preceding Year, all prepared in accordance with generally accepted accounting principles; and

(xiii) have prepared and distributed to all Members (a) within seventy-five (75) days after the end of the Company's Year, Schedules K-1, and (b) by January 31 of each Year, Forms 1099 and similar tax reporting information of the Company relating to the preceding Year.

6.5 Removal of Manager. The Manager may be removed for Cause and will thereafter be only a "Member" under this Agreement. "Cause" shall mean (a) the Manager (i) has committed willful malfeasance in the discharge of its duties to the Company under this Agreement; (ii) has been grossly negligent in the performance of any of its material covenants, obligations or duties hereunder and fails to remedy such breach within thirty (30) days of notice thereof; (iii) has engaged in conduct which materially and directly damages the business of the Company, and fails to remedy such breach within 30 days of notice or any longer applicable cure period; (iv) has committed an act of fraud or embezzlement involving the Company; or (v) is adjudicated as bankrupt, suffers the filing of any involuntary petition in bankruptcy where such petition is not vacated or dismissed within thirty (30) days, or suffers or allows the appointment of a receiver for all or substantially all of its assets where such receivership is not discharged or vacated within thirty (30) days; or (b) the sale, transfer, reorganization or merger of the Manager after which at least one of Terry McEwen, G. Dan Poag and/or Joshua D. Poag or their Affiliates, together or individually, fail to own or control a majority of the voting interests of the Manager. Prior to being terminated for Cause pursuant to Section 6.5(a)(ii) or (iii) above, the Manager shall be given written notice of the basis for termination from the other Member and the Manager shall have thirty (30) days to cure or remedy the situation. Upon the occurrence of any of the events of removal specified in Section 6.5(a)(i), (iii) or (iv) above, MCLC shall have the sole right to designate a replacement Manager to act on behalf of the Company; otherwise, the Members will mutually agree upon a Manager or if no Manager can be agreed upon, then there will be no Manager and the decisions and duties specified in this Agreement to be made or carried out by the Manager shall be made and carried out only with the affirmative vote or action by a Majority in Interest of the Members. The removal of P&M as the Manager will have no effect on P&M's rights as a Member under this Agreement, the Management Agreement or the P&M Development Agreement. If P&M transfers its interest in the Company pursuant to Section 8.1(a) to a person or an entity in which at least one of Terry McEwen, G. Dan Poag and/or Joshua D. Poag or their Affiliates, together or individually, own or control a majority of

the voting interests therein, such transferee shall assume P&M's role as Manager under this Agreement.

6.6 Liabilities and Indemnification of Members.

(a) In carrying out its powers and duties hereunder, each Member, as well as the Manager, shall exercise its best efforts, shall owe a duty of good faith and fair dealing to the Company and to each Member and shall not be liable to the Company or to any other Member for any actions taken on behalf of the Company in good faith or omitted to be taken on behalf of the Company in good faith and reasonably believed to be in the best interest of the Company or for errors of judgment made in good faith; provided, however, that a Member shall be liable to, and shall indemnify, defend and hold harmless the Company and the other Members for actions or omissions involving actual fraud, gross negligence or willful misconduct or from which such Member derived improper personal benefit.

(b) A Member who ceases to be a Member shall not be liable for or on account of obligations or liabilities of the Company incurred subsequent to its ceasing to be a Member.

(c) The Company shall indemnify the Manager, any Member and/or Affiliate performing management, accounting, tax matters, or other duties or obligations of the Company pursuant to this Agreement and save it and each of its officers, directors, shareholders and principals harmless from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) in performing any services for the Company or arising by reason of any actions or omissions in conformity with Section 6.6(a); provided, however, that the foregoing indemnity shall be limited to the assets of the Company and no Member shall be required to contribute any additional capital to the Company in respect of such indemnity. Such indemnity shall not be available with respect to fraud, gross negligence, or willful misconduct.

6.7 Authority of the Members. No financial institution or person, firm, corporation or other entity dealing with any Member with respect to the Company or any of its assets and properties shall be obligated to see that the terms of this Agreement have been complied with, or be obligated to inquire into the necessity or expediency of any act or action of the Member, and every contract, agreement, deed, mortgage, lease, note or other instrument or document executed by the Manager shall be conclusive evidence in favor of any financial institution, person, firm, corporation or other entity relying thereon that such instrument or document was duly executed and is binding upon the Company and the Members thereof, and that the Manager is duly authorized and empowered to execute and deliver such agreement, document or other instrument for and on behalf of the Company.

6.8 Services; Compensation of Members.

(a) Each Member shall devote such time to the Company business as may be necessary for the proper conduct thereof, but no Member shall be required to devote its full time and attention to the business of the Company. Except as restricted by

Section 6.9 hereof, each Member shall be free, without the consent of the other Member, to engage in any other business, activity or enterprise, regardless whether it might be construed in any manner to be competitive with the business of the Company. No Member shall have any obligation to offer any business opportunity to the Company or to any other Member.

(b) P&M, or its respective Affiliate, shall receive a management fee as provided for in the Management Agreement, and development fees and leasing fees as provided for in the P&M Development Agreement, and such further amounts as provided for in the Construction Budget or Operating Budget or as agreed to by all of the Members.

(c) MCLC or its Affiliate, shall receive development fees and leasing fees as provided for in the MCLC Development Agreement. MCLC's services pursuant to the MCLC Development Agreement and the Contribution Agreement shall include using its best efforts to obtain all governmental approvals and necessary governmental financing for the Property and the Center. MCLC will be responsible for and will fund, or will cause its Affiliate, metropolitan district(s) or other governmental or private entities to fund, and construct the Off-Property Improvements described and identified in the Improvements Agreement for the proposed use of the Property as a Lifestyle Center in form reasonably satisfactory to P&M. Within the time specified in the Contribution Agreement, the parties shall enter into an Improvements Agreement which will define the obligations of MCLC with respect to the Off-Property Improvements. The parties agree that they will negotiate in good faith to agree upon the terms of the Improvements Agreement during the Review Period as required by, and as such terms are defined in, the Contribution Agreement. Amounts expended for the Off-Property Improvements will not be treated as Capital Contributions. Notwithstanding any provision hereof to the contrary, MCLC agrees, and agrees to cause its Affiliates, to cooperate at all times with respect to the development and leasing of the Center and agrees not to intentionally divert any prospective lifestyle tenant whose identity is revealed to MCLC by P&M to competing properties.

(d) Except as otherwise provided herein, or in the Management Agreement and Development Agreements, the Members shall receive no compensation for their services as Members of the Company. However, to the extent provided in the Construction Budget and Operating Budget or otherwise agreed to by the Members, each of the Members will be entitled to reimbursement by the Company for reasonable out-of-pocket expenses incurred by such Member on behalf of the Company in connection with the conduct of the Company's business and affairs.

(e) Notwithstanding anything to the contrary, but without limiting the rights of the Members as specified in this Agreement, or rights of parties under the Management Agreement or the Development Agreements, the Company may do business and contract with any of the Members or any Affiliate of a Member for such consideration and upon such terms as are unanimously approved by the Members pursuant to Section 6.2(q) hereof.

6.9 Exclusivity Agreement. From the Effective Date until one year after the Opening Date, (i) neither MCLC nor any of its Affiliates will engage or contract with any Person other than P&M or an Affiliate of P&M to develop any retail shopping in Larimer County, Colorado that includes tenants that are listed as "Exclusive Centerra Lifestyle Center Tenants" of Flat Iron Crossings Mall, Park Meadows Mall or Aspen Grove Lifestyle Center on Schedule 6.9 hereto, and (ii) neither P&M nor any of its Affiliates will develop a Lifestyle Center in Larimer County, Colorado with any Person other than MCLC or an Affiliate of MCLC.

ARTICLE VII
FINANCING; FUTURE DEVELOPMENT

7.1 Budgets. The Manager shall deliver to the other Member, on a monthly basis, written reports updating the Pre-Construction Cost Budget to reflect actual Pre-Construction Expenses. The Manager shall also deliver to the other Member monthly written reports updating the Construction Budget, including a final Construction Budget as soon as practical following the time that the Manager obtains a commitment for the Construction Loan, which Construction Budget shall be subject to the unanimous approval of the Members pursuant to Section 6.2(d).

7.2 Construction Loan.

(a) The Manager shall seek a commitment for a Construction Loan sufficient, together with MCLC's Capital Contributions of the Property and the Financing Equity (if any), to fund the Total Net Project Cost. The Manager shall keep the other Member informed as to the status of the negotiations for the Construction Loan and shall promptly send to the other Member a copy of any commitment that is obtained. Provided that the terms of the commitment for the Construction Loan fall within, or are more favorable to the Company in the aggregate, than the ranges specified in Exhibit G hereto, which shall include the anticipated maximum amount of the equity contribution required of MCLC (the "Parameters"), the Manager shall be authorized, without the consent of the other Member, to enter into the commitment on behalf of the Company and to close the Construction Loan pursuant to the commitment. If the terms of the commitment obtained by the Manager do not fall within, or are not in the aggregate more favorable than, the Parameters, the Manager shall not be authorized to enter into the commitment on behalf of the Company without the prior approval of the other Member.

(b) In the event the construction lender seeks to require additional equity contributions to the Company as a condition to making the Construction Loan and the Manager makes a capital call for the Financing Equity pursuant to Section 3.2, MCLC shall be entitled to notify the Manager, as soon as practicable, if MCLC prefers to propose to the construction lender and agrees to enter into an alternative method of supporting the loan, rather than as contributing the Financing Equity, as follows (either (i) or (ii), the "Financing Support"):

(i) A guarantee by MCLC or one of its Affiliates of a portion of the principal and/or interest under the loan, which shall be in customary form for transactions of such type, acceptable to the construction lender; or

(ii) Granting a security interest in or mortgage of property owned by MCLC or an Affiliate of MCLC, acceptable to the construction lender;

provided that in either case MCLC shall not be obligated to enter into a guaranty of over $10,000,000 principal amount or to pledge collateral valued at over $10,000,000.

The Manager shall negotiate with the construction lender and use commercially reasonable efforts to obtain the construction lender's cooperation with MCLC's preferred method as described above. In the event the Manager is not able to obtain the construction lender's agreement to the Financing Support, MCLC shall contribute the Financial Equity. In any event, MCLC shall complete the contribution of the Financing Equity or the completion of the Financing Support within sixty (60) days of receipt of the notice of the capital call for the Financing Equity (or such later time requested by the Company or the construction lender).

7.3 Permanent Loan.

(a) Prior to the maturity date of the Construction Loan, the Manager shall submit to the other Member in writing the terms proposed for the Permanent Loan, including the maximum loan amount, maturity date, interest rate, fees to the lender, repayment terms and other material terms (the "Permanent Loan Notice"). If the other Member does not object to the terms contained in the Permanent Loan Notice by written notice to the Manager within fifteen (15) days of receipt of the Permanent Loan Notice, the Manager may proceed to close the Permanent Loan in accordance with such proposed terms. If, within such fifteen (15) day period, the other Member objects to the terms contained in the Permanent Loan Notice by written notice to the Manager of such other Member's specific objections, the Manager shall consult in good faith with the other Member and with the proposed lender of the Permanent Loan in an effort to agree upon terms acceptable to all parties. If the Manager determines, in its good faith discretion, at any time after the tenth (10^{th}) day following the date on which the Manager receives notice of the other Member's specific objections, that terms acceptable to all parties cannot be agreed upon, the Manager shall notify the other Member in writing either (i) that the Manager will seek to obtain another Permanent Loan, in which case the Manager may at any time recommence the procedure set forth in this Section 7.3 by sending written notice of new proposed terms to the other Member, or (ii) that an impasse exists (a "Permanent Loan Impasse"), which the Manager intends to resolve by closing the Permanent Loan on terms not less favorable than those contained in the Permanent Loan Notice (the written notice of the Permanent Loan Impasse shall be referred to as the "Permanent Loan Impasse Notice" and shall be accompanied by a written disclosure of all material liabilities and potential liabilities of the Company known to the Manager which are not reflected on its most recent financial statements).

(b) Within fifteen (15) business days of receipt of the Permanent Loan Impasse Notice (together with a written disclosure of all material liabilities and potential liabilities of the Company known to the Manager which are not reflected on its most recent financial statements), the other Member shall be entitled to invoke the reciprocal purchase provisions of Section 7.4 by giving written notice to the Manager setting forth

the Specified Value (as defined therein) for the Property (the "Buy-Sell Notice"). Thereafter the parties shall follow the procedures specified in Section 7.4, with "A" being the other Member, the party giving notice, and "B" being the Manager.

(c) Once the response to the Buy-Sell Notice is made pursuant to Section 7.4(b), and it is determined which Member is to purchase the other Member's Membership Interest (the "Purchasing Member"), the Purchasing Member shall be authorized, without action by the other Member, to enter into a commitment on behalf of the Company for a Permanent Loan on whatever terms such Purchasing Member deems advisable and to close the Permanent Loan pursuant to such commitment. Once the identity of the Purchasing Member is determined by the response to the Buy-Sell Notice, the other Member shall thereafter have no approval or consent rights with respect to any matter that comes before the Members, including but not limited to those matters set forth in Section 6.2 hereof, provided that the Purchasing Member shall not have the right to allow or cause to occur, the transfer, sale or conveyance of all or substantially all of the Property prior to the closing of the purchase of the Selling Member's Membership Interest in the Company.

(d) If the Permanent Loan Impasse is not resolved within fifteen (15) business days of receipt of the Permanent Loan Impasse Notice (i.e., the other Member may agree to the terms proposed for the Permanent Loan and thereby resolve the Permanent Loan Impasse), and if the other Member does not invoke the reciprocal purchase provisions of Section 7.4 by sending the Buy-Sell Notice to the Manager setting forth a Specified Value, Buy-Out Price A and Buy-Out Price B within such period of fifteen (15) business days following receipt of the Permanent Loan Impasse Notice, the Permanent Loan Impasse shall be deemed to be resolved in favor of the terms contained in the Permanent Loan Notice and the Manager shall be authorized, without action by the other Member, to enter into a commitment on behalf of the Company on terms not less favorable than disclosed in the Permanent Loan Notice and to close the Permanent Loan pursuant to such commitment.

7.4 Permanent Loan Impasse; Reciprocal Purchase Rights.

(a) At any time for any reason following the Stabilization Date, or upon a Permanent Loan Impasse pursuant to Section 7.3, any Member (other than a Non-Contributing Member or a Member in default hereunder) may deliver a Buy-Sell Notice (the Member giving such notice being sometimes hereinafter referred to as "A") to the other Member (the Member receiving such written notice being sometimes hereinafter referred to as "B") stating that A wishes to apply the provisions of Section 7.4 to purchase the entire right, title and interest of B in the Company and setting forth (i) a dollar figure selected by A (such figure being hereinafter referred to as the "Specified Value") to be the total value of the Property before deduction of any liabilities, and (ii) the amount A is willing to pay for B's interest in the Company as set forth in the following sentence. A's offer to purchase B's right, title and interest in the Company shall be at a price equal to the amount B would have received if the Property had been sold at the Specified Value, the Company liquidated, all liabilities paid (including Member Loans), and the remainder of the Company's assets distributed to the Members

pursuant to Section 5.5 ("Buy-Out Price B"). The Buy-Sell Notice shall also contain the amount A would receive, calculated in the same manner and under the same assumptions as Buy-Out Price B, if the Property had been sold at the Specified Value, the Company liquidated, all liabilities paid (including Member Loans), and the remainder of the Company's assets distributed to the Members pursuant to Section 5.5 ("Buy-Out Price – A"). A's notice shall be accompanied by a letter or other statement signed by a bank or trust company confirming that A has deposited with such bank or trust company the sum of One Hundred Thousand Dollars ($100,000.00), and the funds so deposited by A shall be held in an interest-bearing account and applied as hereinafter provided.

(b) Within thirty (30) days after receipt of the Buy-Sell Notice from A, B shall give written notice to A electing either (i) to purchase A's entire right, title and interest in the Company at Buy-Out Price A, or (ii) to sell its entire interest to A at the Buy-Out Price - B. If B shall give notice electing to purchase A's entire interest in the Company, then such notice, to be effective, shall be accompanied by a letter or other statement signed by a bank or trust company confirming that B has deposited with such bank or trust company the sum of One Hundred Thousand Dollars ($100,000.00), which funds may be held in an interest-bearing account and applied as hereinafter provided; thereupon, the deposit (together with interest thereon) made by A pursuant to Section 7.4(a) above, shall be returned to A by the bank or trust company with which A shall have deposited said monies. If B shall not effectively give either of the above notices within thirty (30) days of receipt of notice from A, then B shall be deemed to have elected to sell its entire right, title and interest in the Company to A as herein provided.

(c) Unless otherwise extended pursuant to the terms and conditions hereof, the closing of the purchase of the interest of a Member (the "Selling Member") described in this Section 7.4 shall take place within sixty (60) days following the expiration of the thirty (30) day period set forth above for giving notice of an election by B, upon at least thirty (30) days' prior written notice by the Member designated to purchase the interest (the "Purchasing Member") (the "Buy-Out Closing Date"). On the Buy-Out Closing Date, the Selling Member shall convey, transfer and assign to the Purchasing Member or its designee (by assignment and such other instruments of transfer as shall be reasonably requested by the Purchasing Member) the Selling Member's entire right, title and interest in and to the Company, free and clear of any liens, encumbrances or claims of any nature whatsoever, and shall, to the extent requested by the Purchasing Member, cooperate to effect a smooth and efficient continuation of the affairs of the Company. Notwithstanding any provision in this Agreement to the contrary, the Purchasing Member may extend the closing for an additional period of ninety (90) days (i.e., 150 days in lieu of 60 days) by providing the Selling Member notice accompanied by a letter or other statement signed by a bank or trust company confirming that the Purchasing Member has deposited with such bank or trust company an additional sum equal to the lesser of the purchase price due to the Selling Member or One Million Dollars ($1,000,000.00), and the funds so deposited by the Purchasing Member shall be held in an interest-bearing account and applied as provided for in Section 7.4(d) or (e), as the case may be.

(d) On the Buy-Out Closing Date, the Purchasing Member shall pay to the Selling Member, by certified or bank cashier's check, or a wire transfer of immediately

available funds, a cash sum equal to one hundred percent (100%) of Buy-Out Price-A or Buy-Out Price-B, as applicable, for the Selling Member's interest in the Company (net of any debts, loans or other obligations by the Selling Member to the Company or to any other Member, which shall be paid separately pursuant to Section 7.4(g) hereof). On the Buy-Out Closing Date, the Purchasing Member or its designee shall execute such instruments as shall be reasonably requested by the Selling Member to confirm the assumption by the Purchasing Member of all of the Company obligations for which the Selling Member shall have been liable, it being understood and agreed that the Selling Member or its Affiliate may not be released from liabilities and obligations to third parties and the Purchasing Member shall have no obligation to obtain any such third-party releases to complete the purchase contemplated by this Section 7.4; provided, however, the Purchasing Member shall agree to indemnify and hold harmless the Selling Member and any Affiliates of the Selling Member from and against any and all contractual liabilities to third parties arising or accruing in connection with the Company and loans to the Company or its wholly owned subsidiaries or guarantees of other obligations of the Company or its wholly owned subsidiaries that remain in effect subsequent to the purchase contemplated by this Section 7.4; provided, that in no event shall P&M be responsible for any obligations of the Property Manager under the P&M Management Agreement and P&M shall not make any indemnities relating thereto, and MCLC and its affiliates shall not be released from or indemnified for their actions or obligations pursuant to or in connection with the Improvements Agreement. The closing shall occur at such place as shall be designated by the Purchasing Member by notice to the Selling Member at least ten (10) days prior to the Buy-Out Closing Date. Upon the Buy-Out Closing Date, the Selling Member shall have no further right, title or interest in or to the deposit made by the Purchasing Member, and said deposit may be returned to the Purchasing Member by the bank or trust company with which the Purchasing Member shall have deposited said monies, or may be used in payment of the purchase price to the Selling Member; provided, however, that until the Buy-Out Closing Date, said deposit shall stand as security for the performance of the obligations hereunder by the Purchasing Member.

(e) If the Purchasing Member shall fail to complete the purchase within the time and in the manner required by this Section 7.4, the One Hundred Thousand Dollars ($100,000.00) deposit or any additional deposits made by such Purchasing Member with the bank or trust company (including the additional deposit described in the last sentence of Section 7.4(c) if such deposit was made), together with all accrued interest or other earnings thereon (collectively, the "Deposit"), shall be forfeited by the Purchasing Member and shall be paid over by such institution to the Selling Member, and the Selling Member may then elect (i) to become the Purchasing Member and purchase the other Member's entire right, title and interest in the Company on the same terms as provided herein for the Member that failed to complete the purchase, said election to be made within thirty (30) days after the initial Purchasing Member's failure to timely and/or properly close, with the closing then to take place within sixty (60) days thereafter, or (ii) to cancel the notice invoking the provisions of this Section 7.4, regardless of which Member originally gave the notice. In the alternative, the Selling Member may elect to have the Deposit returned to the Purchasing Member, and the Selling Member shall be entitled to recover damages or to enforce specific performance of the Purchasing

Member's obligations hereunder. Absent written agreement of all Members to the contrary, the Purchasing Member shall have no further right thereafter to invoke the provisions of this Section 7.4 with respect to such Permanent Loan Impasse, if applicable.

(f) If the Selling Member shall fail to perform its obligations under this Section 7.4, including conveyance to the Purchasing Member of its entire interest in and to the Company, the Purchasing Member shall receive the Deposit and shall be entitled to recover damages or to enforce specific performance of the Selling Member's obligations. Absent written agreement of all Members to the contrary, the Selling Member shall have no further right thereafter to invoke the provisions of this Section 7.4 with respect to such Permanent Loan Impasse, if applicable.

(g) If the provisions of this Section 7.4 are invoked and a Member's interest is sold, all Member Loans and other loans made by the Selling Member to the Company or to the Purchasing Member, together with any interest accrued thereon, and any accrued fees due to the Selling Member, must be paid by the Purchasing Member on the Buy-Out Closing Date, in addition to the amount specified as Buy-Out Price-A or Buy-Out Price-B.

(h) If the parties cannot agree on any matter set forth in this Article VII, the disagreement shall be resolved by Binding Arbitration as herein provided.

(i) McWhinney Holding agrees to guarantee the obligations of MCLC under this Section 7.4 and PMLC agrees to guarantee the obligations of P&M under this Section 7.4.

7.5 Sales of Membership Interests. Sales of Membership Interests pursuant to this Article VII must be closed and the Membership Interest transferred free and clear of any liens, encumbrances, options or third-party rights of any kind, and the Seller shall deliver a certificate to that effect at closing.

7.6 Certain Public Improvements. Simultaneously with and as a condition to the Closing under the Contribution Agreement, the parties will use all reasonable efforts to cause Centerra Metropolitan District No. 1 to enter into an Improvement Acquisition Agreement whereby the Company will be reimbursed for certain on-site public improvements installed by the Company on the Property, including an ice rink, parking area and landscaping. Such on-site public improvements shall be maintained by the Company pursuant to a maintenance agreement to be entered into between the Company and Centerra Metropolitan District No. 1 and such maintenance costs are intended to be CAM expenses of the Center. The parties agree that the operation and maintenance of such public improvements and the costs relating thereto shall be Operational Expenses hereunder.

ARTICLE VIII
TRANSFERS OF INTEREST

8.1 Restrictions on Transfer; Substitute Members.

(a) Except to another Member or to an Affiliate, or as is otherwise expressly permitted in Section 8.2 or 8.4, no Member may sell, assign, transfer or otherwise dispose of its Membership Interest, whether voluntarily, involuntarily or by operation of law, without the prior written consent of the other Member, which may be unreasonably withheld, and any attempt to do so shall be null and void. Further, any transfer (except to another Member or to an Affiliate, or as otherwise expressly provided in this Article VIII) shall not give the transferee the right to be admitted as a Substitute Member.

(b) An assignee or transferee of a Membership Interest (hereinafter designated "Assignee") shall be entitled to receive the share of the Company capital and distributions to which such Assignee's immediate predecessor would have been entitled; provided, however, that the Assignee has a right to become a Substitute Member owning the interest so transferred only if (i) the Member making such disposition grants the transferee the right to be so admitted, (ii) such admission as a Substitute Member is consented to by the other Member, which may grant or withhold such consent in its sole and absolute discretion and (iii) such Assignee agrees in writing to be bound by all the terms and conditions of this Agreement; provided, however, that the consent by the other Member to the admission of the Assignee as a Substitute Member pursuant to clause (ii) shall not be required for a transfer permitted by Section 8.1(a) or pursuant to Section 8.2(c) or Section 8.4. Upon becoming a Substitute Member, such Assignee shall have all of the rights and powers of, shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of, such Assignee's predecessor, and shall in all respects be a Member under and pursuant to this Agreement. Except as otherwise expressly provided in this Section 8.1, no Member shall have the unilateral right to constitute such Member's Assignee as a Substitute Member.

(c) Unless all Members agree otherwise, no assignment or transfer of a Membership Interest shall relieve the assigning Member (or the parent of the assigning Member in its capacity as guarantor of the assigning Member's obligations hereunder) of any liability to the Company or the other Member that arose prior to the assignment or transfer.

(d) Notwithstanding anything in this Agreement to the contrary, each Member will have the right to pledge its Membership Interest to a third party financial institution for any purpose without complying with Sections 8.1(a), 8.1(b), 8.1(c), 8.2 or 8.4 hereof. In the event that such third party financial institution, or any successor thereto, exercises its rights under any such pledge and possesses the Membership Interest, such third party financial institution or its successor shall have an economic interest but no voting rights hereunder, and shall have all of the rights of a Substitute Member hereunder only with approval by the remaining Members pursuant to Section 8.1(b) provided that such third party financial institution or successor thereto agrees in writing to be bound by the terms and conditions of this Agreement.

8.2 Right of First Refusal.

(a) If a Member (the "Transferring Member") receives an unsolicited bona fide written offer from a third party to purchase all, but not less than all, of such Transferring Member's Membership Interest that the Transferring Member desires to accept, then the Transferring Member shall first offer in writing (the "Offer") to sell its Membership Interest to the other Member (the "Member Offeree") at the price and pursuant to the terms at which the Transferring Member proposes to transfer its Membership Interest to such third party. The Offer shall set forth (i) the name and address of the third party offeror, (ii) the amount of consideration to be received by the Transferring Member in the proposed sale of its Membership Interest, and (iii) the method of proposed payment. The Member Offeree shall have the option to acquire the Transferring Member's Membership Interest at the price and upon the terms provided in the Offer by notifying the Transferring Member in writing within thirty (30) days following receipt of notice of the Offer (the "Option Period"), and shall close any such purchase within sixty (60) days of the expiration of the Option Period.

(b) If the Member Offeree does not desire to exercise such option to purchase the Transferring Member's Membership Interest pursuant to clause (a) above, the Member Offeree may elect, at any time prior to the expiration of the Option Period, to require the Transferring Member to negotiate with the third party offeror to sell the interest of the Member Offeree to the third party offeror on substantially the same terms and conditions as the Offer (the "Tag-Along Right"). The Transferring Member (and the Manager, if it so elects) shall thereafter negotiate with the third party offeror in good faith, and if the third party offeror agrees to purchase the interest of the Transferring Member and the Member Offeree, or to purchase all the assets of the Company, the Member Offeree shall be required to sell its interest to the third party offeror and do all things necessary to facilitate the sale. Upon such sale of all the outstanding Membership Interests, the proceeds of the sale shall be remitted to the Company, rather than directly to the Members, and shall be distributed as though the Company were being liquidated pursuant to Section 5.5, including the return of the balance of each Member's Capital Contribution Account required by Section 5.3(b) (except debts to third parties not required to be repaid pursuant to the terms of the Offer or subsequent negotiation with the third party offeror shall not be repaid; provided that, those debts to third parties that are guaranteed by a Member or its Affiliates shall be paid unless such guarantees are released at the closing of any purchase pursuant to this Section 8.2).

(c) If the Member Offeree does not timely exercise such option to purchase the Transferring Member's Membership Interest and does not exercise the Tag-Along Right pursuant to clause (b) above or exercises the Tag-Along Right but the third party offeror declines to purchase all the outstanding Membership Interests or the assets of the Company, such Membership Interest may be sold by the Transferring Member to the third party named in the Offer upon the terms set forth in the Offer within a period of sixty (60) days following the expiration of the Option Period, but only upon the consent of the Member Offeree. The third party purchasing the Transferring Member's Membership Interest shall become a Substitute Member provided that such third party agrees in writing to be bound by the terms and conditions of this Agreement.

8.3 Restrictions on Transfer of Parent Interests. As long as MCLC and P&M are Members of the Company, each of McWhinney Holding and PMLC, respectively, agrees that it will not sell, assign, transfer or otherwise dispose of its ownership interest in MCLC and P&M, respectively, except to an Affiliate of MCLC or P&M, respectively; provided, however, that McWhinney Holding and PMLC may pledge its ownership interest in MCLC and P&M, respectively, to a third party financial institution for any purpose.

8.4 Notice of Marketing Interest.

(a) If at any time either Member desires to sell or transfer all or any part of its Membership Interest, other than to another Member or to an Affiliate, and has not received an unsolicited bona fide written offer from a third party to buy such interest, such Member ("the Notifying Member") shall notify the other Member (the "Receiving Member") that it desires to sell or transfer its interest and market such interest to third parties, whereupon the Receiving Member shall do one of the following within 30 days after receipt of the notice: (i) decline to have its interest marketed or (ii) inform the Notifying Member to market on behalf of both Members the sale of all the Membership Interests, after which the Notifying Member (or the Manager, if the Manager so elects) shall market the Membership Interests or the assets of the Company to third parties in good faith.

(b) If the Receiving Member elects (i) above or does not respond within 30 days, the Notifying Member may market its interest and seek offers from third parties for its interest. If the Notifying Member receives a bona fide written offer from a third party and desires to accept such a third party offer, the Recipient Member shall have a right of first refusal on the terms described in Section 8.2(a) above to purchase the Notifying Member's interest. If the Recipient Member does not timely exercise such option to purchase the Notifying Member's Membership Interest, such Membership Interest may be sold by the Notifying Member to the third party named in the Offer upon the terms set forth in the Offer within a period of sixty (60) days following the expiration of the Option Period. The third party purchasing the Notifying Member's Membership Interest shall become a Substitute Member provided that such third party agrees in writing to be bound by the terms and conditions of this Agreement.

(c) If the Recipient Member elects (ii) above, the Recipient Member shall be required to sell its interest to any third party offeror (provided that the Notifying Member does not own an interest greater than 10% in the ownership of the third party offeror) as part of a sale of all outstanding Membership Interests or all the assets of the Company on such terms as may be acceptable to the Notifying Member and the Manager, and the Recipient Member shall do all things necessary to facilitate the sale. Upon such sale of all the outstanding Membership Interests, the proceeds of the sale shall be remitted to the Company, rather than directly to the Members, and shall be distributed as though the Company were being liquidated pursuant to Section 5.5 (except debts to third parties not required to be repaid pursuant to the terms of the third party offer or subsequent negotiation with the third party offeror shall not be repaid; provided that, those debts to third parties that are guaranteed by a Member or its Affiliates shall be paid unless such guarantees are released at the closing of any purchase pursuant to this Section 8.4).

8.5 Suspension of Buy-Sell. During the period that is six months after the commencement of marketing by the Notifying Member under Section 8.4 or six months after the receipt of a third party offer under Section 8.2(a) that the Transferring Member desires to accept, the provisions of Section 7.4 shall not apply and the Buy-Sell provision may not be invoked. This six month period shall be extended for up to an additional six months if a Member enters into a definitive agreement for the sale of its interests or the Company enters into a definitive agreement for the sale of all or substantively all its assets during the prior six month period, which agreement requires additional time to close.

ARTICLE IX
DISSOLUTION; TERMINATION OF MEMBERSHIP OR THE VENTURE

9.1 Termination of Membership. Except for withdrawals expressly permitted by provisions contained in this Article IX, no Member shall have the right to withdraw from the Company and all Members hereby agree not to withdraw from the Company, and any attempt to do so, whether voluntary or involuntary, shall be null and void. Each of the Members agrees not to voluntarily resign from the Company or to default with respect to any obligation or undertaking contained in this Agreement or the Act.

9.2 Dissolution; Liquidation of Assets; Payment of Debts. The Company shall be dissolved and its affairs wound up and terminated upon the first to occur of the following events (each, a "Dissolution Event"):

(a) The determination in writing to dissolve the Company by all Members;

(b) At any time when there are no Members;

(c) The sale or other disposition of all or substantially all of the assets of the Company in one transaction or a series of related transactions;

(d) The occurrence of a Continuation Event followed within ninety (90) days by a determination of the requisite Percentage Interests to dissolve the Company as described in Section 9.3 hereof;

(e) The entry of a decree of judicial dissolution under §18-802 of the Act; or

(f) The termination of the Contribution Agreement prior to contribution of the Property, unless the Members unanimously agree not to dissolve the Company.

Upon the occurrence of a Dissolution Event, the Company shall be wound up and liquidated pursuant to Section 9.4 hereof.

9.3 Continuation Event. Neither the death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member, nor the occurrence of any other event that terminates the continued membership of any Member (each, a "Continuation Event"), shall cause the Company to be dissolved or its affairs to be wound up, and upon the occurrence of any such Continuation Event, the Company shall be continued without dissolution, unless within ninety (90) days following such Continuation Event, Members owning no less than half of the

Percentage Interests (not including in the numerator or the denominator the Percentage Interest of the Member which has been the subject of the Continuation Event) agree in writing to dissolve the Company.

9.4 Winding Up of the Company. Upon dissolution of the Company pursuant to Section 9.2 hereof, the Manager, or if there is no remaining Manager, such person as is designated by a Majority in Interest of the Members not subject to the Continuation Event (such remaining Manager or such person being herein referred to as the "Liquidator"), shall proceed to wind up the business and affairs of the Company upon such terms, price and conditions as are determined by the Liquidator in accordance with this Agreement and the requirements of the Act. This Agreement shall remain in full force and effect and continue to govern the rights and obligations of the Members and the conduct of the Company during the period of winding up the Company's affairs. The Liquidator shall have and may exercise, without further authorization or consent of the Members, all of the powers conferred upon the Members under the terms of this Agreement to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Company. The Liquidator shall liquidate the assets of the Company, collect the debts and obligations due to the Company, and pay or provide for payment of all liabilities and obligations of the Company, including payment of all Member Loans and interest thereon, after which the Liquidator shall distribute the remaining assets of the Company to the Members in the order of priority described in Section 5.5 hereof. The Liquidator may distribute assets in kind; provided, however, that the Liquidator shall determine the fair market value by appraisal or other reasonable means of all assets so distributed in kind. Notwithstanding the preceding two sentences, if the dissolution occurs by reason of Section 9.2(f), then (i) Liquidator may distribute assets in kind pursuant to Section 5.3(b) without regard to third party valuations and (ii) prior to any distributions under Section 5.3(c), a Member will be entitled to a special distribution of any assets contributed by such Member, regardless of any appreciation of such assets.

ARTICLE X
MISCELLANEOUS

10.1 Governing Law. This Agreement and the Company shall be governed by and construed in accordance with the laws of the State of Delaware.

10.2 Amendments. Except as otherwise expressly provided in this Section 10.2, amendments or modifications may be made to this Agreement only by setting forth such amendments or modifications in a document approved by all Members. Any alleged amendment or modification herein which is not so documented shall not be effective as to any Member. Notwithstanding the foregoing, the Manager may, without the consent of any Member, amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith to reflect:

(a) a change in the location of the principal place of business of the Company, or a change in the registered office or the registered agent of the Company;

(b) the admission of a Substitute Member into the Company or termination of any Member's Membership Interest in the Company in accordance with this Agreement;

(c) a change (i) that is of an inconsequential nature and does not adversely affect any Member in any material respect; (ii) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or contained in any federal or state statute, compliance with any of which the Manager deems to be in the best interest of the Company and the Members; or (iii) that is necessary or desirable so that the method of tax allocations will comply with applicable provisions of the Code, the Regulations or rulings of the IRS; or

(d) a change in Exhibit A to reflect any change in the Percentage Interests or Capital Contributions that occurs in accordance with the terms of this Agreement.

10.3 Counterparts. This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, binding on all Members, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

10.4 Agreement for Further Execution. As required from time to time in furtherance of the business of the Company, the Members agree to (i) sign and acknowledge any certificate required by law, (ii) sign and acknowledge any amendment to or cancellation of such certificate whenever such amendment or cancellation is required by law; (iii) sign, acknowledge and swear to (if necessary) similar certificates, affidavits or certificates of fictitious firm name, trade name or the like (and any amendments or cancellations thereof) required by the laws of any jurisdiction in which the Company does, or proposes to do, business, and to cause the filing of any of the same for record wherever such filing shall be required by law, and (iv) execute and deliver such further instruments as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

10.5 Broker's Indemnity. Each Member represents that it has not dealt with any broker or agent in connection with this Agreement or any of the transactions contemplated hereby, except for MCLC's dealings with McWhinney Real Estate Services, Inc. Except for any fees or commissions owing to McWhinney Real Estate Services, Inc. which shall be paid solely by MCLC, each Member hereby agrees to indemnify the other Member and the Company and hold them harmless from and against all liability, loss, cost, damage and expense (including attorneys' fees and costs incurred in the investigation, defense and settlement of the matter) which the other Member or the Company shall ever suffer or incur by reason of any claim by any broker or agent, whether or not meritorious, for any compensation with respect to such indemnifying Member's dealings in connection with this Agreement or such indemnifying Member's contribution or other transactions provided for or referred to herein.

10.6 Notices. Notices to Members or to the Company shall be deemed to have been given when personally delivered, delivered by courier or three (3) business days after mailed by prepaid registered or certified mail to the respective mailing addresses of each Member and of the Company's principal office, all as herein provided:

To MCLC:	McWhinney Centerra Lifestyle Center, LLC 2725 Rocky Mountain Ave., Suite 200 Loveland, Colorado 80538 Attn: Chad McWhinney
With copies to:	Hasler, Fonfara and Maxwell LLP Sixth Floor, Key Bank Building 125 South Howes Street Fort Collins, Colorado 80521 Attn: Joseph H. Fonfara
To P&M:	Poag & McEwen Lifestyle Centers – Centerra, LLC 6410 Poplar Avenue, Suite 850 Memphis, Tennessee 38119 Attention: G. Dan Poag Joshua D. Poag
With copies to:	Bass, Berry & Sims PLC 315 Deaderick St., Suite #2700 Nashville, Tennessee 37238 Attn: Lori B. Morgan
To the Company:	Centerra Lifestyle Center, LLC 6410 Poplar Avenue, Suite 850 Memphis, Tennessee 38119 Attention: G. Dan Poag Joshua D. Poag
With copies to:	Poag & McEwen Lifestyle Centers – Centerra, LLC 6410 Poplar Avenue, Suite 850 Memphis, Tennessee 38119 Attention: G. Dan Poag Joshua D. Poag
With copies to:	Bass, Berry & Sims PLC 315 Deaderick St., Suite #2700 Nashville, Tennessee 37238 Attn: Lori B. Morgan

10.7 Partition. Except as otherwise provided in this Agreement, no Member will, either directly or indirectly, make any application for dissolution, take any action to require partition or appraisal of the Company or of any of its assets or properties or cause the sale of any Company property, and notwithstanding any provisions of applicable law to the contrary, each Member (and its legal representative, heirs, successors and assigns) hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale with respect to its

Membership Interest (except as otherwise provided herein), or with respect to any of the properties and assets of the Company.

10.8 Headings, Etc. Section headings appearing in this Agreement are for convenience of reference only and in no way define, limit, extend or describe the text of any such section. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

10.9 Entire Agreement; Successors and Assigns. This Agreement, together with the Exhibits attached hereto and the Contribution Agreement, contain the entire agreement by and among the parties respecting the subject hereof and shall supersede any prior understandings and agreements among them respecting the subject hereof and shall be binding upon the parties hereto, their successors, heirs, permitted assigns, legal representatives, executors and administrators, but shall not be deemed for the benefit of creditors or any other Persons.

10.10 Waiver or Termination. Except as otherwise expressly provided in this Agreement, no waiver or termination of this Agreement, or any part hereof, shall be effective unless made in writing and signed by the party or parties sought to be bound thereby, and no failure to pursue or elect any remedies shall constitute a waiver of any default under or breach of any provisions of this Agreement, nor shall any waiver of any default under or breach of any provision of this Agreement be deemed to be a waiver of any other subsequent similar or different default under or breach of such or any other provision or of any election of remedies available in connection therewith.

10.11 Exhibits. Each Exhibit or certificate attached to this Agreement is incorporated into and made a part of this Agreement for all purposes.

10.12 Separability of Provisions. Each provision of this Agreement shall be considered separable and, if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

10.13 Mediation. In the event of any dispute between the parties regarding the applicability or interpretation of any provision of this Agreement, or as to any matter governed by this Agreement (except matters governed by Article VII that are subject to Binding Arbitration), prior to filing any suit or claim against another party in law or in equity, the parties will mediate in good faith and make every reasonable effort to resolve the dispute. The mediator shall be chosen by the parties, and the mediation shall occur at a mutually agreeable time and place. All costs of the mediation shall be borne equally by the parties.

10.14 Property Valuation. The Company agrees to furnish leases, under the supervision of the Manager, to the local property tax assessor's office for purposes of supporting the assessed valuation of the Property and the Center, but the Company will not be required to leave copies of leases with the tax assessor or any third party.

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

MCWHINNEY CENTERRA LIFESTYLE CENTER, LLC, a Colorado limited liability company

By: McWhinney Real Estate Services, Inc., a Colorado corporation, Manager

By _____
Douglas L. Hill
Chief Operating Officer

POAG & McEWEN LIFESTYLE CENTERS – CENTERRA, LLC

By: _____
Its: Secretary

The following parties join this Agreement solely for the purposes of Section 7.4 and Section 8.3:

MCWHINNEY HOLDING COMPANY, LLLP, a Colorado Limited Liability Limited Partnership

By: MHC GP, LLC, a Colorado Limited Liability Company, General Partner

By: McWhinney Real Estate Services, Inc., a Colorado Corporation, Manager

By _____
Douglas L. Hill
Chief Operating Officer

POAG & MCEWEN LIFESTYLE CENTERS, LLC

By: _____

Its: Secretary

2218511.2

FIRST AMENDMENT TO THE
LIMITED LIABILITY COMPANY AGREEMENT
OF
CENTERRA LIFESTYLE CENTER, LLC

THIS FIRST AMENDMENT (the "First Amendment") to the Limited Liability Company Agreement of CENTERRA LIFESTYLE CENTER, LLC, a Delaware limited liability company (the "Company"), is made and entered into effective as of April 23, 2007, by and between McWhinney Centerra Lifestyle Center, LLC, a Colorado limited liability company ("MCLC"), and Poag & McEwen Lifestyle Centers-Centerra, LLC, a Delaware limited liability company ("P&M") (each of MCLC and P&M, a "Member" and collectively, the "Members").

W I T N E S S E T H:

WHEREAS, the Members entered into a Limited Liability Company Agreement of the Company effective as of September 29, 2004 (the "LLC Agreement"); and

WHEREAS, the Members desire to amend the LLC Agreement for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the undersigned agree as follows:

1. The following shall be added as definitions under Article I:

"Foreclosure" has the meaning given such term in Section 8.1(d) hereof.

"Pledging Member" has the meaning given such term in Section 8.1(d) hereof.

"Standstill" has the meaning given such term in Section 7.4(j) hereof.

2. The first sentence of Section 7.4(a) shall be deleted in its entirety and replaced with the following:

> At any time for any reason, including upon a Permanent Loan Impasse pursuant to Section 7.3, any Member (other than a Non-Contributing Member or a Member in default hereunder) may deliver a Buy-Sell Notice (the Member giving such notice being sometimes hereinafter referred to as "A") to the other Member (the Member receiving such written notice being sometimes hereinafter referred to as "B") stating that A wishes to apply the provisions of Section 7.4 to purchase the entire right, title and interest of B in the Company and setting forth (i) a dollar figure selected by A (such figure being hereinafter referred to as the "Specified Value") to be the total value of the Property before deduction

Exhibit B

of any liabilities, and (ii) the amount A is willing to pay for B's interest in the Company as set forth in the following sentence. A's offer to purchase B's right, title and interest in the Company shall be at a price equal to the amount B would have received if the Property had been sold at the Specified Value, the Company liquidated, all liabilities paid (including Member Loans), and the remainder of the Company's assets distributed to the Members pursuant to Section 5.5 ("Buy-Out Price B").

3. The following shall be added as a new subsection (j) under Section 7.4:

(j) Notwithstanding anything contained herein, in the event that a Buy-Sell Notice is delivered by a Member pursuant to this Section 7.4, no action shall be taken that would materially affect the business or operations of the Company or the condition of the Center without the unanimous consent of the Members, including without limitation any matters requiring the unanimous consent of the Members pursuant to Section 6.2 hereof (the "Standstill"). The Standstill described in this Section 7.4(j) shall remain in effect from the date on which a Buy-Sell Notice is delivered until the earlier of (i) the Buy-Out Closing Date hereof or (ii) the cancellation of the notice invoking the provisions of Section 7.4 as described in Section 7.4(e).

4. Section 8.1(d) shall be deleted in its entirety and shall be replaced with the following language:

(d) Notwithstanding anything in this Agreement to the contrary, each Member (a "Pledging Member") will have the right to pledge its Membership Interest to a third party financial institution for any purpose without complying with Sections 8.1(a), 8.1(b), 8.1(c), 8.2 or 8.4 hereof. In the event that such third party financial institution, or any successor thereto, exercises its rights under any such pledge and possesses the Membership Interest (a "Foreclosure"), the following provisions shall apply:

(i) In the event that the Pledging Member is the Manager hereunder, the Pledging Member shall be removed as the Manager of the Company and shall be replaced as Manager by the non-Pledging Member. As Manager, the non-Pledging Member shall succeed to all rights and responsibilities of the Manager as set forth herein.

(ii) For a period of thirty (30) days following the Foreclosure, the third party financial institution or successor thereto shall have all economic and voting rights of a Member hereunder, including without limitation the right to vote on any matters requiring the unanimous consent of the Members pursuant to Section 6.2 hereof.

(iii) Upon the expiration of the thirty (30) day period described in Section 8.1(d)(ii) above, the third party financial institution, or any successor thereto, shall have an economic interest but no voting rights hereunder, except as set forth in Section 7.4(j) above and Section 8.1(d)(iv) below, and shall have all of the rights of a Substitute Member hereunder only with approval by the remaining Members pursuant to Section 8.1(b), provided that such third party financial institution or successor thereto agrees in writing to be bound by the terms and conditions of this Agreement.

(iv) Notwithstanding anything herein to the contrary, the third party financial institution or successor thereto shall be treated as a Substitute Member for purposes of Sections 7.4, 8.2, 8.4 and 8.5.

Further, in the event that a Pledging Member is contesting in good faith a Foreclosure proceeding initiated by the third party financial institution, or any successor thereto, and such Pledging Member is the Manager hereunder, the Pledging Member shall be removed as the Manager of the Company, shall be replaced as Manager by the non-Pledging Member and shall retain all of its rights as a Member hereunder, including without limitation the right to vote on any matters requiring the unanimous consent of the Members pursuant to Section 6.2 hereof, all for the duration of such Foreclosure proceeding. As Manager, the non-Pledging Member shall succeed to all rights and responsibilities of the Manager as set forth herein. In the event that such Foreclosure proceeding is resolved in favor of the Pledging Member, the Pledging Member shall be reinstated as the Manager of the Company with all rights and responsibilities associated therewith.

5. Section 8.3 shall be deleted in its entirety and shall be replaced with the following language:

> Section 8.3 Restrictions on Transfer of Parent Interests. As long as MCLC and P&M are Members of the Company, each of McWhinney Holding and PMLC, respectively, agrees that it will not sell, assign, transfer or otherwise dispose of its ownership interest in MCLC and P&M, respectively, except to an Affiliate of MCLC or P&M, respectively; provided, however, that McWhinney Holding and PMLC may pledge its ownership interest in MCLC and P&M, respectively, to a third party financial institution for any purpose, and, in the event that such third party financial institution, or any successor thereto, exercises its rights under any such pledge and possesses the ownership interest of McWhinney Holding or PMLC in MCLC or P&M, respectively, such possession shall be treated as a Foreclosure hereunder and the provisions of Section 8.1(d) shall apply.

6. All capitalized terms used and not otherwise defined herein shall have the meaning given to them in the LLC Agreement.

7. Except as amended by this First Amendment, the LLC Agreement and all of the provisions and exhibits thereof shall remain in full force and effect as in effect on the date hereof.

8. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute a complete document.

[The following page is the signature page.]

IN WITNESS WHEREOF, this First Amendment to the LLC Agreement has been executed effective as of the date first above written.

McWHINNEY CENTERRA LIFESTYLE CENTER, LLC, a Colorado limited liability company

By: McWhinney Real Estate Services, Inc., a Colorado corporation, Manager

By: _____
Name: Douglas L. Hill
Title: Chief Operating Officer

POAG & McEWEN LIFESTYLE CENTERS-CENTERRA, LLC, a Delaware limited liability company

By: _____
Name: Joshua D. Poag
Title: Executive Vice President, Chief Financial Officer and Secretary

LexisNexis File & Serve Transaction Receipt

Transaction ID:	42220211
Submitted by:	Jennifer Peters, Otis Coan & Peters LLC
Authorized by:	Jennifer Lynn Peters, Otis Coan & Peters LLC
Authorize and file on:	Jan 30 2012 9:44PM MST

Court:	CO Larimer County District Court 8th JD
Division/Courtroom:	4A - Division 4A
Case Class:	Civil
Case Type:	Breach of Contract
Case Number:	2011CV1104
Case Name:	MCWHINNEY HOLDING COMPANY LLLP A COLORAD et al vs. POAG MCEWEN LIFESTYLE CENTERS-CENTERRA L et al

Transaction Option:	File and Serve
Billing Reference:	16-213-101-JLP
Read Status for e-service:	Not Purchased
Note to Clerk:	Please note we have made a Jury Demand. We request the jury fee be assessed.

Documents List

6 Document(s)

Attached Document, 46 Pages Document ID: 45801711

Document Type:	Access:	Statutory Fee:	Linked:
Answer Counterclaim & Jury Demand	Public	$451.00	

Document title:
Answer, Counterclaim and Jury Demand

Attached Document, 20 Pages Document ID: 45801718
Related Document ID: 45801711

Document Type:	Access:	Statutory Fee:	Linked:
Filing Other	Public	$0.00	

Document title:
Exhibit A to Answer, Counterclaim and Jury Demand (part 1 of 3)

Attached Document, 15 Pages Document ID: 45801722
Related Document ID: 45801711

Document Type:	Access:	Statutory Fee:	Linked:
Filing Other	Public	$0.00	

Document title:
Exhibit A to Answer, Counterclaim and Jury Demand (Part 2 of 3)

Attached Document, 13 Pages Document ID: 45801727
Related Document ID: 45801711

Document Type:	Access:	Statutory Fee:	Linked:
Filing Other	Public	$0.00	

Document title:
Exhibit A to Answer, Counterclaim and Jury Demand (part 3 of 3)

Attached Document, 5 Pages Document ID: 45801728
Related Document ID: 45801711

Document Type:	Access:	Statutory Fee:	Linked:
Filing Other	Public	$0.00	

Document title:
Exhibit B to Answer, Counterclaim and Jury Demand

Attached Document, 3 Pages Document ID: 45801730

Document Type:	Access:	Statutory Fee:	Linked:
Civil Case Cover Sheet	Public	$0.00	

Document title:
District Court Civil Case Coversheet (Jury Demand, Rule 16.1 Does Not Apply)

Expand All

Sending Parties (6)

Party	Party Type	Attorney	Firm	Attorney Type
POAG LIFESTYLE CENTERS LLC A DELAWARE LI	Defendant	Peters, Jennifer Lynn	Otis Coan & Peters LLC	Privately Retained Attorney
POAG LIFESTYLE CENTERS LLC A DELAWARE LI	Defendant	Lyons, Shannon D	Otis Coan & Peters LLC	Privately Retained Attorney
POAG MCEWEN LIFESTYLE CENTERS LLC A DELA	Defendant	Peters, Jennifer Lynn	Otis Coan & Peters LLC	Privately Retained Attorney
POAG MCEWEN LIFESTYLE CENTERS LLC A DELA	Defendant	Lyons, Shannon D	Otis Coan & Peters LLC	Privately Retained Attorney
POAG MCEWEN LIFESTYLE CENTERS-CENTERRA L	Defendant	Peters, Jennifer Lynn	Otis Coan & Peters LLC	Privately Retained Attorney
POAG MCEWEN LIFESTYLE CENTERS-CENTERRA L	Defendant	Lyons, Shannon D	Otis Coan & Peters LLC	Privately Retained Attorney

Recipients (5)

Service List (5)

Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
Service	CENTERRA PROPERTIES WEST LLC A COLORADO	Plaintiff	Keane, Joseph Michael	Norton Smith & Keane PC	Privately Retained Attorney	E-Service
Service	CENTERRA RETAIL SALES FEE CORPORATION A	Plaintiff	Keane, Joseph Michael	Norton Smith & Keane PC	Privately Retained Attorney	E-Service
Service	MCWHINNEY CENTERRA LIFESTYLE CENTER LLC	Plaintiff	Keane, Joseph Michael	Norton Smith & Keane PC	Privately Retained Attorney	E-Service
Service	MCWHINNEY HOLDING COMPANY LLLP A COLORAD	Plaintiff	Keane, Joseph Michael	Norton Smith & Keane PC	Privately Retained Attorney	E-Service
Service	SMP4 INVESTMENTS INC A COLORADO CORPORAT	Plaintiff	Keane, Joseph Michael	Norton Smith & Keane PC	Privately Retained Attorney	E-Service

Additional Recipients (0)

Case Parties

Close

Jennifer Peters

From: LexisNexis File & Serve <TransactionReceipt@fileandserve.lexisnexis.com>
Sent: Monday, January 30, 2012 9:46 PM
To: Jennifer Peters
Subject: Case: 2011CV1104; Transaction: 42220211 Transaction Receipt

To: Jennifer Lynn Peters
Subject: Transaction Receipt

This email is to confirm receipt of your documents. The transaction option you selected was "File And Serve". The details for this transaction are listed below.

Court: CO Larimer County District Court 8th JD
Case Name: MCWHINNEY HOLDING COMPANY LLLP A COLORAD et al vs. POAG MCEWEN LIFESTYLE CENTERS-CENTERRA L et al
Case Number: 2011CV1104
Transaction ID: 42220211
Document Title(s):
Answer, Counterclaim and Jury Demand (46 pages)
Exhibit A to Answer, Counterclaim and Jury Demand (part 1 of 3) (20 pages)
Exhibit A to Answer, Counterclaim and Jury Demand (Part 2 of 3) (15 pages)
Exhibit A to Answer, Counterclaim and Jury Demand (part 3 of 3) (13 pages)
Exhibit B to Answer, Counterclaim and Jury Demand (5 pages)
District Court Civil Case Coversheet (Jury Demand, Rule 16.1 Does Not Apply) (3 pages)
Authorized Date/Time: Jan 30 2012 9:44PM MST
Authorizer: Jennifer Lynn Peters
Authorizer's Organization: Otis Coan & Peters LLC
Sending Parties:
POAG LIFESTYLE CENTERS LLC A DELAWARE LI
POAG MCEWEN LIFESTYLE CENTERS LLC A DELA
POAG MCEWEN LIFESTYLE CENTERS-CENTERRA L Served Parties:
CENTERRA PROPERTIES WEST LLC A COLORADO
CENTERRA RETAIL SALES FEE CORPORATION A
MCWHINNEY CENTERRA LIFESTYLE CENTER LLC
MCWHINNEY HOLDING COMPANY LLLP A COLORAD
SMP4 INVESTMENTS INC A COLORADO CORPORAT

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