1186337 - R8 SDMS

# OPERATING AGREEMENT

# FOR

# RICO PROPERTIES LIMITED LIABILITY COMPANY

THIS OPERATING AGREEMENT is made and entered into as of April 1, 1994 by Richard M. Theile, Stanley A. Foster, JJRC Limited Liability Company, a Colorado limited liability company (hereinafter "JJRC"), Silvercreek Land Company, L.L.C., a Georgia limited liability company (hereinafter "Silvercreek"), Twin City Development, L.L.C., an Arizona limited liability company (hereinafter "Twin City"), and Bill Baird, or his designee (referred to as the "members" and individually as a "member").

The members desire to form a limited liability company pursuant to the laws of the State of Colorado. Accordingly, in consideration of the mutual covenants contained herein, they agree and certify as follows:

## ARTICLE I

## THE LIMITED LIABILITY COMPANY

1.1 Formation. The members hereby form a limited liability company (the "Company") subject to the provisions of the Colorado Limited Liability Company Act as currently in effect (the "Act").

1.2 Filing. In connection with the execution of this Operating Agreement, the members shall cause articles of

organization that comply with the requirements of the Act to be properly filed with the Colorado Division of Corporations and Commercial Code, and shall execute such further documents (including amendments to the articles of organization) and take such further action as is appropriate to comply with the requirements of law for the formation or operation of a limited liability company in all states and counties where the Company may conduct its business.

1.3 Name. The name of the Company shall be Rico Properties Limited Liability Company.

1.4 Registered Office, Registered Agent. The location of the registered office of the Company shall One Hinkley Drive, P.O. Box 220, Rico, Colorado 81332 and thereafter at such other location as the members may designate. The Company's registered agent at such address shall be Richard M. Theile.

1.5 Events of Dissolution. The Company shall continue until December 31, 2021, unless sooner dissolved by:

(a) the affirmative vote of members whose interests in capital as defined in Article 2.2 equals more than 69% of all interests in capital;

(b) any event which makes it unlawful for the business of the Company to be carried on by the members;

(c) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or the occurrence of any other event that terminates the continued membership of a member in the company; or

(d) any other event causing a dissolution of a limited liability company under the Act.

1.6 Continuance of the Company. Notwithstanding the foregoing provisions of Article 1.5, upon the occurrence of an event described in Article 1.5(c), if there are at least two remaining members, the remaining members have the right to continue the business of the Company. Such right can be exercised only by the affirmative unanimous vote of the remaining members, within 90 days after the occurrence of an event described in Article 1.5(c), to continue the business of the Company. If not so exercised, the right of the members to continue the business of the Company shall expire and the Company's affairs shall be wound up as provided in Article 8.

1.7 Management of Business. The name and place of residence of each manager are as follows:

| Name | Address |
|---|---|
| Richard M. Theile | 213 West Colorado Avenue, P.O. Box 725,<br>Telluride, Colorado 81435<br>Fax No. (303) 728-5417 |
| Lynn Goodwin | 60 West 66th St., Apt. 9-E<br>New York, New York 10023-6214<br>Fax No. (212) 704-0196 |

| | |
|---|---|
| Curtis Swanky | 11811 N. Tatum Blvd.<br>Suite 4050<br>Phoenix, AZ 85028<br>Fax No. (602) 953-5626 |
| Michael Hines | c/o Consolidated Planning Corporation<br>400 Colony Square - Suite 525<br>Atlanta, Georgia 30361<br>Fax No. (404) 892-1970 |
| Bill Baird | c/o Mountain Village Construction<br>P.O. Box 1260<br>Telluride, Colorado 81435<br>Fax No. (813) 561-1698 |

These managers shall serve for a five year term, unless they sooner resign. Their successors shall be elected by a vote of a simple majority of the members, by sharing ratios as defined in Article 3.1, except that Lynn Goodwin may appoint a successor at any time, and upon her resignation, such successor shall become a manager for the remainder of her term.

1.8 Character of Business. The business of the Company shall be:

(a) To carry on the real estate business. To acquire by purchase, real property located in and around Rico, Colorado, pursuant to the purchase agreement annexed hereto, and interests of all kinds therein, and (i) to hold, own, develop, improve, manage, operate, let as lessor or sublessor, and mortgage such property; (ii) to sell and exchange such property and interests therein; (iii) to obtain, use, dispose of and deal in and with such property in every other manner, either alone or in conjunction with others, as partners, joint venturers or otherwise; and (iv) to carry on the

business of managing agent, broker, finder, consultant and all other functions in connection therewith.

(b) To transact other business. To transact any and all other businesses for which limited liability companies may be formed under Colorado law.

(c) To act on own account or for others. To accomplish any of the foregoing purposes for its own account or as nominee, agent or trustee for others.

(d) Vote of Managers. The vote of the Managers shall be calculated based on the Interest in Capital of the members whom they represent; ie, Lynn Goodwin voting for JJRC, Curtis Swanky voting for Twin City, Michael Hines voting for Silvercreek, Bill Baird, or his designee, voting for Bill Baird, and Richard M. Theile voting for himself and Stanley A. Foster.

1.9 Principal Place of Business. The location of the principal place of business of the Company shall be at c/o the offices of Richard M. Theile, 213 West Colorado Avenue, Telluride, Colorado 81435, or at such other place as the Managers from time to time may select.

1.10 The Members. The name and place of residence of each member are as follows:

| Name | Address |
|---|---|
| Richard M. Theile | 213 West Colorado Ave.<br>P.O. Box 725<br>Telluride, Colorado 81435<br>Fax No. (303) 728-5417 |
| JJRC | 60 West 66th St., Apt. 9-E<br>New York, New York 10023-6214<br>Fax No. (212) 704-0196 |
| Silvercreek | c/o Consolidated Planning Corporation<br>400 Colony Square<br>Suite 525<br>Atlanta, Georgia 30361<br>Fax No. (404) 892-1970 |

| | |
|---|---|
| Stanley A. Foster | P.O. Box 66<br>Rico, Colorado 81332<br>Fax No. (303) 728-2144 |
| Twin City | c/o Olie Swanky<br>11811 N. Tatum Blvd.<br>Suite 4050<br>Phoenix, AZ 85028 |
| Bill Baird, or<br>his designee | c/o Mountain Village Construction<br>P.O. Box 1260<br>Telluride, Colorado 81435<br>Fax No. (303) 728-3662 |

1.11 New Members. New members may be admitted only upon such terms and conditions as all the then existing members by unanimous consent may so determine, except that Bill Baird may designate in his place and stead on or before May 1, 1994 an entity (whether a partnership, corporation or limited liability company) of which he will be a stockholder, officer, general partner or manager, as the case may be.

## ARTICLE II

## CAPITAL CONTRIBUTIONS

2.1 Initial Contributions. The members initially shall contribute to the Company's capital the following amounts in the manner hereinafter described:

| | | |
|---|---|---|
| (a) | JJRC | $525,000 in cash; |
| (b) | Twin City | $350,000 in cash; |
| (c) | Silvercreek | $350,000 in cash; |
| (d) | Stanley A. Foster | $ 59,500 in cash; |
| (e) | Richard M. Theile | $100,000 in cash; |

(f) Bill Baird, or his designee $350,000 in cash.

2.2 Interests in Capital. The interests of the members in the capital originally contributed to the Company are as follows:

| Name | Interest in Capital |
|---|---|
| Silvercreek | 20.179% |
| Twin City | 20.179% |
| Richard M. Theile | 5.765% |
| Stanley A. Foster | 3.430% |
| JJRC | 30.268% |
| Bill Baird, or his designee | 20.179% |

2.3 Additional Contributions. Except as provided in Article 6.2, no member shall be obligated to make any additional contribution to the Company's capital.

2.4 Vote of Members. For purposes of this agreement, any majority vote of the members shall require a majority in interest, calculated according to the members' Interests in Capital set forth in Section 2.2.

## ARTICLE III

## PROFITS, LOSSES AND DISTRIBUTIONS

3.1 Profits and Losses. All of the Company's net profits or net losses and net distributable cash shall be determined on an annual basis and shall be allocated to the members in proportion to

their Sharing Ratios. The "Sharing Ratio" of each member is set forth below opposite his name:

| Name | Sharing Ratio |
|---|---|
| Silvercreek | 20.179% |
| Twin City | 20.179% |
| Richard M. Theile | 5.765% |
| Stanley A. Foster | 3.430% |
| JJRC | 30.268% |
| Bill Baird, or his designee | 20.179% |

3.2 Distributions. Annually or at more frequent intervals as the members may by majority vote determine, the Managers shall distribute available funds to the members, in proportion to their Sharing Ratios. "Available funds" for this purpose means the Company's gross cash receipts, less the Company's expenditures, and less the amount that, in the Managers' reasonable judgment, the Company should retain in order to fulfill its business purposes.

## ARTICLE IV

## MANAGEMENT

4.1 Members. The liability of the members shall be limited as provided in the Colorado Limited Liability Company Act.

4.2 Powers of Managers.

(a) Subject to Articles 4.2(b) and (c) below, Richard M. Theile is primarily responsible for all aspects of project management and running the day to day business of the Company.

## ARTICLE IV

## MANAGEMENT

4.1 Members. The liability of the members shall be limited as provided in the Colorado Limited Liability Company Act.

4.2 Powers of Managers.

(a) Subject to Articles 4.2(b) and (c) below, Richard M. Theile is primarily responsible for all aspects of project management and running the day to day business of the Company.

(b) The Managers, acting only by a favorable vote of 4 out of 5 Managers, are authorized on the Company's behalf to make all decisions as to (a) the sale or other disposition of substantially all of the Company's assets in a single transaction or a series of related transactions; (b) the improvement and development of the Company's assets; (c) the purchase or other acquisition of other assets of all kinds; (d) the resolution of significant or material issues regarding the management of all or any part of the Company's assets; (e) the borrowing of money and the granting of security interests in the Company's assets (including loans from members) (except see Section 6.8 hereof with respect to a $750,000 working capital loan); (f) the prepayment, refinancing or extension of any mortgage affecting the Company's assets; (g) the compromise or release of any of the Company's claims or debts; and (h) the employment of persons, firms or corporations for the operation and management of the Company's

(b) The Managers, acting only by a favorable vote of 4 out of 5 Managers, are authorized on the Company's behalf to make all decisions as to (a) the sale or other disposition of substantially all of the Company's assets in a single transaction or a series of related transactions; (b) the improvement and development of the Company's assets; (c) the purchase or other acquisition of other assets of all kinds; (d) the resolution of significant or material issues regarding the management of all or any part of the Company's assets; (e) the borrowing of money and the granting of security interests in the Company's assets (including loans from members) (except see Section 6.8 hereof with respect to a $750,000 working capital loan); (f) the prepayment, refinancing or extension of any mortgage affecting the Company's assets; (g) the compromise or release of any of the Company's claims or debts; and (h) the employment of persons, firms or corporations for the operation and management of the Company's business. Subject to the authority first obtained pursuant to the previous sentence, in the exercise of his day to day management powers, Richard M. Theile is authorized, upon the signatures or express written authorization of Richard M. Theile and any one of the remaining four managers, to execute and deliver (a) all contracts, conveyances, assignments, leases, subleases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds for any one item, subject matter or related items or subject matter in excess of one thousand dollars ($1,000) or

such other amount as may be determined by a vote of Managers representing 69% of the Interest in Capital from time to time (it being understood that Richard M. Theile may execute checks in an amount less than $1,000 only with his signature without prior authorization); (c) all promissory notes, mortgages, deeds of trust, security agreements and other similar documents; and (d) all other instruments of any kind or character relating to the Company's affairs, whether like or unlike the foregoing.

(c) The Managers are authorized on the Company's behalf, acting by simple majority vote, to sell or otherwise dispose of less than substantially all of the Company's assets in the ordinary course of the Company's business.

4.3 Nominee. Title to the Company's assets shall be held in the Company's name or in the name of any nominee (including a Manager so acting) that the Managers may unanimously designate. The Managers shall have power acting unanimously to enter into, or to authorize one of the Managers to enter into, a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his willful misconduct.

4.4 Time Devoted to Business. Richard M. Theile shall devote such time to the business of the Company as is necessary for the efficient and successful operation of the Company's business. The Managers shall at all times be free to engage for their own account

in all aspects of any other business or investment similar or dissimilar to the ones in which the Company is involved.

4.5 Information Relating to Company. Upon request, each Manager possessing information regarding the Company or its activities shall supply such information to any member. Each member or his authorized representative shall have access to and may inspect and copy all books, records and materials in any Manager's possession regarding the Company or its activities. The reasonable exercise of the rights contained in this Article 4.5 shall be at the Company's member's expense.

4.6 Exculpation. Any act or omission of the Managers, the effect of which may cause or result in loss or damage to the Company or the members if done in good faith to promote the best interests of the Company, shall not subject the Managers to any liability to the members.

4.7 Records at Principal Place of Business. Richard M. Theile shall cause the Company to keep at its principal place of business the following:

(a) a current list in alphabetical order of the full name and last known business street address of each member;

(b) a copy of the stamped articles of organization and all certificates of amendment to them, together with executed

copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

(c) a complete and accurate current account of all receipts and disbursements, and of all current and long term accounts payable, accounts receivable and liabilities; and

(d) complete copies of all architectural drawings, construction specifications, and all other documents relating to the business of the Company, including proceedings before any governmental authority, and all contracts, invoices, etc.

4.8 Meetings of the Managers; Quorum. The Managers shall meet at least once a year by teleconference or in person, upon no less than 24 hours prior written notice given by facsimile or otherwise. A quorum shall exist if at least four Managers are present, by telephone, or in person to participate. A Manager may vote by proxy, provided such proxy is evidenced by a written authorization.

4.9 Legal Counsel. The members agree to retain M. Jack Duksin as the Company's general counsel, and to pay him according to his regular hourly rate, not to exceed $250 per hour, plus disbursements.

## ARTICLE V

## COMPENSATION

5.1 Management Fee. The members agree that the following Managers shall render the following services to the Company for which they shall be entitled to the following compensation:

(a) Richard M. Theile

(i) Primary responsibility for all aspects of day to day project management: $100,000 for the period April 1, 1994 through March 31, 1995. Thereafter, the members will by majority vote decide whether Mr. Theile will continue as the day-to-day manager, and whether and to what extent he will be compensated.

(ii) Listing brokerage commission (for the period April 1, 1994 through March 31, 1995. Thereafter, the members will by majority vote decide whether Mr. Theile will continue as the listing broker): 3 1/2 percent of sales price on all property sold, except property to any of the members (for which no commission shall be paid), unless such brokerage is reduced by agreement of a majority of the members in order to effect a

sale, in which case the commission shall be the reduced amount; and

(iii) Sales brokerage commission: 3 1/2 percent of the sales price on all sales made by Mr. Theile, except those sold to any of the members (for which no commission shall be paid), unless such brokerage is reduced by agreement of a majority of members in order to effect a sale, in which case the commission shall be the reduced amount.

## ARTICLE VI

## CAPITAL ACCOUNTS

6.1 Books. Richard M. Theile shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business. Such books shall be kept on such method of accounting as the Managers shall select. The Company's accounting period shall be the calendar year.

6.2 Additional Capital Contributions. No member shall be required to make any additional capital contributions unless approved by a favorable vote of (i) members holding a 66 2/3% Interest in Capital, and (ii) four out of five Managers. Notwithstanding the previous sentence, a member may nevertheless refuse to make an additional capital contribution, and in such

event, his Interest in Capital and Sharing Ratio shall be proportionately reduced (diluted) to account for the fact that other members contributed and he did not.

6.3 Capital Accounts. A separate Capital Account will be maintained for each member.

(a) Each member's Capital Account will be increased by:

(i) The amount of money contributed by the member to the Company;

(ii) The fair market value of property contributed by the member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under IRC §752);

(iii) Allocations to the member of net profits and net losses; and

(iv) Allocations to the member of income described in IRC §705(a)(1)(B).

(b) Each member's Capital Account will be decreased by:

(i) The amount of money distributed to the member by the Company;

(ii) The fair market value of property distributed to the member by the Company (net of liabilities secured by such distributed property that such member is considered to assume or take subject to under IRC §752);

(iii) Allocations to the member of expenditures described in IRC §705(a)(2)(B); and

(iv) Allocations to the account of the member of Company loss and deduction as set forth in the relevant Treasury Regulations, taking into account adjustments to reflect book value.

(c) In the event of a permitted sale or exchange of a Membership Interest or an Economic Interest in the Company (as defined in Article VII, hereof), the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Interest in accordance with Treas. Reg. §1.704-1(b)(2)(iv).

(d) The manner in which Capital Accounts are to be maintained pursuant to this section 6.3 is intended to comply with the requirements of IRC §704(b) and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this section 6.3 should be modified to comply with IRC §704(b) and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this section 6.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the members.

(e) Upon liquidation of the Company (or any member's Membership Interest or any Owner's Economic Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the members and Economic Interest owners, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within 60 days of the end of the taxable year (or, if later, within 120 days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a member or Economic Interest owner whose interest is liquidated (either upon the withdrawal of the member or the liquidation of the Company) against the amount otherwise distributable to the member.

(f) Except as otherwise required in the Colorado Limited Liability Company Act (and subject to sections 6.1 and 6.2 above), no member or Economic Interest owner shall have any liability to restore all or any portion of a deficit balance in the member's or Economic Interest owner's Capital Account.

6.4 Withdrawal or Reduction of Members' Contributions to Capital. A member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to members on account of their capital contributions, have been paid or there remains property of the Company sufficient to pay them.

6.5 Transfers During Year. To avoid an interim closing of the Company's books, the share of profits and losses under Article 3 of a member who transferred part or all of his interest in the Company during the calendar year shall be determined by taken his proportionate share of the amount of the profits and losses for the year. The Managers shall make the proration based on the portion of the calendar year that has elapsed prior to the transfer. The Managers shall allocate the balance of the profits and losses attributable to the transferred interest to the transferee of such interest.

6.6 Reports. The Managers shall close the books of account promptly after the close of each calendar year, and shall prepare and send to each member a statement of such member's distributive

share of income and expense for federal income tax reporting purposes.

6.7 Overriding Allocations.

(a) Minimum Gain Chargeback. Subject to the exceptions set forth in Section 1.704-2(f) of the regulations, if there is a net decrease in partnership minimum gain (as defined in Section 1.704-2(d) of the regulations) during a fiscal year, each member shall be specifically allocated items of gross income for such fiscal year (and, if necessary, for subsequent fiscal years) in an amount equal to such member's share of the net decrease in partnership minimum gain (which share of such net decrease shall be determined in accordance with Section 1.704-2(g)(2) of the regulations). It is intended that this Section 6.7(a) shall constitute a "minimum gain chargeback" as provided by Section 1.704-2(f) of the regulations.

(b) Chargeback of Nonrecourse Debt Minimum Gain. Subject to the exceptions set forth in Section 1.704-2(i)(4) of the regulations, if there is a net decrease in partner nonrecourse debt minimum gain (as defined in Section 1.704-2(i)(2) of the regulations) during a fiscal year attributable to a partner nonrecourse debt (as defined in Section 1.704-2(b)(4) of the regulations), each member with a share of partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Section 1.704-2(i)(5) of the

regulations, shall be specially allocated items of gross income for such fiscal year (and, if necessary, for subsequent fiscal years) in an amount equal to such member's share of the net decrease in partner nonrecourse debt (which share of such net decrease shall be determined under Sections 1.704-2(i)(4) and 1.704-2(g)(2) of the regulations). It is intended that this Section 6.7(b) shall constitute a "chargeback of partner nonrecourse debt minimum gain" as provided by Section 1.704-2(i)(4) of the regulations.

(c) Nonrecourse Deductions. Any partner nonrecourse deductions (as defined in Section 1.704-2(i)(2) of the regulations) for any fiscal year or other period shall be allocated to the member who bears the economic risk of loss (as such term is defined in Sections 1.704-2(b)(4) and 1.752-2 of the regulations) with respect to the loan to which such partner nonrecourse deductions are attributable in accordance with Section 1.704-2(i)(1) of the regulations.

(d) Qualified Income Offset. Notwithstanding anything to the contrary herein, except for the provisions of this Section 6.7 set forth below, in the event that a member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the regulations, items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be specially allocated to the member in the manner required by Section 1.704-1(b)(2)(ii)(d) of the regulations

to eliminate, to the extent required thereby, the deficit in the capital account of such member as quickly as possible. It is intended that this Section 6.7(d) constitutes a "qualified income offset" as provided by Section 1.704-1(b)(2)(ii)(d)(3) of the regulations.

(e) Savings Provision. Notwithstanding anything to the contrary herein, if the allocation of any item of income, gain, loss, deduction, expenditure or credit under this agreement does not have substantial economic effect under Section 1.704-1(b)(2) of the regulations and is not in accordance with the members' interests in the Company within the meaning of Section 1.704-1(b)(3) of the regulations, then such item shall be reallocated in such manner as to (A) either have substantial economic effect or to be in accordance with the members' interests in the Company and (B) result as nearly as possible (consistent with clause (i)) in the respective balances of the Capital Accounts that would have resulted if such item had instead been allocated hereunder without regard to this Section 6.7.

6.8 Working Capital Loan. The members hereby authorize the Company to obtain a working capital loan from the Bank of Telluride in an amount of up to $750,000. The members each agree that, if the Bank of Telluride requires that each of them sign a joint and several guaranty of collection (that is, a guarantee whereby the Bank will proceed against the guarantors only after the Bank fully pursues all remedies against the Rico Property which will serve as

collateral for such loan) that they each shall promptly do so, provided that if the member is a limited liability entity, then such entity shall cause one or more owners of such entity to execute such guaranty whereby such owner or owners shall be liable under the guaranty in proportion to such member's proportionate Interest in Capital. Each member agrees that, if and to the extent such member pays more than his pro-rata portion of such loan pursuant to such guaranty, or otherwise, (determined by his Interest in Capital) then he shall have an absolute right of contribution from all other guarantors and/or members based on their respective proportionate interest in the loan.

## ARTICLE VII

## TRANSFERS OF A MEMBER'S MEMBERSHIP INTEREST OR MEMBER'S ECONOMIC INTEREST

7.1 Assignment.

(a) If at any time a member proposes to sell, assign or otherwise dispose of his interest in the Company ("Membership Interest"), such member (the "selling member") shall make a written offer to sell such interest to the other members at a price determined by the selling member on the terms and conditions set forth in Article 7.1(b). The other members shall have the right for a period of 30 days after receipt of such offer to elect to purchase all of such Membership Interest. In exercising their right to purchase, the other members may divide such Membership Interest in any manner to which they shall all agree, and not all

of them must participate in the purchase. In the absence of such agreement, the other members shall divide such interest in proportion to their Sharing Ratios as of the time the offer is made. To exercise such right to purchase, the other members shall give written notice to the selling member. If any one or both of the other members do not elect to purchase all of such Membership Interest, then such non-purchasing member(s) must offer to sell all of his (their) Membership Interest in the Company to the selling member at a price equal to that previously determined by the selling member in the selling member's prior offer to sell. The selling member must in such event purchase from the other member(s) their Membership Interest in the Company on the terms and conditions set forth in Article 7.1(b). The selling member's failure or refusal for any reason to purchase the other member(s)' Membership Interest(s) in the Company at the price so determined shall constitute a material default hereunder. In such event, the remaining members may purchase the selling members' Membership Interest in the Company at a total aggregate cash price equal to one-half of the selling member's capital account.

(b) The purchasing members shall pay for the selling member's Membership Interest in cash within 30 days after notifying the selling member of the exercise of their right to purchase such interest.

7.2 Death or Incompetency. If a member dies, such person or entity as he may have designated by duly executed testamentary

instrument signed by him and delivered to the Managers before or after his death or, if he has made no such designation, his executor or administrator shall succeed to his interest in the profit or loss and capital of the Company (the "Economic Interest"). If a member shall be adjudicated insane, incompetent or incapacitated, his committee, guardian or conservator shall succeed to such Economic Interest. No such successor shall have any right to participate in the management of the Company.

7.3 Substitution of Transferee as Member. A member and an owner may not sell, assign or otherwise dispose of all or any part of his Membership Interest or Economic Interest in the Company except as otherwise provided in Articles 7.1 and 7.2. No transferee, or the legal representative of a member, shall become a substitute member without the unanimous consent of the non-transferring members. In the event that such a consent is not granted, the transferee has no right to participate in the management of the business and affairs of the Company and is entitled only to receive the share of profits or losses and the return of contributions to which that member would otherwise be entitled. As conditions to his admission as a substitute member (a) any transferee, or the legal representative of the member, shall execute and deliver such instruments, in form and substance satisfactory to the Managers, as the Managers shall deem necessary or desirable to cause him to become a substitute member, and (b) such transferee, or legal representative, shall pay all reasonable expenses in connection with his admission as a substitute member,

including but not limited to, the cost of preparation and filing of any amendment of the Operating Agreement or the Articles of Organization necessary to desirable in connection therewith.

7.4 Authority of Managers. Subject to and upon the terms set forth in this Article 7 and Article 1.11, the Managers are authorized (a) to admit substitute members; (b) to exercise the power of attorney granted in Article 9 to amend this Operating Agreement or the articles of organization to reflect such substitution; and (c) to file any such amendment in the appropriate depositories.

## ARTICLE VIII

## DISSOLUTION AND TERMINATION

8.1 Final Accounting. In case of the Company's dissolution, a proper accounting shall be made from the date of the last previous accounting to the date of dissolution, by an independent accounting firm.

8.2 Liquidation. Upon the Company's dissolution and the failure of the remaining members to continue the Company as provided in Article 1.6, the Managers or some person selected by a majority in number of the members shall act as liquidator to wind up the Company. The liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the Company's affairs in an orderly and

prudent manner. The liquidator shall distribute all proceeds from liquidation to the members in proportion to their Sharing Ratios.

8.3 Distribution in Kind. If the members shall unanimously determine that a portion of the Company's assets should be distributed in kind to the members, the liquidator shall distribute such assets to them, in conjunction with all other distributions, in proportion to their Sharing Ratios.

8.4 Cancellation of Certificate. Upon the completion of the distribution of Company assets, the Company shall be terminated and the members shall cause the Company to execute articles of dissolution and take such other actions as may be necessary to terminate the Company.

## ARTICLE IX

## POWERS OF ATTORNEY

9.1 Appointment of Managers. Each member by his execution hereof does irrevocably constitute and appoint each Manager, with full power of substitution, as his true and lawful attorney, in his name, place and stead to file articles of organization with the appropriate depositories and to execute, acknowledge, swear to and file (a) all amendments to this Operating Agreement or to the articles of organization required by law or authorized or required by the provisions of this Operating Agreement or the articles of organization; (b) all certificates and other instruments necessary

to qualify or continue the Company as a limited liability company wherein the members have limited liability in the states where the Company may be doing business; and (c) all conveyances and other instruments necessary to effect the Company's dissolution and termination.

9.2 Irrevocable. The powers of attorney granted herein shall be deemed to be coupled with an interest and shall be irrevocable and survive the death or incompetency of the members. In the event of any conflict between this Operating Agreement and any instruments filed by such attorney pursuant to the power of attorney granted in this section, this Operating Agreement shall control.

## ARTICLE X

## AMENDMENT TO AGREEMENT

Amendments to this Operating Agreement and to the articles of organization that are of an inconsequential nature (as determined by the Managers) and do not affect the rights of the other members in any material respect, or that are contemplated by this Operating Agreement and to the articles of organization (including without limitation those contemplated by Article 7.3), may be made by the Managers through the exercise of the powers of attorney granted in Article 9. Any other amendment to this Operating Agreement and to the articles of organization may be proposed to the members by the Managers. The Managers shall submit to the members any such

proposed amendment and the recommendation of the Managers as to its adoption. A proposed amendment shall become effective at such time as it has been approved in writing by all members, except that Article VII may be amended by approval of a sixty-six and two-thirds percent (66 2/3%) vote of the members, calculated in accordance with their Interests in Capital.

## ARTICLE XI

## NOTICES AND CONSENTS

11.1 Method for Notices. All notices and consents hereunder shall be sent by facsimile or first class mail, postage prepaid, and addressed as set forth in Article 1.10 above (except that any member may from time to time give notice changing his address for such purpose) and shall be effective on the date of receipt or on the fifth day after mailing, whichever is earlier.

11.2 Computation of Time. In computing any period of time under this Operating Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

## ARTICLE XII

## GENERAL PROVISIONS

12.1 Entire Agreement. This Operating Agreement (a) contains the entire agreement among the parties, (b) except as provided in Article 10, may not be amended nor may any rights hereunder be waived except by an instrument in writing signed by the party sought to be charged with such amendment or waiver, (c) shall be construed in accordance with, and governed by, the laws of Colorado, (d) may be executed in counterparts, and (e) shall be binding upon and shall inure to the benefit of the parties and their respective personal representatives, successors and assigns, except as above set forth.

12.2 Construction Principles. Words in any gender shall be deemed to include the other genders. The singular shall be deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and shall have no significance in the interpretation of this Operating Agreement.

12.3 Failure to Contribute Initial Capital. Notwithstanding anything in this Agreement to the contrary, if and to the extent a member does not deposit the initial capital set forth in Section 2.1 with the Telluride Mountain Title Company, Escrow Account Number: 111 203, Rico, 94010047 A, B or C on or before 1:00 P.M., Friday, April 1, 1994, time being of the essence for purposes of this paragraph, then such member's Interest in Capital and Sharing Ratio shall be reduced to reflect such member's reduced

proportionate capital contribution upon which the Interest in Capital and Sharing Ratio are calculated. Any such member shall be allowed to later make up the difference, and thereby restore his original intended Sharing Ratio and Interest in Capital set forth in Sections 3.1 and 2.2, only upon the unanimous vote of all members.

IN WITNESS WHEREOF, the members acknowledge under penalties of perjury that the matters and facts set forth in this Operating Agreement are true and that they have signed this Operating Agreement on the respective dates set forth below to be effective as of the date first above written.

MEMBERS:

RICHARD M. THEILE

STANLEY A. FOSTER

JJRC LIMITED LIABILITY COMPANY

By: M. Jack Duksin

SILVERCREEK LAND COMPANY, L.L.C.

By: Michael Hines, Member

STANLEY A. FOSTER

JJRC LIMITED LIABILITY COMPANY

By: M. Jack Duksin

SILVERCREEK LAND COMPANY,

L.L.C.

By: Michael Hines, Member

proportionate capital contribution upon which the Interest in Capital and Sharing Ratio are calculated. Any such member shall be allowed to later make up the difference, and thereby restore his original intended Sharing Ratio and Interest in Capital set forth in Sections 3.1 and 2.2, only upon the unanimous vote of all members.

IN WITNESS WHEREOF, the members acknowledge under penalties of perjury that the matters and facts set forth in this Operating Agreement are true and that they have signed this Operating Agreement on the respective dates set forth below to be effective as of the date first above written.

MEMBERS:

RICHARD M. THEILE

STANLEY A. FOSTER

JJRC LIMITED LIABILITY COMPANY

By: M. Jack Duksin

SILVERCREEK LAND COMPANY, L.L.C.

By: Michael Hines, Member

TWIN CITY DEVELOPMENT, L.L.C.

By: Olie Swanky, Member

BILL BAIRD, OR HIS DESIGNEE

proportionate capital contribution upon which the Interest in Capital and Sharing Ratio are calculated. Any such member shall be allowed to later make up the difference, and thereby restore his original intended Sharing Ratio and Interest in Capital set forth in Sections 3.1 and 2.2, only upon the unanimous vote of all members.

IN WITNESS WHEREOF, the members acknowledge under penalties of perjury that the matters and facts set forth in this Operating Agreement are true and that they have signed this Operating Agreement on the respective dates set forth below to be effective as of the date first above written.

MEMBERS:

RICHARD M. THEILE

_____

STANLEY A. FOSTER

_____

JJRC LIMITED LIABILITY COMPANY

_____

By: M. Jack Duksin

SILVERCREEK LAND COMPANY, L.L.C.

_____

By: Michael Hines, Member

STATE OF Colorado )
) ss.:
COUNTY OF San Miguel )

On this 1st day of April, 1994, before me personally came Bill Baird, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____ and that he executed the foregoing Operating Agreement.

Notary Public

My Commission Expires 3/15/94

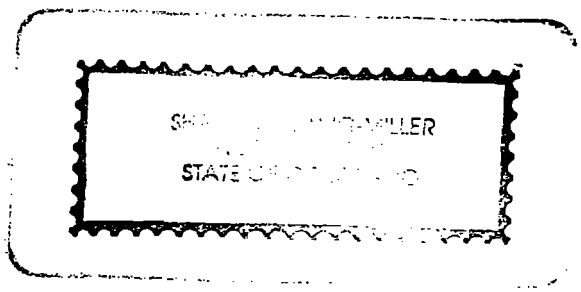
SHARON HELWIG MILLER
NOTARY PUBLIC
STATE OF COLORADO

STATE OF Colorado )
) ss.:
COUNTY OF San Miguel )

On this 31st day of March, 1994, before me personally came Richard M. Theile, to me personally known, who, being by me duly sworn, did depose and say that he resides at Box 725, Telluride and that he executed the foregoing Operating Agreement.

My commission expires: 5/30/94

Notary Public



STATE OF Colorado )
) ss.:
COUNTY OF San Miguel )

On this 31st day of March, 1994, before me personally came Stanley A. Foster, to me personally known, who, being by me duly sworn, did depose and say that he resides at Box 66, Rico, CO 81332 and that he executed the foregoing Operating Agreement.

My commission expires: 5/30/97

SHARON HELWIG-MILLER
NOTARY
COLORADO

Notary Public

STATE OF _____ )
) ss.:
COUNTY OF _____ )

On this ____ day of _____, 1994, before me personally came M. Jack Duksin, to me personally known, who, being by me duly sworn, did depose and say that he resides at 60 West 66th Street, New York, New York 10023 and that he is a member of the JJRC Limited Liability Company and that he executed the foregoing Operating Agreement.

_____
Notary Public

STATE OF GEORGIA )
) ss.:
COUNTY OF FULTON )

On this 31 day of MARCH, 1994, before me personally came Michael Hines, to me personally known, who, being by me duly sworn, did depose and say that he resides at 2053 STARGATE DR. ATLANTA, GA. 30345 and that he is a member of the Silvercreek Land Company, L.L.C. and that he executed the foregoing Operating Agreement.

Kathleen O. Aemond
Notary Public

STATE OF _____ )
) ss.:
COUNTY OF _____ )

On this ____ day of _____, 1994, before me personally came Michael Hines, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____ and that he is a member of the Silvercreek Land Company, L.L.C, and that he executed the foregoing Operating Agreement.

_____
Notary Public

STATE OF _____ )
) ss.:
COUNTY OF _____ )

On this ____ day of _____, 1994, before me personally came Olie Swanky, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____ and that he is a member of Twin City Development, L.L.C., and that he executed the foregoing Operating Agreement.

_____
Notary Public