**This model operating agreement is to be used only for a manager-managed LLC that is filing an s-corporation election. Clients should be made aware that to make an s-corporation election they need to file IRS Form 2553 within 75 days of the start of the taxable year** [**https://www.irs.gov/pub/irs-pdf/f2553.pdf**](https://www.irs.gov/pub/irs-pdf/f2553.pdf)

**Not all LLCs are eligible to make an s-corp election. An election should not be made if the LLC is looking to get investment from Angels or Venture Capitalists.**

**Only LLC’s that meet following criteria are eligible to make an s-corp election. If one of these conditions are no longer met, the s-corp election will end which will have tax consequences the client should discuss with its accountant.**

1. **LLC must have fewer than 100 members.**
2. **All members of the LLCs must be individuals or certain types of trusts. No other entities may hold equity.**
3. **No members can be nonresident aliens.**
4. **The LLC can only have 1 class of equity. This condition is violated by our standard LLC OA. This model contains provisions intended to meet this condition.**
5. **For the remainder of the restrictions visit:** [**https://www.irs.gov/instructions/i2553**](https://www.irs.gov/instructions/i2553)

**Clients should be made aware that they will need to make sure to communicate with their accountants and various service providers that they are an S-Corp.**

**If they decide to revoke the election, or there is an inadvertent revocation they must amend the operating agreement to ensure it reflects partnership tax law.**

**OPERATING AGREEMENT**

**OF**

**[COMPANY]**

THIS AGREEMENT is made and entered into as of the [DATE], by and among [COMPANY] (the “Company”) and the Persons Identified in Exhibit A and any other Person who shall hereafter execute this Agreement as a Member of the Company (collectively, the “Members,” and individually, a “Member”) solely for the purpose of making the acknowledgment at the end of this Agreement.

**R E C I T A L S**

The Members formed the Company by having the Organizer file Articles of Organization (the “Articles”) with the Department of Financial Institutions (the “Department”). The Company was formed as a limited liability company pursuant to the Wisconsin Limited Liability Company Law, Chapter 183 of the Wisconsin Statutes (the “Act”) effective on the date the Articles were filed (the “Effective Date”). The Articles are incorporated by this reference, as provided in the Act; and

The Members wish to enter into this Agreement for the purposes of providing the rights, obligations, and restrictions contained in this Agreement and otherwise to govern the operations and management of the Company.

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, the Members agree as follows:

# **ARTICLE I**

## **Definitions**

For purposes of this Agreement, the following terms shall have the meanings set forth below and any derivatives of the terms shall have correlative meanings:

***“Agreement”*** means this operating agreement of the Company.

“***Applicable Tax Rate***” for a calendar year shall be the combined highest marginal federal and Wisconsin individual income tax rates that apply for such calendar year, treating each Member as if such Member were a Wisconsin resident and taking into account the deductibility of state income tax payments for federal income tax purposes.

*“****Company***” means [COMPANY].

*“****Expenses***” means fees, costs, charges, disbursements, reasonable attorney fees, and any other reasonable expenses incurred in connection with a proceeding giving rise to a request for indemnification.

*“****Liability***” means the obligation to pay any judgment, settlement, penalty, assessment, forfeiture, or fine whatsoever, including any excise tax assessed with respect to an employee benefit plan.

*“****Liquidating Trustee****”* means a person appointed by the Manager as the liquidating trustee of the Company to wind up the Company’s business upon the dissolution of the Company in the event there is no Manager or the Manager refuses to serve as the liquidating trustee of the Company.

*“****Majority Consent***” means the consent of Member(s) together owning greater than fifty percent (50%) of the outstanding Ownership Interest; provided, however, that for purposes of Member Consent pursuant to Article VII of this Agreement, *Majority Consent* means the consent of Member(s) together owning greater than fifty percent (50%) of the outstanding Ownership Interest, excluding the Ownership Interest sought to be transferred, and provided, further, that the Ownership Interest of Involuntary Transferees who have not been admitted as Members to the Company shall be excluded for all purposes in determining Majority Consent.

*“****Manager***” means the person(s) elected as Manager or Managers of the Company by the Members of the Company pursuant to this Agreement.

*“****Member Consent***” means Majority Consent of the Members.

*“****Member***” means any Person listed in Exhibit A to this Agreement until such time as the Person is no longer a Member in accordance with this Agreement and any additional Person who is admitted as a Member to the Company in accordance with this Agreement.

*“****Ownership Interest***” means the percentage of the Company owned by a Member as determined by the number of Ownership Units the member owns divided by the total number of outstanding Ownership Units in the Company.

*“****Ownership Units***” means the individual units (or “shares”) owned by each Member, as set out in Exhibit A.

*“****Permitted Transferee***” means: (1) the spouse or the issue of a Member so long as that person is not a nonresident alien for purposes of Section 1361(b)(1)(c); (2) another Member; (3) a trust described under Section 1361(c)(2) of the Internal Revenue Code created for the benefit of a Member and/or any Persons identified in subsections (1); (4) An exempt organization described under Section 1361(c)(6); or (5) the Company.

“***Profits and Losses***” means the taxable income and loss of the Company as determined in accordance with the accounting methods followed by the Company for federal income tax purposes, including any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses.

*“****Person***” means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

*“****Transfer***” means to sell, assign, give, bequeath, pledge, or otherwise encumber, divest, dispose of, or transfer ownership or control of all of, any part of, or any interest in a Unit to any Person, whether voluntarily or by operation of law, whether inter vivos or upon death.

*“****Transferee***” means any Person who proposes to acquire any or all of a Transferor’s Ownership Units, or a Person acquiring the Ownership Units.

*“****Transferor***” means a Member who proposes to transfer any or all of the Member’s Ownership Units.

*“****Unanimous Consent***” means the consent of Member(s) together owning all (100%) of the outstanding Ownership Interest.

# **ARTICLE II**

## **General Provisions**

**Section 2.1. Name**.

The name of the Company is [COMPANY].

**Section 2.2. Registered Office and Agent.**

The Company’s registered office shall initially be [OFFICE ADDRESS], and the Company’s registered agent shall be [AGENT]. The initial registered office and agent may be changed by the Manager without need to amend this Agreement.

**Section 2.3. Principal Place of Business**.

The principal place of business of the Company shall initially be [BUSINESS ADDRESS] and may be changed by the Manager without need to amend this Agreement.

**Section** **2.4**. **Term**.

The term of the Company commenced on the Effective Date of the Articles and shall be perpetual.

# **ARTICLE III**

## **Ownership, Capital Contributions, Loans and Tax Treatment**

**Section 3.1**. **Capital Contributions and Ownership**.

The Members have contributed the assets set forth in Exhibit A as their Capital Contributions. In exchange for their Capital Contributions, the Members shall receive Ownership Units in the Company (the “Ownership Units”) set forth in Exhibit A. The Members may, in their sole discretion by Unanimous Consent, admit one or more additional Persons as Members in exchange for new Capital Contributions from them, or grant additional Ownership Units from the already existing class to one or more existing Members in exchange for additional Capital Contributions or services from them. The amount or value of the new or additional Capital Contributions received in exchange for Ownership Units issued shall be determined by the Members in the Consent authorizing the issuance of additional Ownership Units. Exhibit A shall be amended by the Manager, without action of the Members, to reflect the grant of any additional Ownership Units by the Company to new or existing Members or the transfer of Ownership Units pursuant to Article VII.

### **Section 3.2. Additional Capital Contributions.**

The Members shall not be required to make any additional Capital Contributions or loans to the Company.

### **Section 3.3. Return of Capital.**

No Member is entitled to withdraw or resign from the Company, to receive a return of any part of the Member’s Capital Contribution, to receive any distribution, or to receive a repayment of any balance in the Member’s Capital Account, except as expressly provided in this Agreement. No Member has the right to demand that distributions be in kind. No Member will be paid interest on any Capital Contribution or on the Member’s Capital Account.

### **Section 3.4. Liability for Company Obligations.**

Except as otherwise provided under applicable law, no Member shall be bound by, or personally liable for, the expenses, liabilities or obligations of the Company. No Member shall restore a Capital Account deficit.

### **Section 3.5. Member Loans.**

No Member shall have an obligation to make loans or advances to the Company but may do so at the discretion of the Member on such terms and conditions as agreed on by the Member and the Company acting by Majority Consent.

# **ARTICLE IV**

## **Management of the Company and Actions by Members**

### **Section 4.1. Management.**

The Manager shall have the authority to supervise, manage and control the business affairs and property of the Company, to make day-to-day operating decisions regarding Company business, and to perform any and all other acts or activities reasonably customary or incident to the management of the Company’s business.

### **Section 4.2. Identity and Number of Managers.**

The initial Manager of the Company shall be [MANAGER]. There shall be one (1) Manager except as otherwise provided by Majority Consent. If the Company has more than one Manager, each Manager shall have independent and concurrent management authority, unless otherwise provided by agreement.

### **Section 4.3. Certificate of Authority.**

Any person dealing with the Company or the Manager may rely on a certificate signed by the Manager as to (i) the identity of the Members and the Manager, (ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Manager or any other matter germane to the Company's affairs; (iii) the persons who are authorized to execute and deliver any instrument or document on the Company's behalf; or (iv) any act or failure to act by the Company or the Members or as to any other matter whatsoever involving the Company or the Members.

### **Section 4.4. Authority and Powers of the Manager(s).**

(a) **Authority and Powers in General.** The Manager(s) are authorized, at the Company’s expense, to do all acts necessary to carry out the Company’s business in its ordinary course. This includes but is not limited to: supervise, manage and control the business affairs and property of the Company, to make day-to-day operating decisions regarding Company business, and to perform any and all other acts or activities reasonably customary or incidental to the management of the Company’s business. The Manager’s term shall cease upon (a) the Manager’s voluntary resignation, death or incapacity or (b) the Manger’s removal as such by the Member. The manager may, but need not be, the Member.

(b) **No Other Representatives.** Only the Manager has authority to execute documents on behalf of and in the name of the Company except as actually authorized by Majority Consent, and no person shall be obligated to inquire into the authority of the Manager to bind the Company. This Section constitutes a restriction on the management rights and duties of the Members to the extent those rights and duties have been delegated to the Manager pursuant to the terms of this Agreement.

### **Section 4.5. Restrictions on Authority of the Manager.**

**Absolute Restrictions.** The Manager shall *not* have the authority to:

(a) Do any act in contravention of applicable law;

(b) Willfully perform any act that would subject the Members to liability in any jurisdiction except for liability for any taxes or fees attributable to the business of the Company or as agreed to by Majority Consent of the Members; and

(c) Cannot revoke the S-Corp Election without Majority Consent of the members.

### **Section 4.6. Other Business Activities of the Manager and Members.**

The Manager shall devote to the Company such time as the Manager deems necessary for the proper performance of the individual’s duties under this Agreement, but the Manager shall not be required to devote any specific amount of time to the performance of those duties. The Manager and Members may engage in business and investment activities outside the Company, and neither the Company nor the other Members have any rights to the property, profits, or benefits of such activities, and the pursuit of such ventures shall not be deemed wrongful or improper. But no Manager or Member may, without Majority Consent, enter into any business or investment activity that is competitive with the business of the Company, or use any property or assets of the Company other than for the operation of the Company’s business.

### **Section 4.7. Compensation and Reimbursement.**

All reasonable and customary out-of-pocket expenses incurred by the Manager(s) in connection with the Company’s business shall be paid by the Company or reimbursed to the Manager(s) by the Company. Members who render services to the Company are entitled to such compensation as may be agreed upon in writing between the Member and the Manager. Members are also entitled to reimbursement from the Company for reasonable expenses incurred on behalf of the Company, including expenses incurred in the formation, dissolution, and liquidation of the Company.

# **ARTICLE V**

**Allocations of Profit and Loss; Distributions**

**Section 5.1.** **Allocation of Profits and Losses.**

The Profits and Losses for any Fiscal Year shall be allocated among the Members based on the respective number of Ownership Units held by each Member, and the number of days in the Fiscal Year that the Member held such Units, subject to allowable elections to the contrary by an S Corporation under the Code (including but not limited to Code Section 1377(a)(2) and the Regulations promulgated thereunder).

**Section 5.2. Use and Distributions of Available Cash.**

* + 1. **Company Expenses and Debt Service.** The Company’s cash flow shall first be applied to: (i) the payment of operating expenses of the Company (including any amounts paid to a Manager or Member for the services or for the indemnification obligations described herein, and debt service on loans (including loans by Members); and (ii) the maintenance of reserves that are adequate (as determined by the Manager).
    2. **Minimum Tax Distributions.**  Except to the extent that all Members otherwise agree, and subject to the availability of funds of the Company, any cash remaining after satisfaction of the provisions of Section 5.2(a), above, shall be distributed to each Member, with respect to each calendar year, in an amount not less than the product of (i) the Applicable Tax Rate for such calendar year multiplied by (ii) such Member’s proportionate pass through share of the taxable income of the Company, if any, for such year. The distributions to be made with respect to a calendar year shall be made in four installments, each payable by the Company on or before the date on which quarterly estimated tax payments are due for federal and state income tax purposes (provided that with respect to the estimated tax payment due January 15 of each year, a partial distribution shall be made prior to December 31) and each distribution to a Member shall be an amount equal to the Applicable Tax Rate multiplied by an amount reasonably estimated by the Company’s accountant as being such Member’s proportionate pass through share of the taxable income of the Company for the period to which such distribution relates.
    3. **Distribution of Remaining Funds.**  Any cash remaining after satisfaction of the provisions of Sections 5.2(a) and 5.2(b) above shall be distributed at the discretion of the Manager from time to time, to the Members in proportion to such Members’ respective Units in the Company.
    4. **No Distributions Contrary to Act or the S Election.** Notwithstanding any other provision of this Agreement, no distribution shall be made if it is not permitted to be made under the Act or if such distribution would invalidate the Company’s election to be taxed as an S Corporation (the “S Election”) for federal or state income tax purposes, as described in Article VI.

**Section 5.3. Withholding.**

If the Company is required pursuant to the Code or any other provision of law to withhold (or otherwise remit to a government agency) any amount based on amounts otherwise distributable or allocable to any Member, the Company shall withhold the amounts as required by law and any amounts so withheld shall be deemed to have been distributed to such Member under this Agreement. If any sums are withheld pursuant to this provision, the Company shall remit the sums so withheld to, and file the required forms with, the Internal Revenue Service or other applicable government agency. In the event of any claimed overwithholding, a Member shall be limited to an action against the Internal Revenue Service or other applicable government agency for refund and each Member hereby waives any claim or right of action against the Company on account of such withholding. Furthermore, if the amount required to be withheld exceed the amounts that would otherwise have been distributed to such Member, such Member shall remit any deficiency to the Company within ten (10) days after notice, and such amount shall not be considered a contribution to capital by such Member nor shall the Company otherwise be obligated to return to such Member any such amount unless such amount is refunded to the Company by the applicable withholding agency. If such deficiency is not remitted within such time, any non-remitted amount shall be considered a demand loan from the Company to such Member, with interest at a rate equal to the lesser of fifteen percent (15%), or the highest rate permitted by law, which interest shall be treated as an item of the Company’s income, until discharged by such Member, upon repayment. Such demand loan shall be repaid, without prejudice to other remedies at law or in equity that the Company may have, out of distributions to which the debtor Member would otherwise be entitled under this Agreement.

**ARTICLE VI**

**S Corporation Election**

**Section 6.1. S Corporation Election.**

Any provision hereof to the contrary notwithstanding, solely for federal and state income tax purposes, each of the Members hereby confirms that the Company will be taxed as an S corporation and that the Company shall be subject to all the provisions of Subchapter S of Chapter 1 of Subtitle A of the Code; provided, however, that the Manager is hereby authorized to file such documents as may be necessary or appropriate to obtain such treatment under federal or state tax laws and that each of the Members hereby agrees that they shall refrain from making any election under Regulation Section 301.7701-3 to treat the Company in a manner different than described in this Section.

**Section 6.2. Disqualifying Transfers or Distributions.**

No transfer, distribution or encumbrance of Units may be made to any person or entity unless (i) the ownership of such Units by the transferee or distributee would be permissible for an S corporation under the tax laws of all jurisdictions in which the S Election is then in effect. If a Member attempts to transfer any Units in violation of this Article VI, such attempted transfer shall be ineffective for all purposes, the proposed transferee shall obtain none of the benefits of ownership of the Units and the ownership of the Units shall be deemed for all purposes to have remained in the transferor at all times. If Units owned by a decedent would, under the decedent’s Last Will and Testament (or, if applicable, state law), be distributed to a person or entity in violation of this Section 6.2, such distribution shall not be made.

**Section 6.3. Other Disqualifying Actions.**

Other than as described in Section 6.4, no party hereto shall take any action, or fail to take any action, that would cause the S Election to terminate, including but not limited to (i) becoming or marrying a non resident alien, (ii) in the case of the Company, issuing more than one class of Units (other than non voting common Units) or becoming part of an affiliated group of corporations, or (iii) in the case of a trust, failing to make a distribution of income (if such failure would cause it to lose its status as a Qualified Trust).

**Section 6.4. Consent to Revocation.**

No Member may sign a consent to the revocation of the Company's election to be taxed as an S corporation for federal income tax purposes or take an action that would cause the S Election to terminate, unless Members holding at least 75% of the Ownership Shares consent to the revocation.

**Section 6.5. Inadvertent Termination.**

If the Company's S corporation election is terminated and the termination is inadvertent within the meaning of I.R.C. § 1362(f), each Member must make any adjustments required by the Internal Revenue Service in order for the Company to be treated as if its S corporation election remained in effect. But no Member is required to make any adjustment that will adversely affect the Member, considering the position the Member would have been in had the Company's S corporation election not terminated, unless the Company or the other Members indemnify and hold the Member harmless against the adverse consequences. The obligations of this subsection are binding on all Members who are parties to this agreement or become Members of the Company in the future, whether or not any such Member holds Ownership Shares at the time the required adjustments are to be made.

**Section 6.6. Tax Reports.**

The Manager shall cause to be prepared and shall file on or before the due date (or any extension of the due date) any federal, state, or local tax returns required to be filed by the Company.

# **ARTICLE VII**

## **Transfer of Ownership Units**

### **Section 7.1. General Restrictions on Transfers.**

Except in accordance with the terms of this Agreement and subject to Article VII of this Agreement, no Member may Transfer all or any portion of the Member’s Ownership Units, except as set out in Section 7.2. Any Transfer, attempted Transfer, or purported Transfer in violation of this Agreement’s terms and conditions shall be null and void.

### **Section 7.2. Permitted Transfers.**

A Member may Transfer all of the Member’s Ownership Units upon notice to the Manager, and acceptance thereof, of Member’s desire to Transfer all of the Member’s Ownership Units. A Member may Transfer all of the Member’s Ownership Units to a Permitted Transferee.

### **Section 7.3. Involuntary Transfer.**

(a) **Definition.** An Involuntary Transfer occurs when Ownership Units are transferred to the Company due to reasons inclusive, but not exhaustive, of the death of a Member, or dissolution of a Member’s marriage. Upon death, divorce, or similar event, the Involuntary Transferor shall be obligated to sell, and the Company shall be obligated to purchase all Ownership Units of the Involuntary Transferor at a purchase price of $1 per Ownership Unit.

(b) **Divorce.** If the Managing Member is married and seeks, or the spouse seeks, a divorce, the Managing Member shall retain 100% of his or her Ownership Units. The Managing Member shall retain the first right of refusal to purchase or otherwise gain ownership of the spouse’s Ownership Units for a price of $1 per Unit.

(c) **Death or Incapacitation.** Any Ownership Units controlled by a Member whose spouse also holds Ownership Units will automatically revert to the spouse upon death of the Member, unless otherwise stated in the Member’s final estate documents. Any Member whose spouse also holds Ownership Units will control the voting rights of the spouse’s Ownership Units indefinitely upon permanent medical incapacitation of spouse. In the event of temporary medical incapacitation of spouse, Member will control voting rights of spouse’s Ownership Units until spouse is no longer medically incapacitated, as declared by spouse’s physician, psychiatrist, or a court of law, upon which time the voting rights of the spouse’s Ownership Units shall revert to the spouse.

# **ARTICLE VIII**

## **Dissociation, Dissolution, and Liquidation**

### **Section 8.1. Effect of Dissociation.**

The dissociation of a Member pursuant to the Act will not entitle a Member to a distribution in redemption of the member’s Ownership Units. Unless otherwise provided in this Agreement, any event of dissociation under the Act will be treated as an Involuntary Transfer pursuant to this Agreement.

### **Section 8.2. Events Causing Dissolution.**

The Company shall be dissolved upon (a) the approval of the dissolution by the Manager and the Members by Majority Consent, or (b) the entry of a decree of judicial dissolution pursuant to the Act. The Company shall not be dissolved upon the occurrence of any other event, including the dissociation of a Member.

### **Section 8.3. Distribution of Assets Upon Termination.**

(a) Upon the dissolution of the Company, the Manager or the Liquidating Trustee shall proceed diligently to wind up the Company’s affairs and distribute its assets.

(i) *First*, to creditors of the Company in satisfaction of any debts and liabilities of the Company (except for any loans made by Members), whether by payment or by the establishment of any reserve that the Manager or the Liquidating Trustee deems, in that Person’s sole discretion, necessary (with the balance remaining in any such reserve, after the expiration of such period of time as the Manager or the Liquidating Trustee, as the case may be, deems advisable, and after payment of any such liabilities and obligations, to be distributed in the manner set forth in this Section);

(ii) *Second*, to the Members who have made loans to the Company, on a pro rata basis (in accordance with the amount of loan principal then outstanding), until each shall have received the outstanding principal of, and accrued and unpaid interest on, those loans; and

(iii) *Third*, to the Members, in accordance with their respective Ownership Units at the time of such distribution.

(b) All distributions pursuant to this Section shall be made no later than the latter of (i) the end of the Fiscal Year during which the liquidation of the Company occurs or (ii) 90 days after the date of that liquidation.

# **ARTICLE IX**

## **Miscellaneous**

### **Section 9.1. Amendments to Agreement.**

No amendment or modification of this Agreement shall be valid unless made in writing and approved by Majority Consent.

### **Section 9.2. Appointment of Manager as Attorney-in-Fact.**

The Members appoint the Manager as their true and lawful attorney-in-fact with full authority in their name to execute, deliver, file, and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to all certificates and other instruments (including counterparts of this Agreement), and any amendment of this Agreement, that the Manager deems appropriate to qualify or continue the Company as a limited liability company in the jurisdictions in which the Company conducts business or in which such qualification or continuation is, in the Manager’s opinion, necessary to protect the Members’ limited liability.

### **Section 9.3. Integration.**

This Agreement supersedes all prior oral or written agreements or understandings between the parties to this Agreement regarding the subject matter of this Agreement.

### **Section 9.4. Binding Provisions.**

The agreements and covenants contained in this Agreement inure solely to the benefit of the parties to this Agreement. The agreements and covenants contained in this Agreement shall be binding on the heirs, executors, administrators, personal representatives, successors, and assignees of the respective parties to this Agreement.

### **Section 9.5. Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin, without giving effect to the principles of conflicts of laws.

### **Section 9.6. Separability of Provisions.**

Each provision of this Agreement shall be considered separable, and if for any reason any provision or provisions of this Agreement are determined to be invalid or contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Agreement that are valid.

### **Section 9.7. Dispute Resolution.**

(a) **Disputes.** Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in Madison, Wisconsin, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then obtaining rules of the American Arbitration Association, but without any requirement that the parties utilize the arbitration services of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction.

(b) **Costs.** In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party. If the Company is the prevailing party, the Company may offset any amounts owed by the Company to the Person by amounts that Person owes to the Company by reason of this Section.

### **Section 9.8. Confidentiality.**

(a) **Duty.** Each Member recognizes and acknowledges that it has and may in the future receive certain confidential and proprietary information and trade secrets of the Company (the “Confidential Information”). Each Member (on behalf of itself and, to the extent that such Member would be responsible for the acts of the following persons under principles of agency law, its directors, officers, shareholders, partners, employees, agents and members) agrees that it will not, during or after the term of this Agreement, take commercial or proprietary advantage of or profit from any Confidential Information or disclose Confidential Information to any Person for any reason or purpose whatsoever, except (i) to authorized directors, officers, representatives, agents and employees of the Company and as otherwise may be proper in the course of performing such Member’s obligations, or enforcing such Member’s rights under this Agreement; (ii) to any bona fide prospective purchaser of the equity or assets of such Member or the Units held by such Member, provided, that such purchaser agrees to be bound by the provisions of this Section 9.8, or (iii) as is required to be disclosed by order of a court of competent jurisdiction, administrative body or governmental body, or by subpoena, summons or legal process, or by law, rule or regulation, provided, that in the event that any Member reasonably believes after consultation with counsel that it is required by law to disclose any Confidential Information, such Member will (a) provide the Company with prompt notice before such disclosure so that the Company may attempt to obtain a protective order or other assurance that confidential treatment will be accorded such Confidential Information and (b) cooperate with the Company or its designee in attempting to obtain such order or assurance. For purposes of this Section 9.8, “Confidential Information” shall not include any information (x) of which such Person learns from a source other than the Company (or any predecessor in interest), who is not known by such Person to be bound by a confidentiality obligation, or (y) which is disclosed in a prospectus or other document for dissemination, or otherwise generally available, to the public.

### **Section 9.9. Notice.**

Any notice required or permitted to be given pursuant to this Agreement shall be valid only if in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when transmitted by fax if confirmation of receipt is printed out on the sending fax machine, or (c) three days after being mailed by certified mail, postage prepaid, addressed to the Person receiving notice at the address contained in the Company’s records, unless that Person otherwise notifies the Company in accordance with this Section of a change of address.

### **Section 9.10. Counterparts.**

This Agreement may be executed in counterparts, all of which taken together shall constitute the same agreement.

### **Section 9.11. Role of Counsel Representing Company.**

This Agreement has been drafted by the Law & Entrepreneurship Clinic as counsel for the Company. Each Member acknowledges and agrees that:

(a) The Law & Entrepreneurship Clinic has not represented the Member in any way in connection with this Agreement.

(b) A conflict may exist between a Member’s interest and the interests of the Company and the other Members;

(c) Each Member has been advised by the Law & Entrepreneurship Clinic that this Agreement can have material income tax consequences for a Member, but that the Law & Entrepreneurship Clinic has not rendered tax advice to the Member; and

(d) Each Member has been advised to seek advice of independent legal counsel and has had the opportunity to do so.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

[NAME], Member

[NAME], Member

# **EXHIBIT A**

**Members of the Company and Units**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Member** | **Address** | **Capital Contribution** | **Number of Units** | **Ownership Percentage** |
|  |  |  |  |  |
|  |  |  |  |  |

# **EXHIBIT B**

**Spousal Consent**

The undersigned spouse of the Member identified below hereby acknowledges that the undersigned spouse has read the foregoing Agreement and agrees and consents to all of its terms, including, without limitation: (i) any disposition made in or pursuant to such Agreement of any interest that the undersigned may now or hereafter have in the Company through marital property, divorce decree or otherwise, and (ii) the price now or hereafter determined for any such interest.

Spouse’s Signature:

Spouse’s Name:

Member’s Name:

Date: