This Model Agreement is appropriate for use with a multi-member WI LLC that will be taxed as a partnership for federal/state income tax purposes.

The footnotes include language that is required for profits interests. Generally, a profit interest should only be used if one (or more) member is contributing assets (including capital) with significant value and one (or more) member is contributing services. If a member receives a capital interest in an LLC in return for his/her services, it will result in self-employment tax to the service-providing member equal to the value of the capital received.

If your client has members that will receive their interest in return for services, you should consider these factors and discuss with your supervising attorney:

Will one or more member(s) receive his/her interest in the LLC in return for services? If yes, continue answering questions. If no, use only capital interests.

Does the LLC have assets with significant value? If yes, continue. If no, use only capital interests.

Would the issuance of the membership interest to the service member trigger a significant tax liability? If yes, discuss using a profit interest with your supervising attorney and the client.

Is it likely that the client will want to convert from an LLC to a c-corp in the near/foreseeable future? If yes, may want to go forward using only capital interests because when the LLC converts to a c-corp. the service member may either be diluted or have self-employment tax liability. Discuss with your supervising attorney, or Tami.

INSTRUCTIONS: F11 will take you to the next location in the document where you need to enter information. Once you have the information entered, delete these Instructions before providing document to the client.

**OPERATING AGREEMENT**

**OF**

[Name of LLC]

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019, by and among f[Name of LLC] (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. Capitalized terms used in this Agreement without definition shall have the meanings assigned to them in Article I.

**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”). A copy of the Articles is attached to this Agreement as Exhibit B and 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.

***“Asset Value”*** means as of any date, with respect to any asset, the asset’s adjusted basis for federal income tax purposes as of such date, except as follows:

1. The initial Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of the asset, as reasonably determined by the Manager;
2. The Asset Values of all assets of the Company shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Manager, as of the following times: (a) the liquidation of the Company within the meaning of section 1.704-1(b)(2)(ii)(*g*) of the Treasury Regulations; (b) the acquisition of additional Ownership Units by any new or existing Member in exchange for more than a de minimis Capital Contribution; (c) the distribution by the Company of more than a de minimis amount of the Company’s property to a Member as consideration for Ownership Units if the Manager reasonably determines that the adjustment is necessary or appropriate to reflect the relative economic interests of the Members; and (d) in connection with the grant of Ownership Units (other than a de minimis interest) as consideration for services to or for the benefit of the Company by an existing Member acting in its capacity as a Member or in anticipation of being a Member;
3. The Asset Value of any Company asset distributed to any Member shall be the gross fair market value of the asset on the date of distribution reasonably determined by the Manager;
4. The Asset Value of the Company’s assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of the assets pursuant to section 734(b) or section 743(b) of the Code, but only to the extent required by section 1.704‑1(b)(2)(iv)(*m*) of the Treasury Regulations; provided, however, that Asset Values shall not be adjusted pursuant to this clause (4) to the extent the Manager reasonably determines that an adjustment pursuant to clause (2), above, is necessary or appropriate in connection with a transaction that otherwise would result in an adjustment pursuant to this clause (4); and
5. If the Asset Value of an asset has been determined or adjusted pursuant to clause (1), (2), or (4), above, the Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to that asset for purposes of computing Profits and Losses.

*“****Available Ownership Units”*** has the meanings set forth in Section 8.3.

*“****Capital Account***” has the meaning set forth in Article V.

*“****Capital Contribution***” means the gross Asset Value contributed to the Company by any Member as reflected on Exhibit A of the Agreement and the Asset Value of any additional Capital Contributions made by any Member.

***“Cash Available for Distribution***” means Cash Flow less Tax Distributions.

*“****Cash Flow***” means cash funds provided from the operation of the Company’s business, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements, and amounts set aside for the restoration or creation of reserves by the Manager.

*[Insert Class A Member and Class B Member definitions here if using a profit interest]*[[1]](#footnote-2)

*“****Code***” means the Internal Revenue Code of 1986, as amended (or any corresponding provisions of succeeding law).

*“****Company***” means [Name of LLC].

*“****Default****”* meansa material breach or violation of this Agreement by a Member or a Member’s failure to perform any of his/her/its respective obligations hereunder.

*“****Depreciation***” means, for each Fiscal Period of the Company, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset of the Company for such Fiscal Period under the Code, except that if the Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Period, Depreciation shall be an amount that bears the same ratio to such beginning Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Period is zero, Depreciation shall be determined with reference to such beginning Asset Value using any reasonable method consistent with the purpose and intent hereof.

*“****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.

*“****Fiscal Period***” means a portion of a Fiscal Year.

*“****Fiscal Year”*** means any 12-month period selected by the Company from time to time as its fiscal year, provided that in the year of the formation, sale, or liquidation of the Company, a Fiscal Year may be less than a 12-month period.

*“****Involuntary Transfer and* *Involuntary Transferee***” have the meanings set forth in Section 8.4(a) of this Agreement.

*“****Involuntary Transfer Notice****”* has the meaning set forth in Section 8.4(b) of this Agreement.

*“****Involuntary Transfer Units****”* has the meaning set forth in Section 8.4(b) of this Agreement.

*“****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 windup 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 VIII 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, Super Majority Consent, or Unanimous 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.

*“****Notice of Transfer***” has the meaning set forth in Section 8.3(a) of this Agreement.

*“****Non-Terminated Member****”* has the meaning set forth in Section 8.5(a) of 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.[[2]](#footnote-3)

*“****Ownership Units***” has the meaning set forth in Section 3.1 of this Agreement.

*“****Partnership Representative***” has the meaning set for in Section 11.4 of this Agreement.

*“****Permitted Transferee***” means: (1) in the case of a Member that is an entity, the owners of the Member; (2) the spouse or the issue of a Member or of any individual identified in subsection (1), above; (3) another Member; (4) a trust created for the benefit of a Member and/or any Persons identified in subsections (1) - (3), above; (5) an entity controlled by, controlling, or under common control with a Member or any Persons identified in subsections (2), (3), and (4), above; or (6) the Company.

*“****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.

*“****Profits and Losses***” mean, for each Fiscal Period, an amount equal to the Company’s taxable income and loss for the Fiscal 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 and loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be added to the taxable income or loss;

(2) Any expenditures of the Company described in section 705(a)(2)(B) of the Code or treated as section 705(a)(2)(B) expenditures described in section 1.704‑1(b)(2)(iv)(*i*) of the Treasury Regulations, and not otherwise taken into account in computing Profits and Losses pursuant to this definition, shall be subtracted from the taxable income or loss;

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

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

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing the taxable income or loss, there shall be taken into account Depreciation for the Fiscal Year or other period; and

(6) Notwithstanding any other provisions of this definition, any items specially allocated pursuant to Sections 7.2 and 7.4(d) of the Agreement shall be taken into account in computing Profits or Losses.

The amounts of the items of income, gain, loss, and deduction available to be specially allocated pursuant to Sections 7.2 and 7.4(d) of the Agreement shall be determined by applying rules analogous to those set forth in this definition as appropriate.[[3]](#footnote-4)

*“****Real Estate***” means the property located at [Address of Property].[[4]](#footnote-5)

*“****Super Majority Consent*”** means the consent of Member(s) with an aggregate Ownership Units of seventy-five percent (75%) at the time consent is sought; provided, that the Ownership Units of Involuntary Transferees who have not been admitted as Members to the Company shall be excluded for all purposes in determining Super Majority Consent.

*“****Tax Distribution***” means the amount distributed to Members pursuant to Section 6.1(a) and (b) of this Agreement.

*“****Tax Distribution Dates***” means, except as provided in Section 6.1(b) of this Agreement, January 15, April 15, June 15, and September 15 of each Fiscal Year commencing with [year distribution commences]

*“****Tax Rate***” means the highest combined marginal income tax rate for federal and Wisconsin purposes for the Fiscal Period at issue applicable to individuals. In determining the Tax Rate, a separate Tax Rate shall be determined for ordinary income and long-term capital gains, respectively, if the Company has both types of income. If applicable, the Company may adjust the Tax Rate to account for Qualified Business Income deductions under Section 199A of the Code.

*“****Termination”***has the meaning set forth in Section 8.5(a).

*“****Terminated Member****”* has the meaning set forth in Section 8.5(a).

*“****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 Available Ownership Units pursuant to the provisions of Article VIII of this Agreement.

*“****Transferor***” means a Member who proposes to transfer any or all of the Member’s Ownership Units pursuant to the provisions of Article VIII of this Agreement.

*“****Treasury Regulations* or *Regulations***” means the regulations adopted from time to time by the Department of the Treasury under the Code, and any references to *partners* or *partnership* in the Regulations shall refer, as appropriate, to Members and the Company, respectively.

*“****Unanimous Consent****”* means the consent of all of Member(s) with aggregate Ownership Units of one-hundred percent (100%) at the time consent is sought; provided, that the Ownership Units of Involuntary Transferees who have not been admitted as Members to the Company shall be excluded for all purposes in determining Unanimous Consent.

# ARTICLE II

## General Provisions

**Section 2.1. Name**.

The name of the Company is [Name of the LLC].

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

(a) **Initial Office and Agent.** The Company’s registered office shall initially be [street address, city], Wisconsin, and the Company’s registered agent shall be [registered agent's name].[[5]](#footnote-6)

(b) **Changes.** The Manager shall appoint a new registered agent and change the registered office, if appropriate, if: (i) the then current registered agent resigns or (ii) the Manager decides to make an appointment or change in the registered agent.

(c) **Filing Upon Change.** Upon the appointment of a new registered agent or the change of the registered office, the Manager shall file the document required by the Act as appropriate to the circumstances.

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

The principal place of business of the Company shall initially be [street address, city], Wisconsin.

**Section 2.4.**  **Purpose**.

The purpose of the Company is any lawful purpose. The Company has the power to do all things necessary, incident, or in furtherance of that purpose.

**Section** 2.5. **Term**.

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

# ARTICLE III

## Ownership, Capital Contributions, and Loans

**Section 3.1**. **Capital Contributions and Ownership**.**[[6]](#footnote-7)**

The Members shall contribute the assets set forth in Exhibit A as their Capital Contributions. The fair market value of each Member’s Capital Contributions as shown on Exhibit A has been mutually agreed to by the Members entering into this Agreement and shall be credited to each Member’s Capital Account. In exchange for their Capital Contributions, the Members shall receive Ownership Units in the Company (the “Ownership Units”) set forth in Exhibit A. An initial Member’s initial Ownership Units are calculated by dividing the initial Member’s initial Capital Contribution by all the initial Members’ initial Capital Contributions to the Company and multiplying that amount by the total number of Ownership Units to be issued. The Members may, in their sole discretion by [Majority Consent][Super Majority Consent][Unanimous Consent], admit one or more additional Persons as Members in exchange for new Capital Contributions from them, or grant additional Ownership Units 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 VIII.

### 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 be obligated to 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 in 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.

Except to the extent otherwise provided in this Agreement, the business of the Company shall be managed by the Manager(s) of the Company (the “Manager”), and no Member shall have any right or power to take part in the management or control of the Company or its business. 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. Manager shall have the title of Manager of the Company.

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

The initial Manager of the Company shall be [Name of initial manager]. There shall be [Number of managers] Manager(s) 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. The Manager need not be Members of the Company.[[7]](#footnote-8)

### Section 4.3. Term of the Manager.

Unless otherwise provided by Majority Consent, a Manager’s term shall cease upon the earliest of any of the following to occur: (a) the Manager’s voluntary resignation effective as of the prospective date provided in a written notice from the Manager to the Company; (b) the Manager’s removal as such by Majority Consent[[8]](#footnote-9); (c) the Manager’s removal as such by a Trustee in Bankruptcy or Receiver; or (d) the Manager’s (i) death or (ii) incompetency as set forth in the Act.

### Section 4.4. Vacancy.

If a Manager ceases to be a Manager for any reason, the remaining Manager(s), if any, shall continue to act as such. Upon withdrawal of a Manager, the Members shall, as promptly as practicable, choose a substitute Manager by Majority Consent. If the Company at any time lacks Managers, the Members shall perform the duties of the Manager by Majority Consent unless and until the Members elect a substitute Manager(s) by Majority Consent. The lack of Managers shall not cause a dissolution or termination of the Company.

### Section 4.5. 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 4.6. Authority and Powers of the Manager(s).

(a) **Authority and Powers in General.** Except to the extent this Agreement requires an action to be taken by Member Consent, 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, including, but not limited to, the right to:

(i) Buy, sell, and lease Company property that does not represent a**)** material part of the Company’s aggregate property;

(ii) Pursuant to the authorization of the Members by Majority Consent or a budget approved by Majority Consent, borrow money and procure temporary, permanent, conventional, or other financing or refinancing on such terms and conditions, at such rates of interest, and from such parties as are approved, and, if security is required for the loan, to mortgage or subject to another security interest the Company assets;

(iii) Insure the Company’s activities and property;

(iv) Negotiate and sign all agreements, contracts, and other instruments or documents that are necessary or appropriate in the course for the Company’s regular business or that are authorized by general or specific action of the Members;

(v) Pay from the Company’s funds the consideration required under contracts or agreements;

(vi) Pay from the Company’s funds all fees and expenses incurred in the organization of the Company, as well as all operating expenses;

(vii) Perform all other acts or activities customary or incident to the routine and day-to-day operation of a business such as that conducted by the Company;

(viii) Establish and maintain books and records for the Company;

(ix) Appoint a new registered agent or change the registered office;

(x) Designate a new Partnership Representative;

(xi) Delegate such duties and responsibilities to such Persons as the Manager deems appropriate;

(xii) Retain attorneys, accountants, and other professionals in the course of performing the duties and exercising the powers of the Manager;

(xiii) Establish reserves and thereafter maintain the reserves in such amounts as the Manager may deem appropriate;

(xiv) Establish bank and money market accounts for the Company’s benefit;

(xv) After giving notice to the Members, bring, defend, settle, compromise, or otherwise participate in any and all actions, proceedings, or investigations, whether at law, in equity, or before any governmental authority or agency, and whether brought against the Company or the Members, related to the business of the Company or the enforcement or protection of interests in or of the Company; and

(xvi) Add additional ownership units provided there is no adverse effect in any material respect on any class of Members.

(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 4.7. Restrictions on Authority of the Manager.

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

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

(ii1 Possess Company property, or assign rights in specific Company property, for other than a purpose of the Company; or

(iii) 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.

(b) **Restrictions Without Consent.** Without Majority Consent, the Manager shall not have the authority to:

(i) Do any act in contravention of this Agreement or that would make it impossible to carry on the activities of the Company;

(ii) Sell, transfer, or otherwise dispose of all or substantially all the assets of the Company or its subsidiaries, whether in one or a series of related transactions;

(iii) Except as provided in Section 4.6(a)(ii), above, borrow money or procure financing or refinancing, or mortgage or subject to another security interest any material portion of the Company’s assets;

(iv) Issue additional Ownership Units except as allowed in Section 4.6(a)(xvi);

(v) Enter into a merger transaction involving the Company in which the Members do not hold a majority of the economic and voting interests of the surviving entity;

(vi) Exercise a Company’s option to purchase Ownership Units pursuant to Article VIII of this Agreement;[[9]](#footnote-10) or

(vii) Amend the Articles of Organization or amend or revoke this Agreement.

### Section 4.8. Authority and Powers of the Members.

Except to the extent otherwise provided in this Agreement or by law, the business of the Company shall be managed by the Manager(s), and no Member shall have any right or power to take part in the management or control of the Company, or to bind or obligate the Company in any manner, except as expressly authorized by this agreement. Members have the right to vote only on those matters expressly set forth in this Agreement or as required by the Act.

### Section 4.9. Actions by Members.

Except as otherwise provided in this Agreement, any actions of the Members shall be taken in the manner set forth below:

(a) **Manner of Acting.** The consent of the Members to any act or failure to act shall be decided by affirmative Majority Consent. Members may act through a meeting in which a quorum of the Members participate in person, or via other permissible means. Any Member may participate in any meeting by written proxy, by telephone, by electronic means, or by any means of communication reasonable under the circumstances. Participating Members are deemed present at the meeting. Alternatively, the Members may act by written consent without the need for a meeting with Unanimous Consent of Members.

(b) **Records.** The Company shall keep written records of all actions taken by the Members.

(c) **Meetings.** Meetings of the Members may be called by any Manager, or by Majority Consent. Meetings not held by electronic means shall be held at the Company’s principal place of business or at such other place as may be designated by the Manager or Majority Consent.

(d) **Notice.** No matter shall be voted upon at a meeting of Members unless (i) at least five days’ notice of the matter to be voted on is given, or (ii) such notice is waived by any Member who is entitled to vote and who has not received notice. A Member may waive notice by submitting a written waiver to the Manager describing the matter for which notice is waived. A Member shall be deemed to have waived notice of any matter acted upon at any meeting that the Member attends or in which the Member participates unless at the beginning of the meeting or promptly upon commencement of the Member’s participation in the meeting the Member objects to the consideration of the matter because of lack of proper notice. No prior notice shall be required for any action taken by written consent of the Members.

(e) **Record Date.** For the purpose of determining the Members entitled to receive notice of any meeting of the Members, or the Members entitled to vote or take any other action, the Manager may fix in advance a date as the record date. The record date shall not be more than 10 days before the date on which the particular action requiring such a determination of Members is to be taken. If no record date is so fixed by the Manager, the record date shall be at the close of business on: (i) with respect to any meeting of Members, the day before the first notice is delivered to Members, and (ii) with respect to any action taken by written consent, the date the first Member signs the consent pursuant to which such action is taken.

(f) **Quorum.** At any meeting of the Members, Member(s) present and holding sufficient Ownership Units to give Majority Consent to the action taken shall constitute a quorum of the Members at the meeting. If a quorum is not present at any meeting, a majority of the Members present may adjourn the meeting without further notice. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally noticed.

(g) **Voting Based on Ownership Units.**  A Member’s voting rights shall be based on the Member’s Ownership Interest. As to any given matter submitted for a vote, a Member shall vote all of the Member’s Ownership Units in the same manner. Unless otherwise specified in this Agreement, voting rights are not determined on an individual basis.[[10]](#footnote-11)

(h) **Proxies.** At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by the Member’s duly authorized attorney-in-fact. Proxies shall be filed with the Manager or secretary of the Company before or at the time of the meeting. No proxies shall be valid after six months from the date of execution, unless expressly provided otherwise in the proxy. A member voting by proxy at a meeting is deemed present at that meeting.

### Section 4.10. 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.[[11]](#footnote-12)

### Section 4.11. 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. Any compensation paid to a Member for services rendered will be treated as an expense of the Company and a guaranteed payment within the meaning of IRC § 707(c), and the amount of the compensation will not be charged against the share of profits of the Company that would otherwise be allocated to the Member. 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.

### Section 4.12. Indemnification of Manager and Members.

(a) **Liability of Manager and Members.** No Manager or Member shall be liable to the Company for any loss or damage suffered by the Company on account of any action taken or omitted to be taken by the Person serving as a Manager or Member, that the Person in good faith believed to be in or not opposed to the Company’s best interests, and with respect to any criminal action or proceeding, that the Person had no reasonable cause to believe was unlawful. In addition, no Manager or Member shall be liable to the Company for any loss or damage suffered by the Company on account of any action taken or omitted to be taken in reliance upon advice of counsel for the Company or upon statements made or information furnished by employees of the Company that the Manager or Member had reasonable grounds to believe to be true. The foregoing shall not exclude other rights and defenses to which the Manager or Member may be entitled as a matter of law.

(b) **Successful Defense.** The Company shall indemnify a Person serving as a Manager or Member to the extent the Person has been successful on the merits or otherwise in the defense of a claim, action, dispute, or issue such that the Person has no liability for all Expenses incurred in connection with the claim, action, dispute, or issue, if the Person was a party due to the Person’s role as a Manager or Member. Indemnification under this subsection shall be made within 10 days of receipt by the Company of a written demand for indemnification.

(c) **Other Cases.**

(i) In cases not included under subsection (b), the Company shall indemnify the Manager or Member against Liability and Expenses incurred by the Person in connection with a claim, action, dispute, or issue, if the Person was a party due to the Person’s role as a Manager or Member, unless it shall have been concluded that the Person breached or failed to perform a duty owed to the Company (using the procedure set out in Section 4.12(d)), which breach or failure constitutes:

(A) A willful failure to deal fairly with the Company in connection with a matter in which the person has a material conflict of interest;

(B) A violation of criminal law, unless the Person had reasonable cause to believe the Person’s conduct was lawful or no reasonable cause to believe the conduct was unlawful;

(C) A transaction from which the Person derived an improper personal profit; or

(D) Willful misconduct.

(ii) Indemnification required under this subsection shall be made upon the last to occur of (A) 30 days from the Company’s receipt of a written demand for indemnification or (B) the determination set forth in Section 4.12(d).

(d) **Means of Determining Whether Indemnification Is Required.** Unless otherwise provided by a written agreement between the *Member* seeking indemnification and the Company, **the** right to indemnification under Section 4.12(c) shall be determined by the Manager(s). Unless otherwise provided by a written agreement between a *Manager* seeking indemnification and the Company, the right to indemnification under Section 4.12(c) shall be determined by the disinterested Manager(s). If no disinterested Manager exists, the right to indemnification under Section 4.12(c) shall be determined by Majority Consent of the disinterested Members. If no disinterested Member exists, the right to indemnification under Section 4.12(c) shall be determined by Majority Consent of the Members. If the Manager(s) or Member(s) determine that indemnification is not required under Section 4.12(c), and the Member or Manager seeking identification does not agree with the determination, the matter shall be determined by arbitration as set out in this Agreement.

(e) **Effect of Termination of Proceeding.** The termination of a claim, action, dispute, or issue by judgment, order, settlement, or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the Manager or Member is not required under this Section.

(f) **Request for Indemnification and Assignment of Claims Required**. To seek indemnification, the Manager or Member shall make a written request to the Company. As a further precondition to any right to receive indemnification, the writing shall contain a declaration that the Company shall have the right to exercise all rights and remedies available to the Manager or Member against any other Person, arising out of, or related to, the claim, action, dispute, or issue that resulted in the Liability and Expenses for which the Manager or Member seeks indemnification, and that the Manager or Member is deemed to have assigned to the Company all such rights and remedies.

(g) **Allowance of Expenses as Incurred.**

(i) Upon written request by the Manager or Member, the Company shall pay or reimburse the Person’s reasonable expenses incurred as a party to a claim, action, dispute, or issue if the Person provides the Company with all of the following:

(A) A written affirmation of the Person’s good faith belief that the Person has not breached or failed to perform the Person’s duties to the Company; and

(B) A written undertaking, executed personally or on the Person’s behalf, to repay the allowance without interest to the extent that it is ultimately determined in accordance with Section 4.12(d), above, that indemnification under this Section is prohibited.

(ii) The undertaking under this subsection shall be accepted without reference to the Person’s ability to repay the allowance. The undertaking shall be unsecured.

(h) **Insurance.** The Company may purchase and maintain insurance on behalf of any Person who is a Manager or Member against any Liability asserted against or incurred by the Person in any such capacity or arising out of the Person’s status as such, regardless of whether the Company is required or authorized to indemnify or allow Expenses to the Person under this Section.

(i) **Severability.** If this Section or any portion of this Section is invalidated on any ground by any court of competent jurisdiction, the Company shall indemnify the Manager or Member as to Liabilities and Expenses, paid in settlement with respect to any claim, action, dispute, or issue to the full extent permitted by any applicable portion of this Section that is not invalidated or by applicable law.

(j) **Continuation of Indemnification.** The indemnification provided by this Section shall be the exclusive indemnification available from the Company to its Manager and Members, and shall continue as to a Person who has ceased to be a Manager or Member, and shall inure to the benefit of the heirs, successors, executors, and administrators of any such Person.

# ARTICLE V

## Capital Accounts

### Section 5.1. Capital Accounts.

(a) **Definition.** There shall be established and maintained with respect to each Member a capital account (“Capital Account”) which shall be adjusted to reflect the value of the Capital Contributions by each Member and the allocations and distributions provided for in Articles VI and VII and Section 10.5. The Capital Accounts shall also be adjusted pursuant to a revaluation of the Company’s property under clause (2) of the Asset Value definition and shall be further adjusted in accordance with the capital account maintenance rules of Treasury Regulation Section 1.704-1(b)(2)(iv).

(b) **Transfers.** If any Member assigns all or any part of the Member’s Ownership Units in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent the Capital Account relates to the transferred Ownership Units.

### Section 5.2. Interpretation.

The provisions of Section 5.1, above, and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b) of the Treasury Regulations, the terms and requirements of which are incorporated in this Agreement by reference, and shall be interpreted and applied in a manner consistent with those terms and requirements.

# ARTICLE VI

## Distributions

### Section 6.1. Current Distributions.

(a) **Current Tax Distributions.** To the extent permitted by law and consistent with the Company’s obligations to its creditors as determined by the Manager, the Company shall make Tax Distributions on or before the Tax Distribution Dates. The aggregate amount of the Tax Distribution made with respect to any given Tax Distribution Date shall be the product of (i) the Company’s estimated federal taxable income under the provisions of the Code, for the Fiscal Period ending on the last day of the calendar month immediately preceding the Tax Distribution Date and commencing on the first day of the calendar month that includes the immediately previous Tax Distribution Date, multiplied by (ii) the applicable Tax Rate. Notwithstanding the foregoing, to the extent the Company has had an estimated federal taxable loss for any prior Fiscal Period in that Fiscal Year, the amount in clause (i), above, shall be reduced by that portion of the loss remaining after reducing taxable income for prior Fiscal Periods in the Fiscal Year for the loss. Each Member shall receive a Tax Distribution proportional to the amount of federal taxable income to be allocated to the Member. Tax distributions shall be treated as a distribution in advance of distributions pursuant to Sections 6.1(c) and 6.2, below.

(b) **Additional Tax Distributions.** If any income tax return of the Company, as a result of an audit or otherwise, reflects items of income, gain, loss, or deduction that are different from the estimated amounts with respect to a Fiscal Year in a manner that results in additional income or gain of the Company being allocated to the Members, an additional Tax Distribution shall be made under the principles of this Article to the Members (or former Members) who are allocated the additional income or gain, except that (i) the last day of the calendar month in which the adjustment occurs shall be treated as a Tax Distribution Date, (ii) the amount of the additional income or gain shall be treated as the Company’s federal taxable income, and (iii) the applicable Tax Rate shall be that which applied for the Fiscal Period to which the additional income or gain relates.

(c) **Cash Available for Distribution**. At such time as the Manager decides and at the complete discretion of the Manager, Cash Available for Distribution shall be distributed to the Members in proportion to their Ownership Interests during the Fiscal Period to which the distribution relates.

### Section 6.2. Liquidating Distributions.

In the event the Company is liquidated pursuant to Article X, below, the assets to be distributed pursuant to Section 10.5(d)(iii), below, shall be distributed to the Members in proportion to the Member’s Capital Account balances, after making the adjustments for allocations under Article VII, below, up to and including the date of the liquidating distribution.

### Section 6.3. Tax Withholding.

To the extent the Company is required to make any withholding or estimated tax payments to any taxing authority on behalf of a Member, such payment or withholding shall be considered a distribution to the Member on whose behalf such payment or withholding was made. The Company shall reduce the amount of distributions (whether a Tax Distribution or otherwise) to such Member in an amount equal to such payment or withholding related to any particular Fiscal Period.

# ARTICLE VII

## Allocation of Profits and Losses

### Section 7.1. Allocation of Profits and Losses.

Except as provided in Section 7.2 and 7.4(d), Profits and Losses shall be allocated among the Members in proportion to their Ownership Interests for the Fiscal Period.[[12]](#footnote-13)

### Section 7.2. Regulatory Allocations.

(a)This Agreement shall be deemed to contain provisions relating to “minimum gain chargeback,” “nonrecourse deductions,” “qualified income offset,” “gross income allocations,” and any other provision required to be contained in this Agreement pursuant to the Treasury Regulations promulgated under section 704(b) of the Code (the “Section 7.2 Allocations”), other than any requirement that a Member be required to contribute to the Company an amount equal to any deficit in the Member’s Capital Account.

(b) No allocation of Loss shall be made to a Member if the allocation would result in a negative balance in the Member’s Capital Account in excess of the amount the Member is deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations. If there is a negative balance in the Member’s Capital Account in excess of the amount(s) set forth above, the Member shall be allocated income and gain in the amount of that excess as quickly as possible. Any Loss that cannot be allocated to a Member pursuant to the restrictions contained in this paragraph shall be allocated to other Members.

(c)The Section 7.2 Regulatory Allocations are intended to comply with the Treasury Regulations promulgated under section 704(b) of the Code. The other provisions of this Article VII notwithstanding, the Section 7.2 Regulatory Allocations shall be taken into account in allocating other Profits, Losses, and items of income, gain and deduction among the Members so that, to the extent possible, the net amount of the allocations of other Profits, Losses, and other items and the Section 7.2 Regulatory Allocations to each Member shall equal the net amount that would have been allocated to each such Member if the Section 7.2 Regulatory Allocations had not occurred.

### Section 7.3. Other Allocation Rules.

(a) **Transfer of Ownership Units.** If a Member transfers all or any portion of the Member’s Ownership Units pursuant to this Agreement during any Fiscal Period, the Profits (or Losses) allocated to the Members for each such Fiscal Period shall be allocated among the Members in proportion to their respective Ownership Units from time-to-time during the Fiscal Period in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Manager.

(b) **Determination of Allocable Amounts.** The Profits, Losses, or any other items allocable to any Fiscal Period shall be determined on a daily, monthly, or other basis, as determined by the Manager, using any permissible method under Section 706 of the Code and the Treasury Regulations under that section.

### Section 7.4. Tax Allocations.

(a) **Capital Contributions.** In accordance with Section 704(c) of the Code and the Treasury Regulations under that section, income, gain, loss, and deduction with respect to any contribution to the Company’s capital shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the property’s adjusted basis to the Company for federal income tax purposes and its initial Asset Value.

(b) **Adjustment of Asset Value.** If the Asset Value of any Company asset is adjusted, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the asset’s adjusted basis for federal income tax purposes and its Asset Value as so adjusted in the same manner as under Section 704(c) of the Code and the Treasury Regulations under that section.

(c) **Elections**. Any elections or other decisions relating to the allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intent of this Agreement.

(d) **Imputed Interest.** To the extent the Company has interest income or deductions with respect to any obligation of or to a Member pursuant to section 483, sections 1271–1288, or section 7872 of the Code, the interest income or deductions shall be specially allocated to the Member to whom the obligation relates.

# ARTICLE VIII

## Transfer of Ownership Units

### Section 8.1. General Restrictions on Transfers.

Except in accordance with the terms of this Agreement and subject to Article IX of this Agreement, no Member may Transfer all or any portion of the Member’s Ownership Units without Super Majority Consent[[13]](#footnote-14). Any Transfer, attempted Transfer, or purported Transfer in violation of this Agreement’s terms and conditions shall be null and void.

### Section 8.2. Permitted Transfers.

A Member may Transfer all or any portion of the Member’s Ownership Units to a Permitted Transferee, provided the applicable provisions of this Section are complied with before the Transfer becomes effective. At that time, the Permitted Transferee will become a Member of the Company.

(a) **Signature.** The Permitted Transferee must sign a counterpart to this Agreement, agreeing for the other Members’ benefit to be bound by this Agreement to the same extent as if the Permitted Transferee had been an original party to the Agreement as a Member

(b) **Approval.** The Company must approve of the trustee, if the Transfer is to a trust, in writing before the Transfer.

(c) **Document.** The Permitted Transferee must take all actions and execute all instruments required by the Company in order for the Transfer to comply with any applicable federal or state laws and regulations relating to the Transfer of Ownership Units or with this Agreement.

### Section 8.3. Third-Party Transfers.

(a) **Notice of Transfer.** Except in the case of a Transfer to a Permitted Transferee or an Involuntary Transfer, a Transferor must send a Notice of Transfer to the Company, and the applicable provisions of this Section must be complied with, before a Transfer will be effective. The Notice of Transfer shall contain (i) the Ownership Units proposed to be Transferred (the “Available Ownership Units”), (ii) the identity of the Transferee, (iii) the terms upon which the Transfer is proposed to be made, and (iv) the date of the proposed Transfer. The Manager shall deliver a copy of each Notice of Transfer to each Member promptly upon receipt of the notice.

(b) **Option to Purchase.** A Transferor may not Transfer the Transferor’s Available Ownership Units, without first offering to sell the Available Ownership Units to the Company and the other Members. If the offer of sale is not accepted by the Company and the other Members with respect to all the Available Ownership Units offered for sale, then none of the acceptances shall be effective, and the Transferor may Transfer the Available Ownership Units pursuant to Section 8.3(c).

(i) **Company’s Option to Purchase.** The Company shall have 30 days from the date of receipt of the Notice of Transfer to exercise the option to purchase contained in this Section by providing written notice of the exercise of the option to the Transferor. If the option is exercised, the Transferor shall be obligated to sell, and the Company shall be obligated to purchase, all or a portion of the Transferor’s Available Ownership Units upon the same terms, conditions, and price as offered by the Transferee and described in the Notice of Transfer.[[14]](#footnote-15)

(ii) **Members’ Option to Purchase.** If the Company does not exercise its option to purchase all the Available Ownership Units being offered, the Manager shall call a meeting of all of the Members (other than the Transferor). The meeting shall be held at the Company’s regular office, or such other location as determined by the eligible Members, not less than 15 days nor more than 30 days after the expiration of the offer to the Company. The Manager shall make successive offers of the Available Ownership Units not accepted by the Company to those Members present at the meeting in accordance with the following procedures. The successive offers shall continue until either all the Available Ownership Units are accepted or it is determined by successive offerings that all the Available Ownership Units will not be accepted. At the meeting, the Manager shall offer the Available Ownership Units to the Members present at the meeting, including the Manager (if a Member), in the following manner:

(A) The Manager shall offer to each Member present at the meeting, and each may accept, only that proportion of the Available Ownership Units being offered as corresponds to that Member’s share of the Ownership Units held by all of the Members present or legally represented at the meeting; and

(B) If all the Available Ownership Units offered for sale are not accepted in accordance with the procedures set forth in clause (A), the Manager shall thereafter make successive offerings to the Members present who did not previously refuse to accept all of the Available Ownership Units offered to them at the meeting. During each offering, the Manager shall offer to each such Member only that proportion of the Available Ownership Units not previously accepted as corresponds to that Member’s share of the Ownership Units held by all of the Members to whom the successive offerings are being made.

(c) **Transfer to Third Party.** If the Company and/or the Members have not elected to purchase all of the Available Ownership Units pursuant to Section 8.3(b) then the Transferor may Transfer all (but not less than all) the Available Ownership Units pursuant to this Section, at which time the Transfer will be effective and the Transferee will become a Member.

(i) The Transferor may Transfer all the Ownership Units identified in the Notice of Transfer to the third party designated in the Notice of Transfer at the same price and on the same terms of payment specified in the Notice of Transfer, provided that the Transfer is made within 120 days after the date of the Notice of Transfer.

(ii) The Transferee must, as part of the closing of the Transfer, sign a counterpart to this Agreement agreeing for the benefit of the other Members to be bound by this Agreement to the same extent as if the Transferee had been an original party to this Agreement.

(iii) The Transferee must, as part of the closing of the Transfer, take all actions and execute all instruments required by the Company in order for the Transfer to comply with any applicable federal or state laws and regulations relating to the Transfer of a Unit or with this Agreement.

(iv) If the Ownership Units proposed to be Transferred pursuant to the Notice of Transfer are not Transferred within the applicable periods and in accordance with the foregoing provisions of this Section, the Ownership Units shall again be subject to the restrictions of this Article.

### Section 8.4. Involuntary Transfer.

(a) **Event of Involuntary Transfer.**  An Involuntary Transfer to a Person other than the Company or another Member will be effective only after the applicable provisions of this section have been complied with. The creditor, receiver, trust or trustee, estate, beneficiary, or other Person to whom Ownership Units are Transferred by Involuntary Transfer (the “Involuntary Transferee”) will have only the rights provided in this Section. “Involuntary Transfer” means any Transfer, other than to a Permitted Transferee, of Ownership Units by operation of law or in any proceeding, including a Transfer resulting from the dissociation of a Member, by or in which a Member would, but for the provisions of this Section, be involuntarily deprived of any interest in or to the Member’s Ownership Units, including, without limitation, (a) a Transfer on death or bankruptcy, (b) any foreclosure of a security interest in the Ownership Units, (c) any seizure under levy of attachment or execution, (d) any Transfer to a state or to a public office or agency pursuant to any statute pertaining to escheat, abandoned property, or forfeiture, or (e) a Member is determined by Majority Consent to be in Default of this Agreement and such Default is not cured within 30 days.

(b) **Notice to Company.** The Transferor and the Involuntary Transferee shall each immediately deliver a written notice to the Company describing the event giving rise to the Involuntary Transfer; the date on which the event occurred; the reason or reasons for the Involuntary Transfer; the name, address, and capacity of the Involuntary Transferee; and the Ownership Units (the “Involuntary Transfer Units”) involved (a “Notice of Involuntary Transfer”).

(c) **Company’s Option To Purchase**. Upon the occurrence of an Involuntary Transfer, the Company shall have 30 days to exercise the option to purchase contained in this Section 8.4 by providing written notice of the exercise of the option to the Involuntary Transferor. If the option is exercised, the Involuntary Transferor shall be obligated to sell, and the Company shall be obligated to purchase, all or a portion of the Involuntary Transfer Units at the purchase price calculated pursuant to Section 8.4(e) at the time of the Involuntary Transfer.[[15]](#footnote-16)

(d) **Members’ Option to Purchase.**  If the Company does not exercise its option to purchase all the Involuntary Transfer Units, the Manager shall call a meeting of all of the Remaining Members. The meeting shall be held at the Company’s regular office, or such other location as determined by the Remaining Members, not less than 15 days nor more than 30 days after the expiration of the Company’s option to purchase in Section 8.4(c). The Manager shall make successive offers of the Involuntary Transfer Units not accepted by the Company to those Members present at the meeting in accordance with the procedures. The successive offers shall continue until either all the Involuntary Transfer Units are accepted or it is determined by successive offerings that all the Involuntary Transfer Units will not be accepted. At the meeting, the Manager shall offer the Involuntary Transfer Units to the Members present at the meeting, including the Manager (if a member) in the following Manner.

(i) The Manager shall offer to each Member present at the meeting, and each may accept, only that proportion of the Involuntary Transfer Units being offered as corresponds to that Member’s share of the Ownership Units held by all of the Members present or legally represented at the meeting; and

(ii) If all the Involuntary Transfer Units offered for sale are not accepted in accordance with the procedures set forth in clause (i), the Manager shall thereafter make successive offerings to the Members present who did not previously refuse to accept all of the Involuntary Transfer Units offered to them at the meeting. During each offering, the Manager shall offer to each such Member only that proportion of the Involuntary Transfer Units not previously accepted as corresponds to that Member’s share of the involuntary Transfer Units held by all of the members to whom the successive offerings are being made.

(e) **Purchase Price.** The purchase price to be paid for the Involuntary Transfer Units purchased pursuant to this Section 8.4 shall be the fair market value of the Ownership Units, taking into account minority and marketability discounts (if any), determined by an appraiser selected by the Manager (with the Company to pay the fees and costs of any appraisal used to determine this purchase price).

(f) **Effect of Involuntary Transfer.**  With respect to any Involuntary Transfer Units not purchased pursuant to Sections 8.4(c) or (d), the Involuntary Transferee shall have the rights of an assignee of such Ownership Units as set out in section 183.0704(1)(b) of the Act, *i.e.* to receive only the distributions and to share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned Ownership Units; provided, however, that the Involuntary Transferee shall have all the duties of a Member, and the Ownership Units shall be subject to all the restrictions, as are set out in this Agreement. Unless and until the Involuntary Transferee is admitted as a member by the Manager, the Ownership Units held by the Involuntary Transferee shall have no voting rights such that the determination of Membership Consent shall be made by excluding the Ownership Units held by the Involuntary Transferee for all purposes.

### Section 8.5. Employees.[[16]](#footnote-17)

(a) **Termination of Employment.**  If a Member who is an employee of, or provides services to, the Company ceases to be an employee of, or provide services to, the Company for any reason (a “Termination”) other than death of the Member, then by virtue of such Termination, such Member (the “Terminated Member”) shall be deemed to have granted an options in Section 8.5(b) and (c) with respect to the Units held by the Terminated Member and any Units Transferred by the Terminated Member in one or more Permitted Transfers (collectively, the “Terminated Member’s Units”). The term “Non-Terminated Members” shall mean all Members of the Company other than a Terminated Member. The term “Terminated Member” shall include, if applicable, the Terminated Member’s legal representative and transferees by means of a Permitted Transfer of the Terminated Member’s Units.

(b) **First Option by Company**. The Company, at any time within thirty (30) days after the Termination of the Terminated Member may provide a written notice of the exercise of the option to the Terminated Member. If the Company exercises this option, the Terminated Member shall be obligated to sell, and the Company shall be obligated to purchase, all or a portion of the Terminated Member Units at the purchase price calculated pursuant to Section 8.5(d).[[17]](#footnote-18)

(c) **Second Option to the Non-Terminated Members.** If the Company does not purchase all the Terminated Member’s Units, the Manager shall call a meeting of all of the Non-Terminated Members. The meeting shall be held at the Company’s regular office, or such other location as determined by the Non-Terminated Members, not less than 15 days nor more than 30 days after the expiration of the Company’s option to purchase in Section 8.5(c). The Manager shall make successive offers of the Terminated Member’s Units not accepted by the Company to the Members present at the meeting. The successive offers shall continue until either all the Terminated Member Units are accepted or it is determined by successive offerings that all the Terminated Member Units will not be accepted. At the meeting, the Manager shall offer the Terminated Member Units to the Members present at the meeting, including the Manager (if a Member) in the following manner.

(i)The Manager shall offer to each Member present at the Meeting, and each may accept, only that proportion of the Terminated Member Units being offered as corresponds to that Member’s share of the Ownership Units held by all of the Members present or legally represented at the Meeting; and

(ii) If all the Terminated Member Units offered for sale are not accepted in accordance with the procedures set forth in clause (i), the Manager shall thereafter make successive offerings to the Members present who did not previously refuse to accept all of the Terminated Member Units offered to them at the Meeting. During each offering, the Manager shall offer to each such Member only that proportion of the Terminated Member Units not previously accepted as corresponds to that Member’s share of the Terminated Member Units held by all of the Members to whom the successive offerings are being made.

(d) **Purchase Price**. The purchase price to be paid for the Terminated Member Units purchased pursuant to this Section 8.5 shall be the fair market value of the Units, taking into account minority and marketability discounts (if any), determined by an appraiser selected by the Manager (with the Company to pay the fees and costs of any appraisal used to determine this purchase price).

(e) **Non-Exercise of Refusal Rights.** In the event all of the Terminated Member’s Units are not purchased pursuant to this Section 8.5, then the un-purchased Units may be retained by the Terminated Member and the Terminated Member shall thereafter be treated in the same manner as an Involuntary Transferee that has not been admitted as a Member to the Company under Section 8.4(f).

### Section 8.6. Marital or Community Property and Divorce.

(a) **Marital or Community Property Rights.**[[18]](#footnote-19) For purposes of this Agreement, any reference to Ownership Units shall include all interests in the Ownership Units now or hereafter acquired by the spouse of a Member or the spouse of a Transferee as a result of (1) community or marital property laws including community or marital property, deferred marital property, or augmented marital property, or (2) a property division or other award or Transfer upon dissolution of marriage. The creation of an interest in Ownership Units by operation of any applicable community or marital property law shall not be deemed a Transfer so long as the Ownership Units in which an interest is created continues to satisfy the following two conditions:

(i) The Ownership Units are registered in the name of the Member or Transferee; and

(ii) The Ownership Units are controlled by the Member or Transferee.

(b) **Involuntary Transfer.** If the conditions set forth in Section 8.6(a) cease to be satisfied for any reason (including, without limitation, the death of the spouse of a Member or the spouse of a Transferee or the dissolution of the marriage), the resulting Transfer shall be considered an Involuntary Transfer.

(c) **Member to Vote.** Each Member shall vote with respect to all matters that come before the Members unless and until the Transfer, if any, of the Ownership Units to the Member’s spouse pursuant to Section 8.5(b). Notwithstanding any marital or community property interest that the spouse of a Member may have in the Ownership Units, the Company will be entitled to rely on the actions of the Member without any further action than the taking of the action by the Member with respect to the Ownership Units otherwise held by the Member.

(d) **Spousal Consent.** If an individual is married at the time he/she seeks admittance as a Member, his/her spouse must execute the Spousal Consent in Exhibit C to this Agreement prior to his/her admittance as a Member. If an individual marries after becoming a Member, he/she shall inform the Manager of the marriage and his/her spouse shall execute the Spousal Consent form at that time.

### Section 8.7. Specific Performance.

The parties declare that it may be impossible to measure in money the damages that will accrue to any party by reason of a failure to perform any of the obligations under this Article, and the parties agree that this Article shall be specifically enforced. Therefore, if any Member or Transferee institutes any action or proceeding to enforce the provisions of this Article, any Person, including the Company, against whom the action or proceeding is brought, waives the claim or defense that the party has or may have an adequate remedy at law. The Person shall not urge in any such action or proceeding the claim or defense that a remedy at law exists, and the Person shall consent to the remedy of specific performance of this Agreement.

# ARTICLE IX

## Absolute Restrictions on Transfers

No Transfer of any Ownership Units may be made if, in the opinion of the Company’s legal counsel, the transfer or assignment will violate any applicable federal or state securities laws. Before making any Transfer of any Ownership Units, the Transferor must notify the Company in writing, and the Manager shall, if the Manger believes there is a material risk of violating this Article, obtain an opinion from the Company’s legal counsel confirming whether the proposed Transfer will cause such a violation of securities laws. Legal fees shall be the Transferor’s responsibility.

# ARTICLE X

## Dissociation, Dissolution, and Liquidation

### Section 10.1. 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 10.2. 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 10.3. Filing and Notice.

Upon dissolution of the Company, the Manager or the Liquidating Trustee shall promptly, upon appointment, execute and file on the Company’s behalf Articles of Dissolution as provided in the Act. The Manager or the Liquidating Trustee shall also notify the Company’s known claimants and publish a notice of the Company’s dissolution as provided in the Act, except as otherwise determined by the Manager.

### Section 10.4. Termination.

Dissolution of the Company shall be effective on the date on which the event causing dissolution occurs, but the Company shall not terminate until Articles of 1) Dissolution have been duly filed under the Act, 2) the Company’s affairs have been wound up, 3) and the Company’s assets have been distributed. Notwithstanding the dissolution of the Company the business of the Company and the affairs of its Members, as such, shall continue to be governed by this Agreement until the liquidation and termination of the Company.

### Section 10.5. 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 in accordance with the provisions of this Section.

(b) All salable assets of the Company may be sold in connection with any dissolution at public or private sale or at such price and upon such terms as the Manager or the Liquidating Trustee may deem advisable. A Member or any entity in which a Member is in any way interested may purchase assets at the sale. The Manager or the Liquidating Trustee in that Person’s sole and absolute discretion may distribute the Company’s assets in kind based on their Asset Value in accordance with Section 10.5(d).

(c) The Company’s Profits and Losses shall be determined as of the end of the period of winding up in accordance with the provisions of this Agreement and shall be credited or charged to the Members’ respective Capital Accounts.

(d) Upon the dissolution and winding up of the Company, the Company’s assets shall be distributed in the following order of priority to the extent available:

(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 Section 6.2.

(e) 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.

**Section 10.6. Limitation on Liability.** Each Member shall look solely to the Company’s assets for all distributions from the Company and the return of the Member’s Capital Contribution to the Company and shall have no recourse (upon dissolution or otherwise) against any Member, or any of their respective affiliates.

# ARTICLE XI

## Books and Records

### Section 11.1. Books and Records.

The Company’s books and records shall be maintained at the Company’s principal office or at any other place designated by the Manager.

### Section 11.2. Company Funds.

The Company’s funds may be deposited in such banking institutions as the Manager determines, and withdrawals shall be made only in the regular course of the Company’s business on such signature or signatures as the Manager determines. All deposits and other funds not needed in the operation of the business may be invested in certificates of deposit, short-term money market instruments, money market funds, government securities, or similar investments as the Manager determines.

### Section 11.3. Availability of Information.

The Company shall keep at its principal office and place of business, all of the following: (a) a current list of the full name and last-known business address of each Member or Manager or former Member or Manager set forth in alphabetical order, the date on which each Member or Manager or former Member or Manager became a Member or Manager, and, if applicable, the date on which any former Member or Manager ceased to be a Member or Manager; (b) a copy of the Articles of Organization and all amendments to the Articles; (c) copies of the Company’s federal, state, and local income tax returns and financial statements, if any, for its four most recent years; and (d) copies of this Agreement and any effective written amendments to this Agreement. Any Member or any Member’s duly authorized representative(s), at the Member’s own expense, during normal business hours shall have the right to inspect and copy the documents described in this Section.

### Section 11.4. Tax Returns and Partnership Representative.

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. The Manager shall cause the Company to pay any taxes payable by the Company out of Company funds. "Name of Partnership Representative" shall serve as the Company’s initial “partnership representative” as defined in Section 6223(a) of the Code, as amended by the Bipartisan Budget Act of 2015, Pub L. No. 114-74 (the “BBA”) (“Partnership Representative”). The individual appointed shall remain as the Partnership Representative until he/she resigns or is replaced by the Manager(s) pursuant to this Agreement. The Manager(s) may elect, at any time, to designate another person to be the Partnership Representative, in which event the Manager(s) shall take all appropriate steps to implement such designation. The Partnership Representative is authorized and shall have the exclusive right to take any actions (including the making of any election) specified under the applicable sections of the BBA and regulations promulgated thereunder or any applicable state statute or local law

### Section 11.5. Reports.

Within 75 days after the end of each Fiscal Year, the Manager shall send to each Person who was a Member at any time during the Fiscal Year then ended (a) a balance sheet as of the end of the Fiscal Year, (b) statements of income, Members’ equity, changes in financial position, and a cash flow statement for the Fiscal Year then ended, and (c) such tax information as is necessary or appropriate for the preparation by the Members of their individual federal and state income tax returns.

# ARTICLE XII

## Miscellaneous

### Section 12.1. Amendments to Agreement.

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

### Section 12.2. 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 12.3. 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 12.4. 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 12.5. 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 12.6. 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 12.7. 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 "name of city or town", 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 (including distributions pursuant to Article VI of this Agreement) by amounts that Person owes to the Company by reason of this Section.[[19]](#footnote-20)

### Section 12.8. 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 12.8, 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 12.8, “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.

**(b) Whistleblower Safe Harbor.**  A Member’s confidentiality obligations hereunder shall not apply to information which is required to be disclosed by an order of a governmental agency, legislative body or court of competent jurisdiction; provided, however, that if Member is requested or required to disclose any of the Confidential Information, then Member will provide the Company with immediate notice of such request or requirement. The Company may, at its own expense, either seek appropriate protective relief from all or part of such request or requirement or waive compliance by Member with the non-disclosure restrictions of this Agreement with respect to all or part of such request or requirement.

### Section 12.9. 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 12.10. Counterparts.

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

### Section 12.11. 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.

Address:

"Member’s name", Member

Address:

"Member’s name", Member

Address:

"Member’s name", Member

# Acknowledgment

I acknowledge that Exhibit B contains a correct copy of the Articles of Organization filed by me with the Wisconsin Department of Financial Institutions to organize the Company.

"Organizer’s name", Organizer

# EXHIBIT A

**Members of the Company and Units**[[20]](#footnote-21)

|  |  |  |  |
| --- | --- | --- | --- |
| **Member** | **Capital Contribution** | **Number of Units** | **Ownership Percentage** |
| ("Member Name") |  |  |  |
| ("Member Name") |  |  |  |
| ("Member Name") |  |  |  |
| ("Member Name") |  |  |  |

# EXHIBIT B

**Articles of Organization**

# EXHIBIT C

**Spousal Consent**[[21]](#footnote-22)

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 (including, without limitation, Section 8.6 of the Agreement), and (ii) the price now or hereafter determined for any such interest.

Spouse’s Signature:

Spouse’s Name:

Member’s Name:

Date:

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

   “***Class B Member****”* means any Person listed in Exhibit A to this Agreement that holds Class B Ownership Units until such time as the Person is no longer a Class B Member in accordance with this Agreement and any additional Person who is admitted as a Class B Member to the Company in accordance with this Agreement. [↑](#footnote-ref-2)
2. If multiple classes of interests use this definition *Ownership Interest* means the percentage of the Company owned by a Member as determined by the number of Ownership Units the member owns, without regard to class, divided by the total number of outstanding Ownership Units across all classes in the Company. [↑](#footnote-ref-3)
3. *Profits Interest* has the meaning set forth in Rev. Proc. 93-27 (1993-27 C.B. 343) [↑](#footnote-ref-4)
4. Remove this definition unless specific business point related to Real Estate. [↑](#footnote-ref-5)
5. Registered agent must be in WI and should be identical to that provided in the Articles of Organization. See Wis. Stat. 183.0105. [↑](#footnote-ref-6)
6. **. Use the following language if using a profit interest: The Ownership Units shall initially consist of Class A and Class B Ownership Units (together the “Ownership Units”), which shall be identical in all respects except that Class B Ownership Units shall be treated as Profits Interests.**  The Class A Members shall contribute the assets set forth in Exhibit A as their Capital Contributions. The fair market value of each Member’s Capital Contributions as shown on Exhibit A has been mutually agreed to by the Members entering into this Agreement and shall be credited to each Class A Member’s Capital Account. In exchange for their Capital Contributions, the Class A Members shall receive Class A Ownership Units in the Company (the “Ownership Units”) set forth in Exhibit A. Each Class B Member has or will provide services to the Company in exchange for the Class B Ownership Units shown on Exhibit A. The value of the services has been mutually agreed to by the Members entering into this Agreement. The Members may, in their sole discretion by , admit one or more additional Persons as Members in exchange for new Capital Contributions from them, or grant additional Ownership Units 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 VIII. [↑](#footnote-ref-7)
7. If it is intended that there be a Board or multiple Managers, consider adding provisions regarding the Manner of Acting for the Board/Managers. See Books Unbound Precedent. [↑](#footnote-ref-8)
8. If Manager is a member, consider whether to exclude the interest of the Manager for purposes of determining Majority Consent. Could do so by amending the definition of Majority Consent. This may not be desirable if the Manager will be a dominant Founder. [↑](#footnote-ref-9)
9. Could remove this from list if it is desired that the Manager have the discretion to exercise the option. Include limitation on ability to assign if Company option is assignable. [↑](#footnote-ref-10)
10. Consider adding a tie-breaking provision (esp. important when 50/50). [↑](#footnote-ref-11)
11. Make sure that the Members are in agreement with this noncompete provision. Could put noncompete provisions in a separate agreement (e.g. an Employment Agreement or Restricted Unit Award Agreement) if some, but not all, members are to be bound by this concept. [↑](#footnote-ref-12)
12. Change this provision if LLC would like to make special allocation of profits and losses. [↑](#footnote-ref-13)
13. Discuss the level of vote needed to approve a transfer. [↑](#footnote-ref-14)
14. Could choose to make the Company’s Option assignable. [↑](#footnote-ref-15)
15. Consider making the Company’s Option assignable. (The Company may, by Majority Consent, assign the Company’s purchase rights under this Section 8.4(b) to one or more Persons who shall have the right, but not the obligation, to exercise the Company’s right to acquire a portion or all of the Involuntary Transferor’s Units on the same terms and conditions as set forth in this Section 8.4). [↑](#footnote-ref-16)
16. Whether to include this section should be a discussion among the founders. Could include similar provisions in a Founders Agreement or Restricted Unit Agreement. The advantage to including this section is that all future members will be bound. For our clients, this can be useful if they intend to “pay” their employees with equity and won’t have lawyers to draft agreements in the future. [↑](#footnote-ref-17)
17. Consider making the Company’s option assignable. [↑](#footnote-ref-18)
18. See spousal consent Exhibit C. This written consent is required because WI is a Marital Property State. The consent will bind any spouses that end up holding Units by operation of law to the transfer restrictions contained in the Agreement. [↑](#footnote-ref-19)
19. Make sure clients are aware of this provision in the OA. [↑](#footnote-ref-20)
20. If Profits Interests will be awarded list $0 as the Capital Contribution. Put asterisk next to the Class of Units with text “Profits Interest as that term is defined in Rev. Proc. 93-27”. If a Member is receiving both a Capital Interest and a Profits Interest the Member should be listed twice in table. If only one class of Units will be issued, can remove the “Class of Units” column. [↑](#footnote-ref-21)
21. Should be signed by each Member’s spouse at the time the OA is executed. If a Member subsequently marries, form should be completed by spouse at that time. [↑](#footnote-ref-22)