

LLC Operating Agreement

The following is a long-form sample LLC (limited liability company) operating agreement. The agreement contains provisions for: formation; members, capital contributions, capital accounts; membership certificates; profits, losses, tax allocations and distributions; accounting and reports; management of company; meetings; limitation of liability; dissolution, winding up and termination; prohibitions on transfer; right of first refusal; and miscellaneous provisions. There are opportunities to select optional language, such as stating that the LLC is created in accordance with the guidelines set out by the Beverly-Killea Limited Liability Company Act of the Corporations Code of the State of California. This document can be customized to fit the needs of any party forming an LLC.

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**OF**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC**

A Limited Liability Company

This Operating Agreement (hereinafter “Agreement”) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Company”) is entered into by [insert name(s) of all Members] (hereinafter “Members”). Members hereby form a limited liability company pursuant to and in accordance with the [**laws of the State of** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] or **[the Beverly-Kilkea Limited Liability Company Act as set forth in Title 2.5 (commencing with Section 17000) of the Corporations Code of the State of California (the "Act").”]** **[*Comment and Instruction: Choose one.* This Statute is particular to the laws of the State of California as pertains to limited liability companies. If you have formed or are forming a limited liability company in another State you might want to strike the portion specifying the law particular to California and use the first option, or determine the statute that is particular to the State of your limited liability company. Or better yet, you should review whether a similar document for another State is available for purchase on Docstoc, because it might have other or additional particular provisions that are specific and applicable to the laws of that State.]**

The Members hereby agree as follows:

1. FORMATION

* 1. Organization

The Company was formed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by the filing of the Articles of Organization with the Secretary of State of the State of \_\_\_\_\_\_\_\_\_\_\_\_. Except as otherwise provided in this Agreement, the rights, duties, liabilities and obligations of the Members, and all other Persons who become Members of the Company in the manner set forth herein, and the administration, dissolution, winding up and termination of the Company shall be governed by the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or **[*Comment*: If the LLC is being formed under the Beverly-Kilkea Limited Liability Company Act or pursuant to a statute of another State, that should be included here**.]

1.2 Name of the Company

The name of the Company is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC.

1.3 Purpose

The Company is organized for the object and purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The business of the Company may be conducted and promoted by the Company, and may engage in any lawful activity for which limited liability companies may be formed under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and engaging in any and all activities necessary or incidental to the foregoing.

1.4 Term

The Company shall commence as of the date of this Agreement and shall continue until terminated as provided in this Agreement or the Act.

1.5 Principal Place of Business

The Company's Principal Place of Business shall be located at, or at any other place in the state at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which the Members may jointly determine.

1.6 Resident Agent

The name and address of the Company's initial resident agent in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_ is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. MEMBERS, CAPITAL CONTRIBUTIONS, CAPITAL ACCOUNTS

2.1 Members of the Company

The Members of the Company may be persons or entities (“Persons”) and **t**heir names and respective addresses, phone numbers, email addresses and facsimile numbers are set forth on Schedule “A” attached hereto and incorporated herein.

2.2 Capital Contributions of the Members

Upon signing this Agreement, the Members have contributed, or will contribute, in cash, services and/or property, real, personal or otherwise, the amount set forth opposite their respective names on Schedule "A" attached hereto (their "Initial Capital Contribution").

2.3 Additional Capital Contributions

The Members may be required to make additional Capital Contributions to the Company if the Members unanimously determine that the Company requires additional funding for operating or capital expenses. Each Member shall then contribute the additional capital required in proportion to their Initial Capital Contribution to the Company.

2.4 Capital Account

A Capital Account shall be maintained for each Member. The Capital Account for each Member shall be equal to such Member’s Initial Capital Contribution increased by (i) cash and the fair market value of any property subsequently contributed to the Company by such Member (net of liabilities assumed or taken subject to by the Company) and (ii) such Member’s allocable share of profits and income and gains, and decreased by (a) cash and the fair market value of property distributed to such Member (b) such Member’s allocable share of losses and expenses, (c) such Member's allocable share of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code of 1986 ("IRC'); and notwithstanding the above, further adjusted as required to comply with Treasury Regulations Section 1.704-1(b)(2)(iv). Each Member shall have a single Capital Account which shall reflect all capital interests of such Member (regardless of class or time of acquisition).

2.5 No Interest on Capital

No interest will be paid to the Members on capital contributions or on Capital Account balances.

2.6 Return of Capital

Except as otherwise specifically provided herein, no time has been agreed upon for the Contributions of the Members to be returned to them. No Member has the right to demand and receive property other than cash in return for that Member’s capital contributions.

2.7 Failure to Make Capital Contributions

If a Member does not make a capital contribution when required to, either of the other Members may send the defaulting Member written notice of such default, giving that Member fourteen (14) days from the date such notice is given to contribute the entire amount of the Member’s required capital contribution. If the defaulting Member does not contribute the required capital to the Company within said fourteen (14) day period, the non-defaulting Members, if there are two (2) or more of them, or the non-defaulting Member, if there is one (1), may elect any one or more of the following remedies:

2.7.1 One or more of the non-defaulting Members may advance to the Company funds on behalf of the defaulting Member(s) equal to the amount which the defaulting Member(s) fails to contribute. Amounts so advanced by non-defaulting Member(s) on behalf of the defaulting Member shall become a loan due and owing from the defaulting Members) to such non-defaulting Member(s) and shall bear interest at the rate of ten percent (10%) per annum payable monthly. All cash distributions otherwise distributable to the defaulting Member(s) under this Agreement shall instead be paid to the non-defaulting Member(s) making such advance until such advances and interest thereon are paid in full. Any amounts repaid shall first be applied to interest and thereafter to principal. Effective upon a Member becoming a defaulting Member, each defaulting Member grants to the non-defaulting Member(s) who advance funds under this Section 2.7.1 a security interest in his Membership Interest to secure his obligation to repay such advances, and agrees to execute and deliver a promissory note containing terms as described herein, together with a security agreement and such UCC-1 financing statements and/or assignments of certificates of Membership (or other documents of transfer) as such non-defaulting Member(s) may reasonably request.

2.7.2 The non-defaulting Member(s) may advance for his or their own account additional funds to the Company equal to the amount which the defaulting Member(s) fails to contribute. In such event, the Percentage Interest, as hereinafter defined, of the defaulting Member(s) and the non-defaulting Member(s) shall be decreased or increased, as the case may be, proportionately by the same percentage amount that the additional funds bear to the total of all capital contributed by all Members to the Company.

2.7.3 The Company may borrow from a third Member lender an amount equal to the sum which the defaulting Member(s) fails to contribute to the Company. In such event, the defaulting Member(s) shall have no right to receive any distributions from the Company until such loan, including any interest thereon and/or fees incurred in connection therewith, has been paid in full.

Each Member acknowledges and agrees that the remedies described in this Section 2.7 bear a reasonable relationship to the damages which the Members estimate may be suffered by the Company and the non-defaulting Members by reason of the failure of a defaulting Member to make a required Capital Contribution, and the election of any or all of the above described remedies is not unreasonable under the circumstances existing as of the date hereof.

The election of the non-defaulting Members to pursue any remedy provided in this Section 2.7 shall not be a waiver or limitation of the right to pursue an additional or different remedy available hereunder or available at law or equity with respect to any default, subsequent or otherwise.

2.8 Loans from Members

Any Member may advance funds to the Company if funds are deemed necessary by all Members. The advances will be evidenced by the Company's note payable to the lending Member. The Note will provide for a commercially reasonable rate of interest and security.

2.9 Admission of Additional Members

Additional Members may be admitted to the Company only with the prior written consent of all existing Members, which may be given or withheld in their respective sole and unfettered discretion. As a condition to the addition of a new Member pursuant to this Section, the new Member shall execute and acknowledge such instruments, in the form and substance satisfactory to the Members, as the Members may deem necessary or desirable to effectuate the admission of the additional Member, and to confirm the agreement of the Person being admitted to be bound by all of the terms and provisions of this Agreement. The instruments executed by the new Member shall set forth the Capital Contribution to be made by the new Member, the name(s), address(es) Capital Contribution(s), and Percentage Interest(s) of the additional Member(s), together with any applicable adjustments to the Percentage Interests of the existing Members, shall be set forth on Schedule "A" attached hereto, as amended from time to time by the Members.

3. MEMBERSHIP CERTIFICATES

3.1 Certificate of Membership Interest

The Membership Interest in the Company may be represented by a certificate of Membership. The exact contents of a certificate of Membership may be determined by the Members but shall be issued substantially in conformity with the following requirements. The certificates of Membership shall be respectively numbered serially, as they are issued, shall be impressed with the Company seal or a facsimile thereof, and shall be signed by all the Members of the Company. Each certificate of Membership shall state the name of the Company, the fact that the Company is organized under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ as a limited liability company, the name of the Person to whom issued, the date of issue, and the Percentage Interest represented thereby as of the date of issue. A statement of the designations, preferences, qualifications, limitations, restrictions, and special or relative rights of the Membership Interests shall be set forth in full or summarized on the face or back of the certificates which the Company shall issue, or in lieu thereof, the certificate may set forth that such a statement or summary will be furnished to any holder of the Membership Interests upon request without charge.

3.2 Cancellation of Certificate of Membership Interest

All certificates of Membership surrendered to the Company for transfer shall be canceled and no new certificates of Membership shall be issued in lieu thereof until the former certificates for a like number of Membership Interests shall have been surrendered and canceled, except as herein provided with respect to lost, stolen, or destroyed certificates.

3.3 Replacement of Lost, Stolen, or Destroyed Certificate

Any Member claiming that his certificate of Membership is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and lodge the same with the Members of the Company, accompanied by a signed application for a new certificate. Thereupon, and upon the giving of a satisfactory bond of indemnity to the Company not exceeding an amount double the value of the Membership Interests as represented by such certificate (the necessity for such bond and the amount required to be determined by the Members), a new certificate may be issued of the same tenor and representing the same Percentage Interest as were represented by the certificate alleged to be lost, stolen or destroyed, subject to adjustment in the event the Percentage Interest of the said Member has been adjusted pursuant to the terms of this Agreement.

4. PROFITS, LOSSES, TAX ALLOCATIONS AND DISTRIBUTIONS

4.1 Allocation of Profits and Losses/Percentage Interest

4.1.1 The Company's Profits and Losses shall be allocated to the Members in proportion to their respective Percentage Interest in the Company.

4.1.2 “Percentage Interest” shall mean the percentage of a Member set forth opposite the name of such Member under the column “Member’s Percentage Interest” in Schedule “A” attached hereto and incorporated herein, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement. Percentage Interest shall be determined unless otherwise provided herein, in accordance with the proportions of the capital contributions made by the Members to the Company.

4.2 Distributions

4.2.1 The Members shall make a good faith effort to make distributions of available cash at least annually, but only after retaining sufficient cash for a reasonable reserve and satisfying current obligations of the Company incurred in the ordinary course of business, including the current portion of long term debt.

4.2.2 Distributions to the Members shall be made in the same proportion as is provided for the allocation of Profits in Section 4.1, above.

4.2.3 Distributions shall be made only to Persons who, according to the books and records of the Company, are the owners of record of a Membership Interest in the Company on a date to be determined by the Members. Neither the Members nor the Company shall incur any liability for making distributions in accordance with the preceding sentence, whether or not the Members have knowledge or notice of any transfer of any Membership Interest in the Company.

4.2.4 In the event any Person receives any distribution in excess of the amount properly distributable to such Person, the other Members may either require such Person to return to the Company such excess amount, or provide that such excess distribution shall be treated as the first amount next distributable to that Person under this Agreement.

4.2.5 If a Membership Interest in the Company is transferred, the income, gains, losses and deductions allocable to the Membership Interest transferred for the calendar year during which the transfer occurred will be allocated between the transferor and transferee of the interest in proportion to the time during the calendar year that the interest was owned by the transferor and transferee. Each transferee will be credited with the Capital Account of the transferor’s interest in the Company; the Capital Account will be allocated in proportion to the fraction of the interest respectively transferred and retained.

4.2.6 Notwithstanding anything to the contrary contained in this Agreement, distribution of proceeds from the sale of all or substantially all of the assets of the Company and distributions made on the liquidation of the Company shall be made first to the Members up to and in proportion to the positive balances of their Capital Accounts.

1. ACCOUNTING AND REPORTS

5.1 Accounting Decisions

All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made unanimously by the Members who may rely upon the advice of the certified public accountants of the Company. The Members shall unanimously select the Company's certified public accountants. The Members may unanimously select one of the Members, or a third Member, to serve as “Custodian” of the Company's records. Once selected, a Custodian may be changed only by the unanimous election of the Members.

5.2 Records and Accounting Methods

The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with generally acceptable accounting procedures and the accounting methods recommended by the Company's certified public accountants. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. The fiscal year of the Company for financial reporting and for federal income tax purposes shall be the calendar year, unless the Members unanimously agree and select another fiscal year.

5.3 Access for Members to Accounting Records

All books and records of the Company shall be maintained at the Company’s principal place of business, and each Member, and its duly authorized representative, shall have access to them at such office and the right to inspect and copy them at reasonable times.

5.4 Annual Tax information For Members

The Members shall use their best efforts to deliver to each Member within ninety (90) days after the end of each Accounting Period all information necessary for the preparation of such Member’s federal income tax return. The Members shall also use their best efforts to cause to be prepared, within one hundred twenty (120) days after the end of each Accounting Period, a financial report of the Company for such fiscal year, containing a balance sheet as of the last day of the year then ended, an income statement for the year then ended, a statement of cash flows, and a statement of reconciliation of the Capital Accounts of Members.

5.5 Tax Matters “Partner”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is hereby designated as the 'Tax Matters Partner" (as defined in Internal Revenue Code Section 6231), to represent the Company, at the Company's expense, in connection with all examination of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and to expend Company funds for professional services and costs associated therewith. In its capacity as “Tax Matters Partner”, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall oversee the Company’s tax affairs in the overall best interests of the Company.

5.6 Annual Filings with the Secretary of State

The Members shall, within ninety (90) days after filing the original Articles of Organization for the Company, and annually thereafter on or before the last day of the month which the anniversary date of the filing of the original Articles occurs in each year, or otherwise in conformity with state law, file with the \_\_\_\_\_\_\_\_\_\_ Secretary of State an annual statement on a form prescribed by the Secretary of State and enclose any required filing fee. The statement required to be filed must contain all of the information required by the LLC Act.

6. MANAGEMENT OF COMPANY

6.1 Controlled by the Managers

The Company shall be controlled by its Members, acting unanimously, who shall manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. ­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_shall be appointed as the Managing Member of the Company.

6.2 Daily Operations

6.2.1 The Members, by unanimous agreement, may delegate responsibility for the day-to-day affairs of the Company to one of the Members, or a third Member, who shall sometimes be hereinafter referred to in this Agreement as the “Operating Manager,” for purposes of carrying on the day-to-day affairs of the Company.\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Managing Member shall assume the role of Operating Manager.

6.2.2 The Operating Manager shall have authority to sign on all checking and/or bank accounts of the Company, provided however, such authority shall be limited to sums under Twenty Thousand Dollars ($20,000.00), and to execute and perform all contracts, agreements, and leases on behalf of the Company in the ordinary course of the Company's business. Any agreements, contracts, or leases that the exceed budgeted revenue or budgeted expenses set forth in the Company's Annual Operating Budget, as described below, by more than ten percent (10%), shall be deemed to be items out of the ordinary course of the business and therefore subject to the provisions of Section 6.4, below. The signatures of all Members shall be required on all documents, deeds, instruments, and/or other agreements documenting and/or evidencing transactions out of the ordinary course of business as defined herein, or elsewhere in this Agreement.

6.3 Adoption of Annual Budgets

Within thirty (30) days of the commencement date of the Company, and annually thereafter, the Members shall approve the capital and operating budget for the Company for the applicable year of its operations (the “Annual Operating Budget”). Any expenditure which causes an Annual Operating Budget for the Company to be materially exceeded and any lease which causes revenue to be materially reduced, shall be deemed an extraordinary matter outside the ordinary course of business for purposes of this Agreement, and shall require the unanimous consent of the Members as provided in Section 6.4.

6.4 Consent of All Members Required for Actions

Except as expressly provided in this Agreement, it shall require the consent of Seventy-Five Percent (75%) of the Members to approve any transactions by the Company out of the ordinary course of business, including requiring additional capital contributions, borrowing money from a Member or from a third Member lender and/or encumbering Company assets, selling the Property or substantially all of the Company's assets, or entering into a lease of or at the Property for a term in excess of one (1) year.

6.5 Limitation on Authority of Members/Operating Manager

Notwithstanding anything to the contrary herein contained, without in each instance receiving the prior written consent of all the Members, no Member or Operating Manager shall have authority to, and each covenants and agrees that it will not:

6.5.1 Do any act in contravention of this Agreement;

6.5.2 Do any act which would make it impossible to carry on the ordinary

business of the Company;

6.5.3 Confess a judgment against the Company;

6.5.4 Possess Company property or assign rights of the company for other than

a Company purpose; or

6.5.5 Admit a new Member.

6.6 Authority to Adopt Bylaws for the Company

The Members shall have the right, by unanimous consent or vote, to adopt Bylaws for the Company which Bylaws shall be consistent with this Agreement, and which shall provide for the operation and governance of the Company. The Bylaws may provide for the election of officers of the Company, their term, their duties and powers, and provisions with respect to special meetings of Members of the Company. In the event there is an inconsistency between the Bylaws adopted pursuant to this Section, and the terms of this Agreement, the terms and provisions of this Agreement shall be controlling.

6.7 Management Fee

No management fee shall be payable to any Member for his services managing the Company or the Property, unless Seventy-five percent (75%) of the Members agree upon such compensation. To the extent the Members elect to hire a third Member manager of the Company or of its Property, management fees payable to such third Member manager shall be agreed upon by Seventy-Five Percent (75%) of the Members.

6.8 Devotion of Time

The Members shall devote so much of their working time and attention as is necessary to successfully implement the Company's purposes, as set forth in Section 1.3 above. The Members, or any of them, may enter into other ventures without the other Members, irrespective of whether such other ventures compete with the business of the Company.

6.9 Limitation on Engaging Affiliates

The Members, acting unanimously, may engage one or more entities to perform Company activities for a fee, which fee shall be an expense of the Company. Except as otherwise expressly provided for herein, none of the Members, nor any of their affiliates shall be engaged for such services, unless the fee or compensation to be paid for such services is competitive with the fee or compensation of independent persons engaged in the business of rendering comparable services and is no greater than the amount a Member, or their affiliates customarily charge independent third Members for comparable services. For the purposes of this Agreement, the term “affiliate” shall mean any entity in which a Member has more than a ten percent (10%) interest, or for which a Member acts as a general partner, officer, or manager. No Member shall receive any rebates or give-ups, nor shall it participate in any reciprocal business arrangements which would circumvent these restrictions.

6.10 Reimbursable and Non-Reimbursement of Expenses

Each Member shall bear its own expenses incurred in connection with the acquisition of the Member’s Membership Interest. The Company shall pay or cause to be paid all other expenses of every nature and description incurred in connection with the organization of the Company, establishing the Company's business, and acquiring the Property.

6.11 Limitation of Liability

No Member, Managing Member, or Operating Manager shall be liable, responsible or accountable in damages or otherwise to the Company, any Member, or any Manager for any action taken or failure to act on behalf of the Company within the scope of the authority conferred by this Agreement, or by law, unless such act or omission was performed or omitted fraudulently or in bad faith or constituted gross negligence or willful malfeasance.

6.12 Indemnification

The Company shall indemnify, protect, defend and hold harmless the Members, Officers, Directors and the Operating Manager, and all their respective affiliates from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or related to, or in furtherance of the interest of, the Company, including but not limited to any judgment, award, settlement, attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the act, omission, or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based were for the Company business and were not performed or omitted fraudulently or in bad faith or as a result of gross negligence or willful malfeasance by such indemnified Member

6.13 Personal Guaranties

The Members acknowledge that certain of the Members or their affiliates, parents, or family Members, may be called upon to personally guarantee obligations of the Company. The Members may be called upon to personally guarantee loans from banks and other credit facilities for the Company. Notwithstanding that such personal guarantees to third Member creditors may provide for joint and several liability of the persons executing the same, it is agreed as between the Members, that each Member shall be responsible for his proportionate share of any Company liabilities which may be guaranteed by other Members, or by himself, up to the amount of such liability or liabilities multiplied by his Percentage Interest, as set forth in Schedule “A” attached hereto. To the extent a Member pays more than his Percentage Interest as applied to such guaranteed liability, he shall have a right to indemnification from the other Members for their respective shares of such guaranteed liability. This indemnification right shall include any attorneys’ fees and costs incurred by a Member in enforcing this indemnification agreement as against any other Member or Members.

7. MEETINGS

7.1 Meetings of the Members

7.1.1 All meetings of Members shall be held at the principal executive office of the Company, or at any other place, within or without the State of \_\_\_\_\_\_\_\_\_\_\_\_, specified by the Members. The place of any meeting of Members shall be specified in the notice calling such meeting.

7.1.2 The **annual meeting of the Members of the Company, after the year 20\_\_, shall be held at [insert time], on the [insert the day of the month, for example, the last Tuesday of November] of each year**, if not a legal holiday, and if a legal holiday, on the next business day following. In the event the annual meeting of Members shall not be held on the date above specified, the Members shall cause a meeting in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at such meeting shall be as valid as if such business were transacted or election held at the annual meeting. At the annual meeting, reports of the affairs of the Company shall be considered, and any other business may be transacted which is within the power of the Members.

7.1.3 A special meeting of the Members for any purpose or purposes whatsoever may be called at any time by any Member.

7.1.4 Whenever Members are required to or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than ten (10) days or more than forty-five (45) days before the date of the meeting, to each Member. Such notice shall state the place, date and hour of the meeting and the general nature of the business to be transacted, and no other business may be transacted at such special meeting. Notice of the meeting shall be given either personally or by First Class Mail, or other means of written communication, addressed to the Member as shown on the books of the Company. When a Members’ meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereafter arc announced at the meeting to which the adjournment is taken. At the adjourned meeting, the Members may transact any business which might have been transacted at the original meeting. At any meeting of Members, unless otherwise required by this Agreement or the LLC Act, a quorum shall consist of at least 51% of the Members, and unless a unanimous or 75% vote and/or approval of all Members is required for a decision, approval, resolution, or other act to be binding, the vote of the majority interest of the Members present at a meeting shall be binding.

7.1.5 Members may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all Members participating in such meeting can hear one another. Participation in a meeting pursuant to this subsection constitutes presence in person at such a meeting.

7.1.6 Any action that can be taken at a meeting may be adopted by unanimous consent in writing of all Members.

8. LIMITATION OF LIABILITY

Each Member’s liability shall be limited as set forth under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_. A Member shall not be liable for any debts or losses of the Company.

9. DISSOLUTION. WINDING UP AND TERMINATION

9.1 Dissolution

The happening of any one of the following events shall dissolve the Company:

9.1.1 The unanimous agreement of the Members to dissolve;

9.1.2 The election of a non-withdrawing Member to dissolve the Company under Section 9.3.3, below;

9.1.3 The sale of all or substantially all of the assets of the Company.

Subject to Section 9.1.2, the death, disability, withdrawal or insolvency of a Member shall not cause dissolution of the Company.

9.2 Winding Up and Termination

9.2.1 Upon dissolution of the Company, the Members shall serve as liquidating agent, and in such capacity, shall proceed to sell or otherwise liquidate the assets of the Company within a reasonable time and, after making due provision for all liabilities to creditors of the Company, shall distribute the assets among the Members in accordance with the provisions for the making of cash distributions set forth in Section 4 of this Agreement.

9.2.2 Within a reasonable time following the completion of the liquidation of the Company’s assets, the liquidating agent shall provide to each of the Members a statement by the Company’s accountants which shall set forth the assets and liabilities of the Company as of the date of complete liquidation and the amount retained as reserves by the liquidating agent pursuant to this Section 9.2.

9.2.3 The Company shall terminate when all property owned by the Company shall have been disposed of and the assets, after payment of or due provision for liabilities to Company’s creditors, shall have been distributed among the Members as provided in this Agreement.

9.3 Voluntary Withdrawal of a Member

Notwithstanding any other provision of this Agreement to the contrary, any Member may elect to voluntarily withdraw from the Company by giving written notice of such election to the other Member(s). Upon receiving notice of a Member’s election to withdraw, the remaining Member(s) may, in their sole and unfettered discretion, elect to do any of the following:

9.3.1 Continue the business of the Company, and purchase the interest of the withdrawing Member (hereinafter, the “Former Member”). The non-withdrawing Member(s) shall give notice of their election to exercise this option to purchase the Former Member’s interest within fifteen (15) days of receipt of notice of the Former Member’s election to withdraw. If all non-withdrawing Members elect to jointly participate in this purchase option, they shall have the right to purchase the interest of the former Member in proportion to their respective Percentage Interests in the Company. If at least one (1) non-withdrawing Member declines to participate in the exercise of the option, the remaining non-withdrawing Member(s) may participate on his, her or its own and shall be deemed the non-withdrawing Member(s) for all purposes under this Section 9.3. In the event of a purchase of the former Member’s interest, the purchase price shall be mutually agreed to by the non-withdrawing Member(s) and the Former Member within forty-five (45) days of receipt of the Former Member’s notice of its election to withdraw. If agreement cannot be reached within said time period, the procedure set forth in Section 9.3.4, below, shall be followed for determining the purchase price for the interest of the Former Member (the “Purchase Price”). The Purchase Price shall be payable fifty percent (50%) in cash and the balance in the form of a promissory note payable to the Former Member, bearing interest at seven percent (7%) per annum, and providing for monthly installment payments in an amount sufficient to fully amortize the principal sum thereof over sixty (60) consecutive months. The promissory note shall provide that it may be pre-paid at any time without penalty, and shall be guaranteed by the personal guaranty of the non-withdrawing Member(s) purchasing the Membership interest, in form reasonably satisfactory to the Members. The purchase of the Former Member’s interest shall be consummated within thirty (30) days of the determination of the Purchase Price by delivery of the cash portion of the Purchase Price, together with an executed promissory note dated as of said closing date, providing for the first monthly installment payment thirty (30) days following such closing date.

9.3.2 Dissolve the Company in accordance with Sections 9.1 and 9.2, above.

9.3.3 Notify the Former Member that, subject to the rights of the non-withdrawing Member(s) to approve of a proposed purchaser of a Membership Interest as specified in Section 10, and its right of first refusal set forth in Section 11 of this Agreement, the Former Member may proceed to attempt to sell its Membership Interest in the Company to third Members.

9.3.4 In the event that the non-withdrawing Member(s) elect(s) to purchase the Former Member’s interest in accordance with Section 9.3.1, above, and the Former Member and the non-withdrawing Member(s) cannot agree on the Purchase Price for such interest, each shall appoint, at their own cost and expense, an MAI or similarly qualified appraiser within or substantially familiar with the industry in which Company operates within sixty (60) days of the date of the notice of withdrawal of the Former Member, to value the Former Member’s interest in the Company. Each such appraiser shall have twenty-one (21) days from the date of an updated statement by the Company’s accountants which sets forth the assets and liabilities of the Company as of the date of the notice of the Former Member of withdrawal within which to value the Former Member’s interest in the Company and seek agreement with the other appraiser as to such value. In the event the two appraisers cannot agree, but their valuations are within Five percent (5%) of one another, the purchase price for the Former Member’s interest shall be the average of the two. In the event said valuations are not within Five Percent (5%) of each other, unless the Former Member and non-withdrawing Member(s) agree upon a purchase price, the two appraisers shall select a third appraiser whose sole function shall be to **[*Instruction - Chose one*: “select which of the initial two valuations is more accurate. The selection by the third appraiser of the more accurate valuation shall be binding on all Members and constitute the Purchase Price of the Former Member’s interest.” Or “conduct what is known as a night baseball arbitration, wherein the figures of the initial two valuations are kept confidential from the third appraiser. Upon rendering of the valuation by the third appraiser, the figure mathematically closest to that of the initial two valuations becomes the binding award.”]** The Member whose valuation is not selected by the third appraiser shall pay the costs and expenses of the third appraiser.

9.4 Insolvency of a Member

The commencement of any insolvency proceeding against or by a Member, provided such proceeding is not dismissed within 30 days, or up to 90 days if a Court has prior thereto granted one or more continuances to determine whether to dismiss such a proceeding, shall be deemed the equivalent of a notice of a voluntary withdrawal as described in Section 9.3, above, by such insolvent Member, effective as of the expiration of the aforementioned period, and shall give the other Members all the rights and/or options of a non-withdrawing Member as specified in said Section 9.3.

10. PROHIBITIONS ON TRANSFER

No Member may transfer his, her or its Membership Interest in the Company to any third party, other than to a family member, or a trust for the benefit of such Member or family member, without the prior written consent of the other Members, which consent shall not be unreasonably withheld, other than expressly set forth herein. “Family member" includes all lineal descendants of a designated common ancestor (living or deceased) and their spouses or spousal equivalents. Any transfer to a Non-Member (and thereafter) shall include notification of, and all certificates shall bear a legend, informing the transferee (and restricting the right of transfer without so further informing the next transferee) of any rights of “claw-back” that Members or their Estates might have.

The transfer by any Member which is a corporation, partnership, or limited liability company, in a single transaction or a series of transactions during the existence of the Company, of a Twenty-Five Percent (25%) or greater interest of such Member in the Company shall constitute a transfer of such Member’s Membership Interest subject to the provisions of this Section 10. In connection with seeking consent to any proposed transfer of a Membership Interest, the Member wishing to transfer shall provide the non-transferring Member(s) with all reasonable financial information regarding the proposed transferee of the Membership Interest, including without limitation an income statement, balance sheet, and three (3) years federal income tax returns, all of which shall be considered Confidential Information pursuant to the Confidential Information Non-Disclosure Agreement entered into and between the Members, and governed by same, or such NDA as may be entered into by the Company and the proposed transferee. [***Comment-Option***: The Members agree that it shall be deemed a reasonable grounds to decline to give consent to a proposed transferee of a Membership Interest if said proposed transferee’s net worth is in excess of Ten Percent (10%) less than the net worth of the selling Member as of time of the proposed sale.]

11. RIGHT OF FIRST REFUSAL

Subject to the provisions of Section 10 above, if a Member undertakes or proposes to transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Membership Interest (or as required by operation of law or other involuntary transfer to do so) (hereinafter, a “Transfer”), other than to another Member, such Member shall first offer such Membership Interest to the non-transferring Member(s) in accordance with the following provisions:

11.1 Such Member (the “Transferor”) shall deliver a written notice (the “Transfer Notice”) to the other Member(s) stating (i) such Member’s bona fide intention to transfer such Membership Interest, (ii) the name and address of the proposed transferee, payment for which the Member proposes to transfer such Membership Interest. The Transfer Notice shall be accompanied by any offers, counter-offers, agreement(s), and documentation evidencing the proposed Transfer, all of which shall be deemed Confidential Information.

11.2 Within fifteen (15) days after receipt of the Transfer Notice, each non- transferring Member shall notify the Transferor in writing of his or her desire to purchase a portion of the Membership Interest being so transferred. The failure of any Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase any or the Membership Interest which may be so transferred. Each Member so electing to purchase shall be entitled to purchase a portion of such Membership Interest in the same proportion that the Percentage Interest of such Member bears to the aggregate of the Percentage Interests of all of the Members electing to so purchase the Membership Interest being transferred. In the event any Member elects to purchase less than all of his or her pro rata share of such Membership Interest, then the other Members can elect to purchase more than their pro rata share.

11.3 Within fifteen (15) days after receipt of the Transfer Notice, the Members electing to purchase such Membership Interest shall have the first right to purchase or obtain such Membership interest at the time, upon the price and terms of payment designated in such notice. If such notice provides for the payment of non-cash consideration, such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Purchasing Member(s).

11.4 If the other Members elect not to purchase or obtain **all** of the Membership Interest designated in the Transfer Notice, then the Transferor may transfer the Membership interest described in the Transfer Notice to the proposed transferee, provided such transfer (i) is completed within thirty (30) days after the expiration of the other Member’s right to purchase such Membership Interest, (ii) is made on terms no less favorable to the transferring Member than as designated in the Transfer Notice, and (iii) the requirements at Sections [9 and] 11 are met. If such Membership Interest is not so transferred, the transferring Member must give notice in accordance with this Section prior to any other or subsequent Transfer of such Membership Interest.

12. MISCELLANEOUS PROVISIONS

12.1 Assurances

Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company or implementing the provisions of this Agreement.

12.2 Notifications

Any notice required, permitted to be given, or otherwise given hereunder may be effectively given by letter delivered either by personal delivery, registered mail certified return receipt requested, postage prepaid, or delivered by overnight delivery service, or by facsimile machine upon receipt from the sender of a confirmation of receipt, or by other electronic means so long as the recipient has acknowledged receipt (for purposes of this section an automatically generated receipt confirmation does \*not\* qualify as acknowledgement of receipt), addressed to each Member as set forth in Schedule A.

12.3 Complete Agreement

This Agreement shall constitute the entire agreement between The Members and will supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. The Members shall not be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement. This Agreement has been carefully drafted and the Members are convinced that this document completely and clearly expresses their intentions. Further, the Members place great value on the quick and inexpensive resolution of any dispute that may arise between them concerning this contract or the subject hereof. Therefore, the Members agree that: (i) all disputes concerning this Agreement or the subject matter hereof shall be resolved as provided herein; (ii) this Agreement constitutes the sole agreement among the Members, and supersedes any and all prior or contemporaneous oral or written agreements, promises, or understandings among them, pertaining to the matters contemplated in this Agreement; (iii) no express or implied representations, warranties, or inducements have been made by any Member to any other Member except as set forth in this Agreement; (iv) this Agreement may not be amended, added to, or altered except by a writing duly executed by each of the Members hereto, as set forth herein; and (v) no parole or extrinsic evidence whatsoever may be introduce or considered in any judicial or arbitration proceeding involving this Agreement, for any purpose, including to interpret, explain, clarify, or add to this Agreement, except in any instance in which a provision is found in whole or in part to be invalid, illegal or unenforceable and subject to severability and the arbitrator or court undertakes to re-write or construe the severed provision as closely as possible to conform to the intent of the Members.

12.4 Amendment

No modification, supplement, termination, extension, waiver or amendment to or of this Agreement (or any attachments or exhibits) or any of its provisions may be made, and any attempts, shall not be binding unless agreed to by the Members in writing, by pen on paper, by duly authorized representatives of the Members. There shall be no oral agreements. Electronic writings, including E-mail messages, text messages, tweets, instant messages, etc., their contents, and any attachments, and any prior or subsequent communications including oral discussions or negotiations concerning some or all of this Agreement, or anything at all, are not intended to represent and do not reflect an offer or acceptance to enter into (or amend, modify, revise, terminate, abrogate, extend, waive a breach or damages of, etc.) a binding contract, transaction or agreement, and are not intended to and do not bind any Member to this Agreement. The Members may determine that they wish to attempt to negotiate a written agreement that is binding that amends, modifies, revises, terminates, abrogates, extends, waives a breach or damages of, this Agreement , however, the Members **intend and will continue to intend that there shall be no contract formations, waivers, modifications, abrogations, extensions, amendments, etc., without one or more formal written documents executed non electronically but with holographic signatures by hand with ink pen on paper signed by a duly authorized representative of each of the Members** (aka “wet signatures” or “pen on paper signatures”). Any communication to the contrary in the past, now or future, is not binding on any Member to this Agreement. Absent the written express statement to the contrary as set out below, it is the intention of the Members, and the Members agree not to conduct any contract formation, modifying transaction, amend any agreement, abrogate any agreement, grant any extension, or waive any right by electronic writing. Any alleged communication to the contrary is not binding on any Member. The written express statement mentioned above ("electronic express statement") shall be the following, or that which expresses the same intent as the following: “I expressly intend that this shall constitute an electronic signature to a writing thereby [forming, modifying, amending, abrogating, granting an extension in relations to, or waiving a breach to] a binding [contract or agreement].” For purposes of any agreement, a formal written document on paper with wet signatures (pen on paper signatures) and otherwise consistent with the requirements herein, which is transmitted by facsimile, the internet, or any cell/wireless/mobile telephone system, or the like, as an image or PDF document is valid when signed by pen on paper by all Members to be charged. The Members expressly state and intend that Emails / texts / tweets / instant messages, etc., sent or received - even when there are multiples or combinations of these - do not include all of the essential or material terms required in order for there to be a legally binding agreement or contract between the Members, and are ineffective for purposes of contract formation, modification, amendment, waiver, etc., without the electronic express statement mentioned above. No addition to or modification or consensual cancellation of this Agreement, notice or statement shall be binding unless made in one or more formal written documents consistent with the pen on paper or "electronic express statement" requirements herein. Any purported communication to the contrary is not binding.

No waiver of any breach of any provision of this Agreement, notice or statement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and wet signed by pen on paper or electronic express statement as set out herein.

12.5 Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as they apply to agreements entered into and to be performed entirely within the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, without regard to conflict of law provisions.

12.6 Headings

The headings for sections herein are for convenience only and shall not affect the meaning of the provisions of this Agreement. Such headings shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof, nor shall they otherwise be given any legal effect.

12.7 Binding Provisions

This Agreement is binding upon, and to the limited extent specifically provided herein, inures to the benefit of the Members hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and assigns.

12.8 Pronouns

Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neutral, singular, and plural, as the identity of the Person may in the context require.

12.9 Severability

Each of the provisions of this Agreement (and each part of each such provision) is severable from every other provision hereof (and every other part thereof). In the event that any provision (or part thereof) contained in this Agreement or the application thereof to any circumstance shall be invalid, illegal or unenforceable, in whole or in part, and to any extent: (i) the validity, legality or enforceability of such provision (or such part thereof) in any other jurisdiction and of the remaining provisions contained in this Agreement (or the remaining parts of such provision, as the case may be) shall not in any way be affected or impaired thereby; (ii) the application of such provision (or such part thereof) to circumstances other than those as to which it is held invalid, illegal or unenforceable shall not in any way be affected or impaired thereby; (iii) if possible, such provision (or such part thereof) shall be construed or re-written as closely as possible to conform to the intent of the Members, in which instance parole or extrinsic evidence may be considered to do so; (iv) if not susceptible to such construction, such provision (or such part thereof) shall be severed from this Agreement and ineffective to the extent of such invalidity, illegality or unenforceability in such jurisdiction and in such circumstances; and (v) the remaining provisions of this Agreement (or the remaining parts of such provision, as the case may be) shall nevertheless remain in full force and effect.

12.10 Counterparts

This Agreement, may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement, including the judicial proof of any of the terms hereof. A photocopy, fax copy, or electronic image copy, which depicts the inclusion of one or more signatures by pen on paper, shall be deemed an original.

12.11 Attorneys’ Fees

In the event of litigation or arbitration relating to the subject matter of this Agreement, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

12.12 Conflict Waiver

The Members, and each of them, acknowledge that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has represented, and in the case of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, does represent them and him in multiple matters. Actual conflicts of interest do exist and potential conflicts may arise which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has, in detail, described to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the Members. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_has advised \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to seek the advice of independent counsel with respect to said actual and/or potential conflicts. and the Members, and each of them, have, based upon said advice, voluntarily waived said conflicts without undue influence, duress or coercion.

12.13 Venue

The Members further agree that venue of any legal action or claim hereunder shall be exclusively in and with a court having jurisdiction over \_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_ , if disputes are to be resolved in Court, if at all, as set out below, or where arbitration or mediation is to occur, if at all, as set out below. The Members further agree and hereby consent to, and waive all defenses of lack of personal jurisdiction and forum *non conveniens* with respect to, venue and jurisdiction in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_ County. Notwithstanding the foregoing any Member may seek equitable, preliminary, or permanent injunctive relief from any court of competent jurisdiction, which rights and remedies shall be cumulative and in addition to any other rights or remedies at law or in equity to which any Member may be entitled.

**IN WITNESS WHEREOF**, the Members have executed, or caused this Agreement to be executed, as of the date set forth hereinabove.

“MEMBERS”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)*

Member:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)*

Member:

### **SCHEDULE “A”**

## Members’ Names and Addresses

Name, Address, Email Address, Capital Contribution Member % Interest

Phone and Facsimile Numbers of

Member

**IN WITNESS WHEREOF**, the Members have executed, or caused this Schedule “A” to be executed, as of the date set forth hereinabove.

“MEMBERS”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)*

Member:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)*

Member:

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