GRANT AGREEMENT

ADDRESS OF GRANTEE

Dear :

This Grant Agreement is being executed and delivered in connection with the Limited Liability Company Agreement (the “LLC Agreement”) of , LLC, a Delaware limited liability company (the “Company”). This Grant Agreement is entered into by you (the “Grantee”) and the Company in consideration for the mutual covenants and undertakings recited herein.

1. Grant of Membership Interest. Effective as of the date of this Grant Agreement (the “Grant Date”), the Company hereby grants to the Grantee units of common membership interests (the “Membership Interest”). The Membership Interest constitutes a profits interest within the meaning of Revenue Procedures 93-27 and 2001-43. The Grantee shall be treated as a Member of the Company with respect to the entire Membership Interest from the Grant Date. The Grantee recognizes that, under the terms of the Company’s LLC Agreement, the Company’s other Members existing prior to the Grant Date are entitled to the distribution, prior to any distribution to the Grantee, of an amount equal to the fair market value of the Company as of the Grant Date. Accordingly, the Membership Interest has no value on the Grant Date. The Grantee authorizes the Company to elect to value the Membership Interest at its liquidation value on the Grant Date to the extent such election is permitted pursuant to or in accordance with the finally promulgated successor to Proposed Treasury Regulation § 1.83-3(l) and Notice 2005-43. The Company shall make any allocations of income, gain, loss, deduction or credit required by such successor rules (including any forfeiture allocations). The Grantee shall comply with all of the requirements for such election and, notwithstanding anything in this Grant Agreement or the LLC Agreement to the contrary, authorizes the Company’s Board of Managers to amend this Grant Agreement or the LLC Agreement to the extent necessary or desirable as a result of such successor rules.
2. [need something on vesting]
3. The Membership Interest is subject to forfeiture and cancellation if the Company terminates the Grantee’s services for any reason. This forfeiture restriction shall lapse as follows:
   1. With respect to one-third of the Membership Interests granted to the Grantee, on the first anniversary of the Grant Date;
   2. With respect to one-third of the Membership Interests granted to the Grantee, on the second anniversary of the Grant Date; and
   3. With respect to the remainder of the Membership Interests granted to the Grantee, on the third anniversary of the Grant Date.
4. Repurchase. If the Grantee’s services are terminated for Cause, the Company shall have the right, but not the obligation, to repurchase the Membership Interests owned by the Grantee after application of the forfeiture provisions set forth in Section 3 hereof. The price at which the Company is obligated to repurchase the Membership Interests are their initial Fair Market Value on the date of this Grant Agreement.
5. Definitions. The following definitions will apply to this Grant Agreement.
6. “Cause” means the Grantee has: (A) committed any act constituting a violation of Grantee’s fiduciary duties to the Company; (B) committed an act constituting a felony or a lesser crime constituting fraud, misappropriation, embezzlement or another act of dishonesty;

(C) engaged in gross misconduct having a material adverse effect on the Company or any of its business partners, customers, clients or vendors; or (D) refused to comply with the lawful, written direction of the Company’s Board of Managers, provided the Board of Managers first notifies the Grantee in writing of the act or omission the Company believes gives rise to terminating the Grantee’s services for Cause and the Grantee fails to cure such act or omission (if curable) within ten (10) business days of receiving the written notice.

1. “Fair Market Value” shall be determined by the Company’s Board of Managers on the relevant valuation date. The Board may use such valuation methods as it deems appropriate, provided that the determination is made in good-faith as required by Section 422(c)(1) of the Code and considers the factors listed in 26 C.F.R. § 20.2031-2.
2. Joinder to LLC Agreement. As a condition of receiving this grant of Membership Interests, the Grantee shall execute a joinder to the LLC Agreement, as the LLC Agreement may be amended or restated from time to time, in the form attached as Exhibit A. The Grantee acknowledges receipt of a copy of the LLC Agreement and that he has reviewed the LLC Agreement. The Grantee understands that the rights granted to the Grantee under the LLC Agreement are complex in nature, and have certain legal, tax and financial consequences to the Grantee. The Grantee has been advised by the Company to consult, and the Grantee has consulted to the extent the Grantee desired to do so, the Grantee’s own legal, tax and financial advisors with respect to these consequences. The Grantee understands, acknowledges and agrees that, upon execution of this Grant Agreement and the joinder to the LLC Agreement, the Grantee shall, without further action or deed, thereupon be bound by the LLC Agreement, as it may thereafter be restated or amended, as though a direct signatory thereto.
3. Certification. The Grantee acknowledges that the Membership Interest shall initially be uncertificated. The Company is authorized under the LLC Agreement to certificate the Membership Interest if the Company’s Board of Managers so determines. Until certificated, the LLC Agreement and this Grant Agreement shall evidence the Grantee’s Membership Interest.
4. Interest for Services; Safe Harbor Election. The Company and Grantee each acknowledge that the Internal Revenue Service (“IRS”) issued Internal Revenue Notice 2005-43,

I.R.B. 2005-24 (June 13, 2005), proposing to create a safe harbor election for the issuance of “profits interests” to service providers of partnerships and limited liability companies (“Notice

2005-43”) (the safe harbor election referred to herein as the “Safe Harbor Election”). The IRS has not yet finalized the Safe Harbor Election. At any time after final guidance has been issued from the IRS and/or the Department of Treasury, and upon the request of Grantee or the Company, the Company (i) shall cause an amendment to this Grant Agreement to be executed modifying any provisions necessary for the Company to qualify for the Safe Harbor Election, and (ii) shall execute and file any other necessary forms or documents and take all other actions reasonably necessary to cause the Company and Grantee to qualify for the Safe Harbor Election; provided, however, such Safe Harbor Election must be available to the Company and Grantee under the terms of the final guidance. Grantee agrees to execute any documents necessary to make this Safe Harbor Election effective.

1. Section 83(b) Election. The Grantee understands that under Section 83 of the Internal Revenue Code of 1986, as amended, the excess of the fair market value of the Membership Interests on the date any forfeiture restrictions applicable to the Membership Interests lapse over the purchase price paid for the Membership Interests may be reportable as ordinary income at that time, and, to the extent that the Grantee desires to file an election under Section 83(b) in the form attached as Exhibit B, the Grantee acknowledges that it is the Grantee’s sole responsibility, and not the Company’s, to file a timely election under Section 83(b), even if the Grantee asks the Company or its representatives to make such filing on his behalf.
2. Grantee’s Representations, Warranties and Acknowledgments.
3. Exemption to Registration. The Grantee is receiving the Membership Interests under this Grant Agreement based upon an exemption from registration under the Securities Act of 1933 (the “Securities Act”) under Securities and Exchange Commission Rule 701 promulgated under the Securities Act, and a comparable exemption from qualification under applicable state securities laws, as each may be amended from time to time.
4. HIGH-RISK INVESTMENT. THE GRANTEE UNDERSTANDS AND ACKNOWLEDGES THAT THE ACQUISITION OF THE MEMBERSHIP INTEREST INVOLVES A HIGH DEGREE OF RISK, INCLUDING THE RISK THAT HE COULD LOSE ALL OR PART OF HIS INVESTMENT. THE GRANTEE SHOULD NOT ACQUIRE THE MEMBERSHIP INTEREST IF HE MIGHT HAVE NEED FOR THE FUNDS THAT WOULD OTHERWISE BE RECEIVED BY THE GRANTEE IN RESPECT OF THE SERVICES PERFORMED, AND SERVICES THAT WILL BE PERFORMED IN THE FUTURE, FOR THE COMPANY.
5. No Registration. The Grantee acknowledges and understands that the Membership Interest has not been registered under the Securities Act, or the securities laws of any state, in each case pursuant to exemptions therefrom.
6. Illiquid Investment. The Grantee acknowledges and understands that the Membership Interest is an illiquid investment, which means that the Grantee must bear the economic risk of the investment for an indefinite period of time because:
   1. there is no market for the Membership Interest and none is expected ever to develop,
   2. the transfer of the Membership Interest is subject to significant restrictions under applicable securities laws and the LLC Agreement, and
   3. in addition to the transfer restrictions set forth in the LLC Agreement, the Membership Interest may not be sold, transferred or otherwise disposed of in the absence of registration under the Securities Act and all applicable state securities laws or an opinion of counsel satisfactory to the Company that no such registrations are required.
7. No Obligation to Register Membership Interest. The Grantee understands that the Company is under no obligation to register the Membership Interest under the Securities Act or under any state securities law.
8. Investment Intent. The Grantee is acquiring the Membership Interest for the Grantee’s own account for investment only, and not with a view towards distribution or resale.
9. No Distribution. The Grantee represents that he has not offered or sold any of the Membership Interest for which the Grantee is hereby receiving to any other person and has no present intention of dividing such Membership Interest with others or reselling or otherwise disposing of any portion of such Membership Interest.
10. No Regulatory Review. The terms of this Grant Agreement and the LLC Agreement (collectively with this Grant Agreement, the LLC Agreement and any documents entered into in connection therewith, the “Transaction Documents”), have not been submitted to or reviewed by any securities regulatory agency or any governmental agency.
11. Financial Ability. The Grantee represents that his financial commitment to all investments (including his proposed investment in the Membership Interest) is reasonable in relationship to his net worth.
12. U.S. Person. The Grantee is a “United States Person” for purposes of the United States Internal Revenue Code. The address set forth below is the true and correct residence of the Grantee and the Grantee has no present intention of moving his residence to any other state or jurisdiction.
13. Access to Information. The Grantee hereby acknowledges receipt of all information and materials the Grantee deems necessary or desirable to evaluate an investment in the Membership Interest and hereby acknowledges that the Grantee has fully reviewed and fully understands all such information and materials. In addition to and not in limitation of the foregoing, the Grantee hereby acknowledges that the Grantee has had ample opportunity to discuss with management of the Company (i) the Transaction Documents, (ii) the terms of the Grantee’s investment in the Membership Interest, (iii) the cancellation of prior Membership Interests, if any, and (iv) any other matters the Grantee has deemed to be relevant or appropriate.

follows:

1. Fundamental Representations. The Grantee represents and warrants as
   1. The Grantee has full power and authority to execute this Grant Agreement and to consummate the transactions contemplated hereby.
   2. If the Grantee is a corporation, partnership, trust, estate or other entity,
      1. the Grantee is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; and
      2. the execution and delivery by the Grantee of this Grant Agreement and the consummation by the Grantee of the transactions contemplated hereby have been duly authorized by all necessary corporate or other legal entity action.
   3. The Grantee has duly executed and delivered this Grant Agreement and (assuming due authorization, execution and delivery by Company) this Grant Agreement constitutes his legal, valid and binding obligation, enforceable against him in accordance with its terms.
   4. The execution and delivery of this Grant Agreement does not, and the performance of this Grant Agreement by the Grantee will not, (i) in the case of a Grantee that is a corporation, partnership, trust, estate or other entity, conflict with or violate the organizational documents of the Grantee, or (ii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or require payment under, or result in the creation of a lien on, any of the properties or assets of the Grantee pursuant to any contract to which the Grantee is a party or by which the Grantee or any of his properties is bound.
2. Dilution. The Grantee acknowledges that the Membership Interest may be diluted by (i) investments in the Company, (ii) additional grants of Membership Interests to other service providers of the Company or (iii) other events involving changes in ownership or capitalization of the Company.
3. Company’s Fundamental Representations and Warranties. The Company represents and warrants as follows to the Grantee:
4. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized;
5. The Membership Interest has been duly authorized and validly issued;
6. The execution and delivery by the Company of this Grant Agreement and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary limited liability company action;
7. The Company has duly executed and delivered this Grant Agreement and (assuming due authorization, execution and delivery by the Grantee) this Grant Agreement constitutes its legal, valid and binding obligation, enforceable against the Company in accordance with its terms; and
8. The execution and delivery of this Grant Agreement does not, and the performance of this Grant Agreement by the Company will not, (i) conflict with or violate the organizational documents of the Company, or (ii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or require payment under, or result in the creation of a lien on, any of the properties or assets of the Company pursuant to any contract to which the Company is a party or by which the Company or any of its properties is bound.
9. Miscellaneous.
10. Indemnification. The Grantee and the Company hereby agree to indemnify and hold each other harmless, and their respective officers, directors, agents, employees and Affiliates (as defined in the LLC Agreement), from and against any and all loss, damage or liability due to or arising out of a breach of this Grant Agreement.
11. Governing Law; Jurisdiction**.** This Grant Agreement and the transactions contemplated hereby shall be governed by and construed according to the laws of the state of New York. With respect to any dispute arising out of or related to this Grant Agreement or the LLC Agreement, the parties hereby consent to the exclusive jurisdiction of the United States District Court for the Southern District of New York (or if that court is unable to exercise jurisdiction for any reason, the parties hereby consent to the exclusive jurisdiction of the New York State Supreme Court, New York County). The parties waive any objection based on improper venue or inconvenient forum. THE PARTIES HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR RELATED TO THIS GRANT AGREEMENT OR THE LLC AGREEMENT.
12. Warranties and Signature. Each of the Grantee and the Company understand that the respective other party will be relying on the accuracy and completeness of their representations, warranties and other statements contained herein, and the Grantee and the Company will notify each other immediately of any material change in any representation, warranty or other statement made herein that occurs.
13. Entire Agreement. This Grant Agreement, together with the other Transaction Documents, constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and thereof and supersedes all other prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties, including, but not limited to, any prior grant agreements.
14. Modifications. No supplement, modification, amendment, or waiver of this Grant Agreement shall be binding unless executed in writing and signed by all parties.
15. Waiver. No waiver of any of the provisions of this Grant Agreement shall be deemed to or shall constitute a waiver of any other provisions hereof (whether or not similar), nor

shall such waiver constitute a continuing waiver unless otherwise expressly provided. Any waiver must be in writing and signed by the party charged therewith.

1. Binding Effect. This Grant Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective successors, heirs, estates, representatives and permitted assigns.
2. Headings; Counterparts. Section headings are not to be considered part of this Grant Agreement and are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof. This Grant Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
3. No Strict Construction. Each of the parties hereto acknowledges and agrees that this Grant Agreement has been prepared jointly by the parties hereto and their respective counsel and that this Grant Agreement shall not be strictly construed against either party by virtue of the person or entity who may have drafted the subject provision.
4. Assignment. Neither this Grant Agreement nor any of the rights, interests or obligations under this Grant Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the respective other party, and any such assignment without such prior written consent shall be null and void.
5. Termination. This Grant Agreement shall automatically terminate if, at any time prior to its execution, the LLC Agreement shall have been terminated, and upon such termination this Grant Agreement shall immediately become void and there shall be no liability or obligation on the part of the Company or the Grantee under this Grant Agreement; provided however, that any such termination of this Grant Agreement shall not relieve any party from liability for any willful breach of this Grant Agreement which resulted in the termination of this Grant Agreement pursuant to this Section 12(k).

THE MEMBERSHIP INTEREST IS BEING OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT. THE SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF THE MEMBERSHIP INTEREST NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING MATERIALS OR SELLING LITERATURE, INCLUDING THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Signature Page

Date:

(Signature)

(Printed Name)

Address:

ACCEPTED THIS

DAY OF

, 20 .

ABC, LLC

By: Name:

Title:

EXHIBIT A JOINDER AGREEMENT

By executing and delivering this Joinder Agreement (“Joinder Agreement”) to

LLC, a Delaware limited liability company (the “Company”), the undersigned hereby agrees to become a party to, be bound by and comply with the provisions of the Company’s Limited Liability Company Operating Agreement dated , 20 , as amended, as a Member thereof and as a holder of profits membership interests granted pursuant to a Grant Agreement dated

, 20 .

The undersigned agrees, both before and after the date of this Joinder Agreement: (i) to use his best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the joinder and other transactions contemplated by this Joinder Agreement, (ii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the joinder or other transactions contemplated hereunder, and (iii) to cooperate with the Company in connection with the foregoing.

Accordingly, the undersigned has executed and delivered this Joinder Agreement as of

, 20 .

ACKNOWLEDGED AND ACCEPTED

, LLC, a Delaware limited liability company

By:

Name:

Title:

EXHIBIT B 83(b) ELECTION

This statement is being made under Section 83(b) of the Internal Revenue Code pursuant to Treas. Reg. Section 1.83-2.

1. The name, address and taxpayer identification number of the undersigned are: Name:

Address:

Social Security Number:

1. Description of the property with respect to which the election is being made:

Membership Interests of , LLC (the “Company”).

1. The date on which property was transferred was \_\_\_\_\_\_\_\_\_\_, 20\_\_. The taxable year in which the election is being made is .
2. The nature of the restrictions to which the property is subject is:

The Interests are subject to forfeiture and cancellation if the undersigned’s services to the Company are terminated for any reason. These forfeiture restrictions lapse with respect to one third of the Interests on each of the first three anniversaries of the initial grant date. As a result, the Interests remain subject to risk of forfeiture.

1. Fair market value:

The fair market value at the time of transfer (determined without regard to any restriction other than restrictions that by their terms will never lapse) of the property with respect to which this election is being made is $0.00.

1. Amount (if any) paid for the property.

The amount paid by the taxpayer for the property is $0.00 in the aggregate.

1. Furnishing statement:

A copy of this statement was furnished to , LLC.

Dated:

Taxpayer Spouse

This election must be filed (i) with the Internal Revenue Service Center with which taxpayer files his federal income tax returns within 30 days after the execution of the Grant Agreement by registered or certified mail, return receipt requested. The taxpayer must retain copies of the completed form for filing with his federal and state tax returns for the current tax year and an additional copy for his records.