**OPERATING AGREEMENT  
  
OF  
  
MagnaFusion, LLC**

**(A Tennessee Member-Managed LLC)**

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**THIS AGREEMENT** is made and entered into and is effective as of September 24, 2015, by and among the Company and the Members of the Company.

**RECITALS**

**WHEREAS**, on April 8th, 2016, the Company was formed as a Tennessee member-managed limited liability company by filing Articles with the Tennessee Secretary of State.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows:

# DEFINITIONS

## Definitions of Certain Terms

. Capitalized words and phrases used in this Agreement shall have the following meanings:

### “Act” means the Tennessee Revised Limited Liability Company Act, Tennessee Code Annotated section 48-249-101, *et seq*., in effect on the date hereof and as it may be amended hereafter.

### “Affiliate” means any Person or entity controlling, controlled by or under common control with the Company.

### “Affiliation Agreement” means that certain Affiliation Agreement of even date herewith by and among Matthew S Moseley, Travis E Schaefer and Terry W Martin.

### “Agreement” means this agreement, as it may be hereafter further amended, modified or restated in writing from time to time as provided herein, which is the “operating agreement” of the Company, as such term is defined in Section 48-249-102(24) of the Act.

### “Articles” means the articles of organization of the Company, which were filed with the Tennessee Secretary of State on April 8th, 2016, as they may be amended, modified or restated hereafter, and which are the “articles of organization” of the Company, as such term is defined in Section 48-249-102(3) of the Act.

### “Capital Contribution” shall have the meaning given to such term in Section 1.1.3 of Schedule B. The initial Capital Contributions of the Members are as listed on the books and records of the Company.

### “Cash Flow” means the Company’s gross cash proceeds less the portion of such proceeds used to pay or establish reserves established by the Members for all Company expenses, debt payments, capital improvements, replacements and contingencies, all as determined by the Members. Cash Flow shall include any new cash proceeds from Capital Contributions, Company indebtedness, the disposition of Company property, and from the refinancing of indebtedness of the Company. Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to this definition. Cash Flow shall be determined separately for each fiscal year and not cumulatively.

### “Cause” shall mean gross misconduct determined by the other unaffected Members following written notice and an opportunity to cure, including but not limited to fraud, theft, misappropriation regarding Company property, indictment of any felony, willful violation of Company compliance policies, procedures, or protocols or any other action materially detrimental to the Company, or injurious to the Company’s ability to continue its business.

### “Chief Executive Officer” means the office of Chief Executive Officer and shall be the Person holding such office as described in ARTICLE VII. The initial Chief Executive Officer is set forth on Schedule A.

### “Company” means MagnaFusion, LLC, the Tennessee member-managed limited liability company to which this Operating Agreement relates.

### “Electronic Transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by such a recipient through an automated process.

### “Financial Rights” means the rights described in Act section 48-249-102(11) of each Member or Holder to share in allocations of the Company’s profits and losses, to receive interim and liquidating distributions of the Company, and to transfer such rights in accordance with the terms of this Agreement.

### “Governance Rights” means the rights described in Act section 48-249-102(13) of each Member to vote on one or more matters as herein specified or otherwise required under the Act and all of each Member’s rights as a Member of the Company other than Financial Rights and the right to assign Financial Rights.

### “Holder” means a Person, other than a Member, owning any Financial Rights in the Company.

### “Majority Consent” means the consent of Members holding a combined Percentage Governance Rights of greater than fifty percent (50%).

### “Members” means those Persons listed on Schedule A attached hereto, together with any additional Persons admitted as Members pursuant to the provisions of this Agreement. No Person shall be a Member unless such Person possesses some Governance Rights. The term “Member” means any one of such Persons.

### “Membership Interest” means each Member’s interest in the Company described in Act section 48-249-102(22), consisting of Financial Rights and Governance Rights.

### “Officer” means the Persons who are vested with the authority of an officer under ARTICLE VII.

### “Person” means any business association, individual person, or governmental body.

### “Personal Representative” has the meaning given to such term in Section 48-249-102(26) of the Act.

### “Percentage Financial Interest” means the interest of each Member or Holder expressed as a percentage of the entire Financial Rights of the Company. The initial Percentage Financial Interest of each Member is set forth opposite such Member’s name on Schedule A. Thereafter, such Percentage Financial Interest shall be adjusted from time to time in accordance with this Agreement.

### “Percentage Governance Interest” means the interest of each Member in the Governance Rights of the Company expressed as a percentage of the entire Governance Rights of the Company. The initial Percentage Governance Rights of each Member is set forth opposite each Member’s name on Schedule A. Thereafter, such Percentage Governance Rights shall be adjusted from time to time in accordance with this Agreement.

### “Specially Allocated Assignment” shall have the meaning given it in the Affiliation Agreement.

### “Super-Majority Consent” means the consent of Members holding a combined Percentage Governance Rights of at least seventy-five percent (75%).

## Other Definitions

. Certain definitions related to book and tax allocations, Capital Accounts, and other tax matters are found on Schedule B, which is incorporated into the Agreement by reference. Capitalized terms used in this Agreement not otherwise defined in this ARTICLE I shall have the meanings given to them elsewhere herein. Capitalized terms not otherwise defined in this Agreement, but defined in the Act, shall have the meanings set forth in the Act.

# FORMATION

## Formation

. The Members hereby acknowledge the formation of the Company, as a Tennessee limited liability company upon the filing of the Company’s Articles of Organization with the Secretary of State of Tennessee on May 22, 2015.

## Name

. The name of the Company is MagnaFusion, LLC. The Company shall conduct its business under said name or may adopt and conduct its business under such other name or assumed or trade name as the Members may designate from time to time. The Members shall execute and cause to be filed any and all documents as may be required to conduct business in Tennessee and other states or jurisdictions in which the Company does business to enable the Company to lawfully transact business in such jurisdiction under such name.

## Articles of Organization

. The Articles, as in effect on the date of this Agreement, are hereby adopted and ratified by the Members. In the event of a conflict between the terms of this Agreement and the terms of the Articles, the terms of the Articles shall prevail.

## Principal Executive & Registered Office

. The initial principal executive office of the Company shall be located at 357 Riverside Drive, Suite 214, Franklin, Tennessee 37064, or at such other place as may be designated from time to time by the Members. The initial registered office for purposes of the Act shall be located at 357 Riverside Drive, Suite 214, Franklin, Tennessee 37064. Upon a change in the Company’s registered office, the Chief Executive Officer shall file the statement of change required by Act section 48-249-110. The business of the Company may also be conducted at such other or additional place or places or offices as may be designated by the Chief Executive Officer.

## Nature of Member’s Interest. No Member or Holder, in such Person’s capacity as a Member or Holder, shall own any interest in specific Company property.

## No Certificates Evidencing Interests in Company

. The Company shall have no authority to issue certificates evidencing Membership Interests, Governance Rights or Financial Rights in the Company. The Chief Executive Officer shall, at the request of any Member, provide the written statement describing the interest of such Member to which such Member is entitled under Act section 48-249-502(b).

## Registered Agent

. MagnaFusion, LLC is the Company’s registered agent. Upon a change in the Company’s registered agent or a change in the address of the Company’s registered agent, the Chief Executive Officer shall file the statement of change required by Act section 48-249-110.

## Filings

. The Company shall execute and cause to be filed such certificates and documents required by Tennessee and any state or other jurisdiction in which the Company engages in business. The Company shall take any and all other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of Tennessee and in any state or other jurisdiction in which the Company engages in business, and the Chief Executive Officer shall execute and file for public record the Articles, and any and all amendments thereto, and other filings in all places and at such times as required by the Act or other applicable law necessary for the continuation of, or the transaction of any, business by the Company.

## Status of Company for Tax Purposes

. The Members intend that the Company be classified as a partnership for federal income tax purposes. The Members and Officers of the Company shall be under a continuing obligation to perform their duties and responsibilities under this Agreement in light of such intention, and the Company shall do any and all things and acts necessary or appropriate to maintain such classification. The Members understand and acknowledge that, under Act section 48-249-1003, the Company shall be treated as a partnership for all state and local Tennessee taxes if the Company is so classified for federal income tax purposes.

# PURPOSE AND POWERS

## Purpose

. The purpose of the Company shall be to engage in any lawful business.

## Powers

. In furtherance of its purpose, the Company shall have full power and authority to do all things necessary or desirable to accomplish its purpose and carry on its business as permitted by applicable law and shall have all powers and authority to which limited liability companies are entitled under the Act.

# PERCENTAGE FINANCIAL INTERESTS AND CAPITAL

## Capital Contributions

. Each Member has made the Capital Contribution as set forth in the books and records of the Company in exchange for the Financial Rights and Governance Rights, set forth opposite such Member’s name on Schedule A attached hereto. Additional Financial Rights and Governance Rights may be issued at such time, for such Capital Contributions, and upon such other terms and conditions as the Members may determine. With the approval of a Super-Majority of the Members, upon determination by such Super-Majority that additional Capital Contributions are necessary, each Member shall deliver such additional Capital Contribution to the Company no later than thirty (30) days following the date that notice of assessment is given.

## Failure to Make a Required Capital Contribution

*.* In the event any Member (herein, a “Non-contributing Member”) fails to make any contribution that such Member is required to make under this Operating Agreement, then, at the sole option of a majority of the contributing Members: (i) the capital contributions of contributing Member(s) shall be treated as a loan to the Company, with interest at a rate equal to the prime rate as published in *The Wall Street Journal* from time to time; such loan to be repaid prior to the payment of any subsequent distributions to the Members, or (ii) the Percentage Financial Interest and Percentage Governance Interest of the Members, shall be adjusted to reflect the capital contributions of the contributing Member(s), and shall result in the dilution of the Non-contributing Member, or (iii) the failure to make the required capital contribution shall be deemed a material breach of this Agreement by the Non-Contributing Member under Section 11.2(vii), which shall trigger the Company’s rights under Section 13.1.

## No Interest On or Right to Withdraw Capital Contributions

. No Member or Holder shall have the right to demand the return of, or otherwise withdraw, the Capital Contribution associated with such Person’s Financial Rights, or to receive any specific property of the Company, except as specifically provided in this Agreement. No Member or Holder shall have the right to demand and receive property other than cash in return for the Capital Contributions associated with such Person’s Financial Rights. No Member or Holder shall have the right to any interest on Capital Contributions.

## Capital Accounts

. The Company shall maintain for each Member a Capital Account in accordance with Article II of Schedule B.

## Member Loans

. Any Member or Holder, upon unanimous consent of the Members, may lend money to the Company. If any Member or Holder makes any loan or loans to the Company, the amount of any such loan shall not be treated as a Capital Contribution but shall be a debt due from the Company. Any Member’s or Holder’s loan to the Company shall be repayable out of the Company’s cash and shall bear interest at prevailing market rates, as determined by such Member or Holder and the Company. None of the Members or Holders shall be obligated to loan money to the Company.

## Member Borrowing

. Any Member or Holder, upon unanimous consent of the Members, may borrow money from the Company. Any Member’s or Holder’s loan from the Company shall bear interest at prevailing market rates, as determined by such Member or Holder and Company. The Company shall not be obligated to loan money to any of the Members.

## Issuance of Membership Interest to Gaines Business Ventures, LLC. In connection with the execution of this Agreement, the Members have entered into the Affiliation Agreement and the Agreement to Award Incentive Membership Interests that provide for (i) the immediate issuance of certain Incentive Membership Interests to Gaines Business Ventures, LLC (“GBV”), and (ii) an offer to issue upon achievement of certain agreed goals set out in the Affiliation Agreement, Membership Interests to GBV. Any Membership Interests held by GBV shall have Financial Rights only and no Governance Rights until such time as GBV shall reach equality of percentage interests with other Members as set forth in the Affiliation Agreement.

# PROFITS, LOSSES & DISTRIBUTIONS OF CASH FLOW

## Allocation of Profits and Losses

. Profits and Losses shall be allocated among the Members as provided in Article III of Schedule B which generally provides that Profits and Losses will be allocated among the Members and Holders in accordance with their respective Percentage Financial Rights.

## Distributions

. Except as provided in Sections 5.3 and 5.4, the Company may, from time to time, make such distributions of Cash Flow as are determined by the Members. Except as provided in Section 14.3, such distributions shall be made to the Members and Holders in accordance with their respective Percentage Financial Rights.

## Mandatory Tax Distributions

. Notwithstanding Section 5.2, the Company shall, to the extent of Cash Flow, distribute to each Member an amount estimated by the Members to be sufficient to allow each Member to pay all income taxes resulting from all of the various allocations (whether regular or special) of the Company’s income, gain, loss and deduction among the Member pursuant to Article III of Schedule B for each fiscal year of the Company or other shorter period utilizing for this purpose the then highest marginal individual federal income tax rate in effect during such fiscal year or shorter period. Such distribution shall be made by the fifth (5th) day preceding the earliest date (without regard to extensions) by which any Member must file his or her federal income tax return reporting such Person’s distributive share of the Company’s taxable income and may be made, at the Members’ discretion, in installments over the twelve (12) months preceding such due date to coincide with federal income tax estimated payments.

## Limitation on Distributions

. Notwithstanding anything in this Agreement to the contrary, the Company shall not make any distributions if, after giving effect to such distribution, either (i) the Company would not be able to pay its debts as they become due in the ordinary course of business or (ii) the Company’s total assets would be less than the sum of its total liabilities, other than liabilities for which the recourse of creditors is limited to specified property (provided, however, the value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the total assets of the Company only to the extent that the value of the property exceeds such liability).

## Special Allocation of Income and Other Items. Notwithstanding the provisions of this Agreement, pursuant to the Affiliation Agreement, the Members have agreed to the Specially Allocated Assignment.

# MEMBERS, MEMBER MEETINGS, AND VOTING RIGHTS

## Admission of New Members

. No Person shall be made a Member after the date hereof without the unanimous consent of the Members. The Chief Executive Officer shall revise Schedule A to reflect the admission of new Members and the revised Membership Interests, Governance Rights and/or Financial Rights as a result thereof.

## Meetings

. No annual meeting of the Members shall be required. A meeting of the Members of the Company may be called by the Chief Executive Officer or any Members holding Governance Rights in an amount greater than twenty percent (20%) of the total Governance Rights of all Members. The Person or Persons having authority to call a meeting of the Members may call the meeting by giving written notice of demand for such meeting to every Member entitled to vote on the matters to be considered at such meeting. Such notice must be given no fewer than ten (10) days nor more than two (2) months before the meeting date. The notice must contain the date, time and place of the meeting, and it must contain a statement of the purposes of the meeting. Unless all Members entitled to vote on the matters to be considered and all Members entitled to receive notice of a particular meeting agree to the holding of a meeting at another place, all meetings of the Members shall be held in the county in which the principal executive office is located or, if there is no such principal executive office, in the county in which the registered office is located. A conference among Members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes attendance at the meeting in Person or by proxy if all the other requirements for a meeting are met.

## Quorum Requirements for Meetings

. Members holding a majority of all of the Governance Rights entitled to vote at a meeting shall constitute a quorum for the transaction of business. Once Member’s Governance Rights are represented at a meeting for any purpose, all of such Member’s Governance Rights shall be deemed to be present for quorum purposes for the remainder of that meeting and for any adjournment thereof unless a new record date is or must be set for that adjourned meeting. A meeting may be adjourned, and notice of any adjourned meeting is not necessary if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken.

## Voting

. For Governance Rights purposes, a Member shall be entitled to vote such Member’s Percentage Governance Interest. Except where this Agreement or the Articles require a larger proportion, the Members entitled to vote shall take action on an item by obtaining Majority Consent on that item of business.

## Action on Written Consent

. On any matter that, under this Agreement, the Articles or the Act, is to be voted on, consented to or approved by Members, the Members may take such action without a meeting, without prior notice and without a vote, if consent or consents in writing, setting forth the action so taken is signed by the Members having not less than the minimum Percentage Governance Rights that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote on the matter were present and voted. A consent transmitted by Electronic Transmission by a Member or by a Person or Persons authorized to act for the Member shall be deemed to be written and signed for purposes of this Section 6.5. Prompt notice of the taking of an action under this Section 6.5 without a meeting by less than unanimous written consent of the Members shall be given to any Member entitled to vote on the matter that did not sign such written consent.

## Voting by Proxy

. A Member may exercise such Member’s Governance Rights in Person or by proxy and may appoint a proxy to the full extent and subject to the same conditions as provided in Tennessee Code Annotated section 48-17-203 with respect to shareholders in a for-profit business corporation.

## Membership by Entity. If a Member is a Person other than an individual (such as a limited liability company or corporation), certain provisions of this Agreement that are intended to affect and apply to individuals shall be interpreted to apply to the individual designated by the Member as its designee. If a right or obligation of the Company or a Member shall arise due to the occurrence of any item applicable to a designee of a Member, the right or obligation will be effective as if the event had occurred affecting the Member. The provisions of this Agreement that are intended to apply to an individual Member or its designee shall be liberally interpreted in favor of application to the designee, and in the event of any uncertainty shall be determined by the Members who are individuals; further, these provisions include, but are not limited to the provisions of Articles VI, VII, XI, and XIII.

# MANAGEMENT AND OFFICERS

## Management

. The Company is a “member-managed LLC” as such term is used in the Act. The Members shall have and exercise full, exclusive and complete management and control of the business affairs of the Company. Unless otherwise required by the Act or this Agreement, all decisions of the Members shall be that of a Majority Consent of the Members. Notwithstanding the foregoing, unanimous consent of the Members must be obtained in order for the Company to take any of the following actions:

#### The sale of all or substantially all of the assets of the Company;

#### The merger of the Company into another entity or the merger of another entity into the Company;

#### The voluntary termination and dissolution of the Company;

#### The amendment, except for technical amendments, of this Agreement or the Articles;

#### The incurring of any indebtedness;

#### The sale of any additional Percentage Interests to existing Members of the Company; or

#### The admission of any new Members or the issuance of any additional Percentage Interests to any Person.

## Election, Withdrawal and Removal of Officers

. The Members may delegate authority to such Officers which they may appoint from time to time, including, but not limited to the Chief Executive Officer and a Chief Technology Officer and such other officers as may be listed on Schedule A. The initial officers are listed on Schedule A hereto. The Chief Executive Officer shall have the powers granted to officers of member-managed limited liability companies in the Act, this Agreement, and such other powers as may be granted by the Members. All Officers shall be designated, appointed, elected, removed, or replaced by Majority Consent of the Members. All Officers shall serve at the pleasure of the Members until they are removed from office or until their successors are duly elected and qualified. The Members may at any time eliminate any Officer position. Any Officer may resign at any time by giving written notice to the Members; provided, however that such resignation shall not affect such Officer’s status as a Member, if any, and shall not prejudice any contractual rights of the Company with respect to such resigned Officer. Any resignations shall take effect at the time specified in the notice relating thereto, or, if no time is specified, then upon its acceptance by the Members.

## Compensation of Officers

. Officers shall be entitled to be reimbursed for their reasonable out-of-pocket expenses incurred by them in the course of their service as Officers hereunder. Except as may be expressly agreed to by the Company in writing, no other payment shall be made by the Company to any Officer for the services of such Officer.

# INDEMNIFICATION

The Company shall indemnify and advance expenses to its Members and Officers to the fullest extent permitted by the Act. Claims for indemnification of Members and Officers and advancement of expenses to Members and Officers shall be presented and approved in the manner provided by the Act.

# FISCAL MATTERS

## Books and Records

. The Company shall maintain all information and records required by Section 48-249-406 of the Act at its principal executive office or at such other place or places within the United States designated by the Members.

## Fiscal Year

. The fiscal year of the Company shall end on December 31 of each year or as otherwise required by the Code or as set by the Chief Executive Officer.

## Income Tax Reports

. Within seventy-five (75) days after the end of each fiscal year, the Company shall prepare and deliver to each Member and Holder, all information necessary for the preparation of such Person’s federal, state and local income tax returns.

## Financial Statements

. Within ninety (90) days after the end of each fiscal year, the Company shall annually prepare or have prepared financial statements, which shall include a balance sheet and an income statement. Such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied.

## Bank Accounts

. All funds of the Company shall be deposited in its name at banks or other financial institutions approved by the Chief Executive Officer, in such checking and savings accounts or time deposits or certificates of deposit as shall be approved by the Chief Executive Officer.

# TERMINATION & ADMISSION OF MEMBERS

## No Right to Withdraw

. No Member or Holder shall have the right to withdraw as a Member of the Company or otherwise have his or her Membership Interest or Financial Rights in the Company redeemed by the Company without the approval of the Members. Upon such approval of the withdrawal of a Member or Holder and the redemption of such Member’s or Holder’s Membership Interest or Financial Rights, the interest of such Member or Holder in the Company shall terminate and the Company shall pay to such Member or Holder in exchange for such Member’s or Holder’s entire interest in the Company an amount determined under ARTICLE XII and on such terms as provided in ARTICLE XII.

## Termination of Membership Interest

. A Member’s continued membership in the Company shall terminate upon (i) the Member’s withdrawal from the Company as permitted in Section 10.1, (ii) the death or disability of a Member or the Member’s designee, (iii) the Member’s filing of a voluntary petition in bankruptcy, (iv) the Member’s adjudication of bankruptcy, (v) the transfer, encumbrance or other disposition, or the attempted transfer, encumbrance or other disposition, of any part of such Member’s Membership Interest or Financial Rights in breach of this Agreement, (vi) the material breach by such Member of this Agreement or any other material Agreement with the Company which remains uncured for a period of thirty (30) days after written notice of such breach, (vii) the termination of a Member or the Member’s designee as an employee of the Company for Cause, or (viii) the occurrence of any other event that terminates the continued membership of the Member in the Company under this Agreement or the Act. Upon the termination of a Member’s membership in the Company, all Governance Rights held by such Member shall automatically be canceled and such Member shall be treated as an assignee of the Financial Rights, if any, owned by such Member immediately prior to the termination of such membership. Notwithstanding anything in the Act to the contrary, no Member whose Membership Interest is terminated shall be entitled to receive any amount in exchange for his or her interest in the Company except as otherwise provided in this Agreement.

## No Preemptive Rights

. Notwithstanding anything in this Agreement or the Articles to the contrary, the Members shall have no preemptive rights.

# TRANSFERS OF GOVERNANCE AND/OR FINANCIAL RIGHTS

## General Prohibition on Transfers of Governance Rights

. Except as otherwise expressly provided in this Agreement, no Member shall have the right to voluntarily or involuntarily sell, assign, transfer, alienate, mortgage, pledge or otherwise dispose of or encumber all or any portion of any Governance Rights except upon the unanimous consent of the Members (excluding those Members for which transfer is sought).

## General Prohibition on Transfers of Financial Rights

. Except as otherwise expressly provided in this Agreement, no Member or Holder shall have the right to voluntarily or involuntarily sell, assign, transfer, alienate, mortgage, pledge or otherwise dispose of or encumber all or any portion of any Financial Rights except upon the unanimous consent of the Members (excluding those Members for which transfer is sought).

## Revision of Schedule A

. Following any transfer permitted by this ARTICLE XI, the Chief Executive Officer of the Company shall revise Schedule A attached hereto to reflect the admission of new Members and/or the revised Membership Interests, Governance Rights and/or Financial Rights as a result thereof.

# COMPANY’S RIGHT TO PURCHASE UPON CERTAIN EVENTS

## Company’s Right to Purchase

. Upon the termination of a Member’s membership in the Company pursuant to Section 10.2, subject to the limitations contained therein with respect to a Member’s death or Disability, during the period ending at 11:59 p.m. on the thirtieth (30th) day following the day on which the Company has actual notice of the event causing the termination of such Member’s continued membership in the Company (the “Call Right Notice Period”), the Company may elect, by written notice delivered to the terminated Member, to purchase all of the Financial Rights of the terminated Member (the “Call Right”). In the event of a Member’s death or Disability, if such Member has not given the notice referred to in Section 11.2, and the Company fails to give notice during the Call Right Notice Period of its intent to exercise the Call Right, then such Member may require the Company to exercise such Call Right by written notice delivered to the Company within thirty (30) days following the end of the Call Right Notice Period.

## Determination of Purchase Price

. The Company and the Member whose Membership Interest has terminated shall negotiate in good faith to determine the purchase price of such terminated Member’s Membership Interest. If such purchase price cannot be agreed upon within ten (10) days after the exercise of the Call Right, the Purchase Price of the terminated Member’s Membership Interest shall be determined in accordance with ARTICLE XIII as of the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Call Right was exercised, and the terminated Member shall be obligated to sell to the Company such terminated Member’s Membership Interest at a purchase price equal to (A) where such terminated Member’s continued membership in the Company was terminated due to an event described in clauses (i), (ii), (iii), (iv) or (viii) of Section 10.2, one hundred percent (100%) of the Fair Market Value of the terminated Member’s Membership Interest or, (B) where such terminated Member’s continued membership in the Company was terminated due to an event described in clauses (v), (vi) or (vii) of Section 10.2, fifty percent (50%)of the Fair Market Value of the terminated Member’s Membership Interest.

## Terms of Purchase; Closing

. Unless the Company and the terminated Member otherwise agree, the closing of the purchase and sale of the terminated Member’s Membership Interest shall occur at the principal office of the Company at 10:00 a.m. on the first business day occurring on or after the thirtieth (30th) day following the final determination of the Fair Market Value of the terminated Member’s Membership Interest. Unless otherwise agreed to by the Company and the terminated Member, the purchase price shall be paid in thirty-six (36)equal installments with the first installment being due at the closing of the purchase. The remaining installments shall be due monthly thereafter and shall bear interest from such closing date at a rate equal to (A) where such terminated Member’s continued membership in the Company was terminated due to an event described in clauses (i), (ii), (iii), (iv) or (viii) of Section 10.2, the prime rate published in *The Wall Street Journal* plus two percent (2%), which rate shall be adjusted as of the same dates on which said Journal adjusts its prime rate or (B) where such terminated Member’s continued membership in the Company was terminated due to an event described in clauses (v), (vi) or (vii) of Section 10.2, the applicable federal rate. At closing, the terminated Member shall deliver to the Company good title, free and clear of any liens or encumbrances (other than those created by this Agreement) to the terminated Member’s Membership Interest thus purchased. At closing, the terminated Member and the Company shall execute such documents and instruments of conveyance as may be necessary or appropriate to effectuate the transactions contemplated hereby, including the transfer of the terminated Member’s Membership Interest to the Company. The terminated Member and the Company shall each bear their own costs of such transfer and closing, including attorneys’ fees and filing fees. The cost of determining Fair Market Value shall be borne one-half by the terminated Member and one-half by the Company.

## Life Insurance. The Company may obtain key man life insurance for the benefit of the Company, and in such event, the proceeds of any life insurance shall be used to fund a cash portion of the purchase price provided in Section 13.3 above. If the proceeds of the life insurance shall be insufficient to fully fund the purchase price, then a promissory note may be used as provided in Section 13.3.

# DETERMINATION OF FAIR MARKET VALUE

“Fair Market Value,” as of any day, shall be equal to the fair market value of Company as a going concern as of such day. As used herein, as of any day, “fair market value” of the Company means the price at which a willing seller would sell, and a willing buyer would buy, the Company, free and clear of all liens, security interests, or other encumbrances, in an arm’s-length transaction for cash, without time constraints and without being under any compulsion to buy or sell. The determination of the Fair Market Value shall be made by an appraisal firm jointly selected by the Company and the Member (or such Member’s Personal Representative, as applicable) whose Membership Interests are being purchased. Such appraisal firm shall be qualified with prior experience in appraising businesses comparable to the business of the Company and that is not an interested Person with respect to any Member. If the parties are unable to agree on a single appraisal firm, each may select a firm and those firms may select a third firm.

# DISSOLUTION, TERMINATION AND WINDING UP

## Dissolution of Company

. The Company shall be dissolved and its affairs wound up upon the Super-Majority Consent of the Members, or as may be otherwise required by law. The Company shall be terminated when the winding up of Company affairs has been completed following dissolution.

## Winding Up Affairs on Dissolution

. Upon dissolution of the Company, the Chief Executive Officer shall prepare and file all instruments or documents required by law to be filed to reflect the dissolution of the Company, and, after paying or providing for the payment of all liabilities and obligations of the Company, shall distribute the assets of the Company as provided by the terms of this Agreement.

## Distribution Upon Dissolution

. Upon dissolution of the Company and the sale of its assets, the proceeds of such sale of the assets of the Company shall be allocated as set forth below:

### First, to pay all outstanding liabilities and expenses of the Company;

### Second, to establish such reserves for unknown or contingent liabilities as the Members may determine; and

### The balance, if any, to the Members and Holders, in accordance with the positive balances in their Capital Accounts determined in accordance with Schedule B, after giving effect to all contributions, distributions and allocations for all periods.

## Waiver of Right to Partition and Decree of Dissolution

. As a material inducement to each Member to execute this Agreement, each Member covenants and represents to each other Member that during the existence of the Company, no Member, nor such Member’s heirs, personal representatives, administrators, successors, transferees or assigns, will attempt to make any partition of any Company assets whether now owned or hereafter acquired, and each Member waives all rights of partition provided by statute or principles of law or equity, including partition in kind or partition by sale. The Members agree that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in a court to dissolve the Company. The Members agree that there are fair and just provisions for payment and liquidation of the interest of any Member, and fair and just provisions to prevent a Member from selling or otherwise alienating such Member’s Membership Interest in the Company. Accordingly, each Member hereby waives and renounces such Member’s right to such a court decree of dissolution or to seek the appointment by court of a liquidator or receiver for the Company.

# REPRESENTATIONS OF MEMBERS

## In General

. As of the date hereof, each Member hereby makes each of the representations and warranties applicable to such Member as set forth in this ARTICLE XV, and such representations and warranties shall survive the execution of this Agreement. Said warranties and representations shall also be made by and shall be binding upon all Persons receiving Membership Interests at any time after the date hereof as of the date such Persons receive Membership Interests.

## No Conflict; No Default

. Each Member or Holder hereby represents and warrants that neither the execution, delivery or performance of this Agreement nor the consummation by such Member of the transactions contemplated hereby will:

### conflict with, violate, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Member or Holder or any of its Affiliates;

### conflict with, violate, result in a breach of, or constitute a default under any material agreement or instrument to which such Member or Holder or any of its Affiliates is a party or by which such Member or Holder or any of its Affiliates is or may be bound or to which any of its material properties or assets is subject;

### conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interest or rights, or require any consent, authorization or approval upon any indenture, mortgage, lease agreement, or instrument to which such Member or Holder or any of its Affiliates is a party or by which such Member or Holder or any of its Affiliates is or may be bound;

### result in the creation or imposition of any lien upon any of the material properties or assets of such Member or Holder or any of its Affiliates.

## Governmental Authorizations

. Each Member or Holder hereby represents and warrants that any registration, declaration or filing with, or consent, approval, license, permit or other authorization or order by, any governmental or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance and performance by such Member under this Operating Agreement or the consummation by such Member of any transaction contemplated hereby has been completed, made or obtained.

## Investment in Company

.

### The Members and Holders acknowledge that:

#### the Membership Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, the Tennessee securities laws or the securities laws of any other state (the “Securities Acts”) because the Company is issuing these Membership Interests in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering;

#### the Company has relied upon the fact that the Membership Interests are to be held by each Member or Holder for investment;

#### exemption from registrations under the Securities Acts would not be available if the Membership Interests were acquired by a Member or Holder with a view to distribution;

#### the Company is under no obligation to register such Member’s Membership Interest or a Holder’s Financial Rights or to assist such Member or Holder in complying with any exemption from registration under the Securities Acts if such Member or Holder should at a later date wish to transfer the Membership Interest or Financial Rights; and

#### the Membership Interests and Financial Rights are unlikely to qualify for transfer under Rule 144 of the Securities and Exchange Commission unless such Member or Holder is not an “Affiliate” of the Company and the Membership Interest or Financial Rights have been beneficially owned and fully paid for by such Member or Holder for at least three (3) years.

### Member and Holder Investment Representations and Agreements.

#### Each Member and Holder represents and warrants to the Company that such Member or Holder is acquiring the Membership Interest or Financial Rights for such Member’s or Holder’s own account for investment and not with a view to the resale or distribution thereof.

#### Each Member and Holder agrees not to sell or offer for sale any of portion of such Member’s Membership Interest or Holder’s Financial Rights unless there is an effective registration or other qualification relating thereto under the Securities Acts or unless such Member or Holder delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under the Securities Acts is not required in connection with such transfer, offer or sale.

#### Each Member and Holder represents and warrants that such Member and Holder has made an investigation of the Company and its business and has had made available to each such Member or Holder all information with respect thereto which such Member or Holder needed to make an informed decision to acquire the Membership Interest or Financial Rights.

#### Each Member and Holder considers himself to be a Person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member’s or Holder’s investment in the Membership Interest or Financial Rights.

# GENERAL PROVISIONS

## Notices

. All notices or other communications provided for under this Agreement or the Act shall be in writing, signed by the party giving the same, and shall be deemed properly given when personally delivered or on the earlier of actual receipt or the fifth (5th) business day after mailing if mailed by registered or certified United States mail, postage prepaid, or deposited with any other generally recognized delivery service with charges prepaid or billed to sender, addressed:

### In the case of the Company, to its principal executive office; or

### In the case of any Member or Holder, to the address set forth on Schedule A or to such other address as such Person may specify by notice to the Company.

## Integration

. This Agreement and the Affiliation Agreement embodies the entire agreement and understanding among the Members with respect to the subject matter hereof, and supersedes all prior agreements and understandings, if any, among and between the Members relating to the subject matter of this Agreement. Notwithstanding Section 48-249-203(a) of the Act to the contrary, the Company’s “operating agreement” shall be in writing and all of its provisions are set forth herein and shall at all times be contained in one single integrated document.

## Governing Law

. This Agreement and the rights of Members and Holders shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee.

## Severability

. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions herein contained and any other application thereof shall not in any way be affected or impaired.

## Binding Effect

. Except as otherwise provided herein to the contrary, this Agreement shall be binding upon, and inure to the benefit of, the Members and their respective heirs, personal representatives, administrators, successors, transferees and assigns. Further, the Articles and this Agreement shall be binding on any Person who becomes a Member or Holder after the effective date of this Agreement, regardless of whether such Member or Holder consents to or executes the Articles or this Agreement, if such Member or Holder complies with the conditions for becoming a Member or Holder as set forth herein.

## Terminology

. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural, and vice versa. Titles of Articles and sections are for convenience only and shall not control or affect the meaning or construction of any terms or provisions of this Agreement. All references herein to Articles and sections are references to Articles and sections hereof except where such references are made to the Act, the Code or to some other specified law, regulation or instrument.

## Amendment

. This Agreement may be amended, modified, or supplemented only by Majority Approval of the Members; provided, however, that the Chief Executive Officer is hereby authorized and directed to amend Schedule A to reflect changes thereto when authorized under this Agreement without obtaining the approval of the Members.

## Arbitration of Disputes

. The parties hereto agree that they shall seek to resolve any and all disputes arising in connection with the interpretation or enforcement of this Agreement in an amicable manner through informal discussions. Should an unresolvable dispute arise in connection therewith, the parties agree to submit the matter to binding arbitration according to the Commercial Arbitration Rules of the American Arbitration Association before an arbitrator in Nashville, Tennessee. The decision of the arbitrator shall be final and binding upon the parties, to the fullest extent permitted by law and may be enforced in any court of competent jurisdiction sitting in Tennessee. The arbitrator shall award all costs, expenses, and reasonable legal fees to the victorious party in the arbitration. Notwithstanding the foregoing, the Company or the Members may seek an injunctive remedy to prevent any violations of the provisions in Section 7.5 hereof in addition to the relief under arbitration.

## Multiple Counterparts

. This Agreement may be executed in multiple counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

[signature page to MagnaFusion, LLC Operating Agreement]

**IN WITNESS WHEREOF**, this Agreement is executed effective as of the date first set forth above.

By:

Matthew Moseley, CEO

By:

Travis Schaefer, XXX

By:

Terry Martin, XXX

**SCHEDULE A**

|  |  |  |
| --- | --- | --- |
| Name &  Address | Percentage  Financial  Interest | Percentage  Governance  Interest |
|  |  |  |
| Matthew Moseley | 50.0% | 50.0% |
| Travis Schaefer | 25.0% | 25.0% |
| Terry Martin | 25.0% | 25.0% |

Chief Executive Officer: Matthew Moseley

Tax Matters Member: Matthew Moseley

XXX Travis Schaefer

XXX Terry Martin

**SCHEDULE B**

**TAX PROVISIONS**

**Article I**

**Definitions**

1.1 Definitions of Certain Terms. Capitalized words and phrases used in this Agreement shall have the following meanings.

1.1.1 “Adjusted Capital Account Deficit” means, with respect to any Member or Holder, the deficit balance, if any, in such Member’s or Holder’s Capital Account as of the end of the relevant fiscal year or other shorter period, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts that (i) such Member or Holder is obligated or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations sections 1.704-2(g)(1) and 1.704-2(i)(5), and (ii) to the extent provided in Regulations section 1.704-1(b)(2)(ii)(C), the amount of any unconditional obligation of such Member or Holder imposed by this Agreement or by state or local law to make contributions to the Company; and

(b) Debit to such Capital Account the items described in Regulations sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

1.1.2 “Capital Account” means, with respect to each Member or Holder, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To the Capital Account of each Member or Holder there shall be credited (i) such Member’s or Holder’s Capital Contributions, (ii) such Member’s or Holder’s distributive share of Profits and any items in the nature of income or gain that are specially allocated to such Person pursuant to Section 3.3 or 3.4 of this Schedule B, and (iii) the amount of any Company liabilities assumed by such Member or Holder or that are secured by any Company property distributed to such Member or Holder.

(b) To the Capital Account of each Member or Holder there shall be debited (i) the amount of cash and the Gross Asset Value of any Company property distributed to such Member or Holder pursuant to any provision of this Agreement, (ii) such Member’s or Holder’s distributive share of Losses and any items in the nature of expenses or losses that are specially allocated to such Person pursuant to Section 3.3 or 3.4 of this Schedule B, and (iii) the amount of any liabilities of such Member or Holder assumed by the Company or that are secured by any property contributed by such Member or Holder to the Company.

(c) In the event of an assignment of a Membership Interest or of Financial Rights that is permitted by this Agreement, the assignee shall succeed to the Capital Account of the transferor in accordance with Regulations section 1.704-1(b)(2)(iv) to the extent such Capital Account relates to the transferred Membership Interest or Financial Rights; provided, however, no such assignment shall, in and of itself, relieve the transferor of any obligation to the Company, including, but not limited to, any obligation of such transferor to contribute to the capital of the Company.

(d) In determining the amount of any liability for purposes of subsections (a) and (b) above, there shall be taken into account Code section 752(c) and any other applicable provisions of the Code and Regulations.

1.1.3 “Capital Contributions” means, with respect to any Member or Holder, the amount of money and the initial Gross Asset Value of any property (other than money) contributed at any time to the Company with respect to such Member’s or Holder’s interest in the Company.

1.1.4 “Company Minimum Gain” has the meaning set forth in Regulations sections 1.704-2(b)(2) and 1.704-2(d) for “Partnership Minimum Gain.”

1.1.5 “Code” means the United States Internal Revenue Code of 1986, as amended from time to time.

1.1.6 “Depreciation” means, for each fiscal year or other shorter period of the Company, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year or other period bears to such beginning adjusted tax basis; provided, however, if the adjusted basis for federal income tax purposes of an asset at the beginning of such fiscal year or shorter period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Chief Executive Officer.

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

(a) The initial Gross Asset Value of any asset contributed to the Company by a Member or Holder shall be as described in the definition of Capital Contribution;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code section 7701(g) into account), as determined by the Chief Executive Officer, as of the following times:

(i) The acquisition of an additional interest in the Company by any Person in exchange for more than a *de minimis* Capital Contribution if the Members reasonably determine that such an adjustment is necessary or appropriate to reflect the relative economic interests of the Member or Holder.

(ii) The distribution by the Company to a Member or Holder of more than a *de minimis* amount of property as consideration for an interest in the Company if the Chief Executive Officer reasonably determines that such an adjustment is necessary or appropriate to reflect the relative economic interests of the Member’s and Holder’s, and

(iii) The liquidation of the Company within the meaning of Regulations section 1.704-1(b)(2)(ii)(g).

(c) The Gross Asset Value of any Company asset distributed to any Member or Holder shall be the gross fair market value of such asset (taking Code section 7701(g) into account) on the date of distribution, as agreed upon by the Person to whom the asset is distributed and the Chief Executive Officer; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations section 1.704-1(b)(2)(iv)(m) and subparagraph (f) of the definition of Profits and Losses or Section 3.3.7 of this Schedule B; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent the Chief Executive Officer determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsections (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

1.1.8 “Issuance Items” has the meaning set forth in Section 3.3.8 of this Schedule B.

1.1.9 “Member Nonrecourse Debt” has the same meaning as the term “Partner Nonrecourse Debt” set forth in Regulations section 1.704-2(b)(4).

1.1.10 “Member Nonrecourse Debt Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations section 1.704-2(i)(3).

1.1.11 “Member Nonrecourse Deductions” has the same meaning as the term “Partner Nonrecourse Deductions” set forth in Regulations sections 1.704-2(i)(1) and 1.704-2(i)(2).

1.1.12 “Nonrecourse Deductions” has the meaning set forth in Regulations section 1.704-2(b)(1).

1.1.13 “Nonrecourse Liability” has the meaning set forth in Regulations section 1.704-2(b)(3).

1.1.14 “Profits or Losses” shall mean, for each fiscal year or other shorter period of the Company, an amount equal to the Company’s federal taxable income or loss for such year or period, determined in accordance with Code section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) Any income of the Company that is exempt from federal income taxation and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.1.14 shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code section 705(a)(2)(B) or treated as Code section 705(a)(2)(B) expenditures pursuant to Regulations section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses pursuant to this section 1.1.14 shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Subsections 1.1.7(b) or 1.1.7(c) of this Schedule B, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

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

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other shorter period, computed in accordance with Section 1.1.6 of this Schedule B;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code section 734(b) is required pursuant to Regulations section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s or Holder’s interest, the amount of such adjustment shall be treated as an item of gain from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this Section 1.1.14, any items that are specially allocated pursuant to Sections 3.3 or 3.4 of this Schedule B shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 3.3 or 3.4 of this Schedule B shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

1.1.15 “Regulations” means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of the Code. All references herein to sections of the Regulations shall include any corresponding provision or provisions of succeeding, substitute, proposed or final Regulations.

1.1.16 “Regulatory Allocations” has the meaning set forth in Section 3.4 of this Schedule B.

1.2 Other Definitions. Certain other definitions are found in Section 1.1 of the Agreement. Capitalized terms used in this Schedule B not otherwise defined in this Article I shall have the meanings given to them elsewhere herein or in the Agreement. Capitalized terms not otherwise defined in this Schedule B or the Agreement, but defined in the Act, shall have the meanings set forth therein.

**Article II**

**Capital Accounts**

The Company shall maintain for each Member or Holder a Capital Account in accordance with Section 1.1.2 of this Schedule B. Section 1.1.2 of this Schedule B and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Chief Executive Officer determines that it is prudent to modify the manner in which Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property, or that are assumed by the Company or the Members or Holders), are computed in order to comply with such Regulations, the Chief Executive Officer may make such modification, provided it is not likely to have a material effect on the amounts distributable to any Member or Holder pursuant to Article XV of the Agreement upon the dissolution of the Company. The Chief Executive Officer also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members or Holders and the amount of Company capital reflected on the Company’s balance sheet, as computed for book purposes, in accordance with Regulations section 1.704-1(b)(2)(iv)(q), and (ii) any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations section 1.704-1(b).

**Article III**

**Allocation of Profits and Losses**

3.1 Allocation of Profits. After giving effect to the special allocations set forth in Sections 3.3 and 3.4 of this Schedule B, Profits for any fiscal year or other shorter period shall be allocated among Members or Holders in accordance with their respective Percentage Financial Rights.

3.2 Allocation of Losses.

3.2.1 Loss Allocations Generally. After giving effect to the special allocations set forth in Sections 3.3 and 3.4 of this Schedule B, Losses for any fiscal year or other shorter period shall be allocated among Members and Holders in accordance with their respective Percentage Financial Rights.

3.2.2 Loss Allocation Limitation. Losses allocated pursuant to Section 3.2.1 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member or Holder to have an Adjusted Capital Account Deficit at the end of any fiscal year. In the event some but not all of the Members or Holders would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to section 3.2.1, the limitation set forth in this Section 3.2.2 shall be applied on a Person by Person basis so as to allocate the maximum permissible Loss to each Member or Holder under section 1.704-1(b)(2)(ii)(d) of the Regulations.

3.3 Special Allocations. The following special allocations shall be made in the following order:

3.3.1 Minimum Gain Chargeback. Except as otherwise provided in Regulations section 1.704-2(f), notwithstanding any other provision of this Article III, if there is a net decrease in Company Minimum Gain during any Company fiscal year or other shorter period, each Member and Holder shall be specially allocated items of Company income and gain for such year or other shorter period (and, if necessary, subsequent years) in an amount equal to such Person’s share of the net decrease in Company Minimum Gain, determined in accordance with Regulations section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member or Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 3.3.1 is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

3.3.2 Member Minimum Gain Chargeback. Except as otherwise provided in Regulations section 1.704-2(i)(4), notwithstanding any other provision of this Article III, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year or other shorter period, each Member or Holder who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year or other shorter period (and, if necessary, subsequent years) in an amount equal to such Person’s share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member or Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 3.3.2 is intended to comply with the minimum gain chargeback requirement in Regulations section 1.704-2(i)(4) and shall be interpreted consistently therewith.

3.3.3 Qualified Income Offset. In the event any Member or Holder unexpectedly receives any adjustments, allocations, or distributions described in Regulations sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of income and gain shall be specially allocated to each such Person in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Person as quickly as possible, provided that an allocation pursuant to this Section 3.3.3 shall be made if and only to the extent that such Person would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article III have been tentatively made as if this Section 3.3.3 were not in the Agreement.

3.3.4 Gross Income Allocation. In the event any Member or Holder has a deficit Capital Account at the end of any Company fiscal year or other shorter period that is in excess of the amount such Person is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Person shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 3.3.4 shall be made if and only to the extent that such Person would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been tentatively made as if Section 3.3.3 of this Schedule B and this Section 3.3.4 were not in the Agreement.

3.3.5 Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other shorter period shall be specially allocated among the Members and Holders in accordance with their respective Percentage Financial Rights.

3.3.6 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other shorter period shall be specially allocated to the Member or Holder who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations section 1.704-2(i)(1).

3.3.7 Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code sections 734(b) or 743(b) is required, pursuant to Regulations section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member or Holder in complete liquidation of such Financial Rights, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain or loss, and such gain or loss shall be specially allocated to the Members and Holders in accordance with their interests in the Company in the event that Regulations section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Persons to whom such distribution was made in the event that Regulations section 1.704-1(b)(2)(iv)(m)(4) applies.

3.3.8 Allocations Relating to Taxable Issuance of Financial Rights. Any income gain, loss, or deduction realized as a direct or indirect result of the issuance of Financial Rights by the Company (“Issuance Items”) shall be allocated among the Member or Holder so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member or Holder shall be equal to the net amount that would have been allocated to each such Member or Holder if the Issuance Items had not been realized.

3.3.9 Imputed Interest. To the extent the Company has federal taxable interest income with respect to any promissory note pursuant to section 483 or sections 1271 through 1288 of the Code:

(a) Such interest income shall be specially allocated to the Member or Holder to whom such promissory note relates; and

(b) The amount of such interest income shall be excluded from the Capital Contributions credited to the Capital Account of such Member or Holder in connection with payments of principal with respect to such promissory note.

3.4 Curative Allocations. The allocations set forth in Sections 3.2.2, 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6, and 3.3.7 of this Schedule B (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the Members and the Holders that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 3.4. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the Chief Executive Officer shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner they determine to be appropriate so that, after such offsetting allocations are made, the Capital Account balance of each Member or Holder is, to the extent possible, equal to the Capital Account balance such Person would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Sections 3.1, 3.2, 3.3.8, and 3.3.9 of this Schedule B. In making their determinations under this Section 3.4, the Chief Executive Officer shall take into account future Regulatory Allocations under Sections 3.3.1 and 3.3.2 of this Schedule B that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 3.3.5 and 3.3.6 of this Schedule B.

3.5 Other Allocations Rules.

3.5.1 Basis for Determining Profits or Losses. For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Chief Executive Officer on a consistent basis using any permissible method under Code section 706 and the Regulations thereunder.

3.5.2 Distributions of Cash Treated as Proceeds from Nonrecourse Liability or Member Nonrecourse Debt. To the extent permitted by section 1.704-2(h)(3) of the Regulations, the Chief Executive Officer shall endeavor to treat distributions of Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member or Holder.

3.5.3 Allocations of Items Not Otherwise Allocated. Except as otherwise provided in this Agreement, all items of Company income, gain, credit, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members and Holders in the same proportions as they share Profits or Losses, as the case may be, for such fiscal year or other shorter period.

3.5.4 Allocations Binding. The Members and Holders are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their respective shares of Company income and loss for income tax purposes. The Members and Holders further intend that, pursuant to Regulations section 1.704-1(b)(3), the respective interests in the Company of the Members and Holders are equal to their respective Percentage Financial Rights of such Person for purposes of complying with section 704(b) of the Code.

3.5.5 Profits for Determining Excess Nonrecourse Liabilities. Solely for the purposes of determining the proportionate share of a Member’s or Holder’s “excess nonrecourse liabilities” of the Company within the meaning of Regulations section 1.752-3(a)(3), the interests of the Members and Holders in Company profits are in proportion to their Percentage Financial Rights.

3.6 Tax Allocations: Code Section 704(c). In accordance with Code section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members or Holders so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value using any method acceptable under the Regulations under Code section 704(c). In the event the Gross Asset value of any Company asset is adjusted pursuant to Section 1.18(b) of this Schedule B, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under code section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Chief Executive Officer in any manner that reasonably reflects the purpose and intuition of this Agreement. Allocations pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or is any way be taken into account in computing the Capital Account of any Member or Holder or any such Member’s or Holder’s share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

3.7 Allocations with Respect to Transferred Interests.

3.7.1 General Rule. If a Membership Interest or Financial Rights are transferred or increased or decreased by reason of the admission of a new Member or otherwise, during any fiscal year or other shorter period of the Company, Profits or Losses and any other item of income, gain, loss, deduction or credit of the Company for such fiscal year or other shorter period shall be allocated among the Members or Holders in accordance with their varying respective Percentage Financial Rights that they had from time to time during such fiscal year or other shorter period in accordance with Code section 706(d).

3.7.2 Accounting Convention. For convenience in accounting, the Company may, to the extent permitted by law, treat a transfer of a Membership Interest or of Financial Rights, or an increase or decrease of a Member’s or Holder’s Percentage Financial Interest, that occurs at any time during a month (commencing with the month including the date of this Agreement) as having been consummated on the first day of that month, regardless of when during that month, the transfer, increase or decrease actually occurs, or adopt such other convention as the Chief Executive Officer may lawfully select.

3.7.3 Sale or Other Disposition of All Assets. Notwithstanding anything in this Section 3.7 to the contrary, gain or loss of the Company realized in connection with the sale or other disposition of all or substantially all the Company’s assets (other than in the usual or regular course of the Company’s business) and/or the liquidation of the Company shall be allocated only to Members or Holders who own interests as of the date such transaction occurs.

**Article IV**

**Tax Provisions Related to Distributions**

4.1 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Company or Members or Holders shall be treated as amounts paid or distributed, as the case may be, to them with respect to which such amount was withheld pursuant to this Section 4.1 for all purposes under this Agreement. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members and Holders, and to pay over to any federal, state or local government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law, and shall allocate any such amounts the Members or Holders with respect to which such amount was withheld.

4.2 Distributions in Kind. No Member or Holder shall have the right to demand or receive distributions of property other than cash. Distributions in kind of Company property, in liquidation or otherwise, shall be made only with the consent of the Chief Executive Officer and only at a value agreed to by the Chief Executive Officer. Prior to any such distribution in kind, the difference between such agreed value and the book value of such property shall be credited or charged, as the case may be, to the Members’ and Holders’ Capital Accounts in proportion to their Percentage Financial Rights, except as may otherwise be required under Code section 704(c). Upon the distribution of such property, such agreed value shall be charged to the Capital Accounts of the Members or Holders receiving such distribution.

4.3 Assignment. In the event of an assignment of a Membership Interest or Financial Rights in the Company that is permitted under this Agreement, Profits or Losses and other tax attributes shall be allocated and distributions of Cash Flow shall be made to the assignee rather than to the assignor to the extent of the Financial Rights assigned. Except as otherwise provided in Section 3.7.3 of this Schedule B, the Profits or Losses and other tax attributes allocable to any Member or Holder whose Membership Interest or Financial Rights has been assigned, in whole or in part, during a fiscal year shall be allocated among the Persons who were the Members and Holders during such fiscal year in proportion to their respective holding periods, without separate determination of the results of Company operations during such periods in accordance with Code section 706. The Chief Executive Officer of the Company shall revise Schedule A attached to the Agreement to reflect any such assignment and the revised Membership Interests, Governance Rights and Financial Rights as a result thereof.

4.4 Distributions Upon Liquidation. In the event the Company is “liquidated” within the meaning of Regulations section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article IV to the Members and Holders who have positive Capital Accounts in compliance with Regulations section 1.704-1(b)(2)(ii)(b)(2). If any Member or Holder has a deficit Capital Account balance after giving effect to all contributions, distributions, and allocations, such Member or Holder shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or any other Person for any Person for any purpose whatsoever.

**Article V**

**Miscellaneous**

5.1 Tax Matters Partner. The Members shall designate a Member to serve as the Tax Matters Partner (“TMP”) as such is defined in Code section 6231(a)(7), which TMP shall be listed on Schedule A. Upon the failure of the Members to so designate the TMP, the Chief Executive Officer, provided he or she is then a Member, shall serve as the TMP. The TMP shall perform all duties and responsibilities imposed upon him or her, and shall have all powers granted, by the Code and the Regulations.

5.2 Tax Election Under Code Section 754. Upon the transfer of a Membership Interest or assessment of Financial Rights in the Company or the distribution of property to a Holder, the Chief Executive Officer may, but is not required to, file an election pursuant to section 754 of the Code to adjust the basis of Company property under Code section 734(b) and 793(b).