**OPERATING AGREEMENT**

**of**

**[NAME]**

**An Oklahoma Limited Liability Company**

Dated [Month/day], 2011

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**OPERATING AGREEMENT**

**of**

**[NAME]**

The Members listed on Exhibit A and the Company enter into this Operating Agreement as of [Month/day], 2011, to be effective upon filing of the Articles of Organization with the Oklahoma Secretary of State. The terms of the Agreement are as follows.

# ARTICLE 1

## Organizational Matters

1.1.  *Formation*.  The Company has been or shall be formed as a limited liability company under the Act by the filing with the Secretary of State of the State of Oklahoma of Articles of Organization, which are furnished to each Member.

1.2.  *Name*.  The name of the Company is “[Name]”.

1.3.   *Agent and Principal Office*.  The agent and principal office of the Company are as stated in the Articles of Organization, subject to change by the [Members] [Managers] on filing with the Secretary of State. The Company may also maintain offices at such other place or places as the [Members] [Managers] deem advisable.

1.4.  *Term*.  This Agreement commences upon the filing of the Company’s Articles of Organization with the Oklahoma Secretary of State, and continues through the dissolution and liquidation of the Company; provided that the provisions of Section 6.4 and Article 14 continue thereafter.

# ARTICLE 2

## Definitions

2.1.  *Definitions*.  For purposes of this Agreement, the following terms have the meanings ascribed to them.

“*Act*” means the Oklahoma Limited Liability Company Act, 18 Okla. Stat. §2000 *et seq*., as it may be amended from time to time, and any successor to such act.

“*Affiliate*” means, with respect to any Person, any other Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Person. “*Control*” means either (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise or (ii) a direct or indirect equity interest of ten percent or more in the Person.

“*Agreement*” means this Operating Agreement, as amended or supplemented from time to time.

“*Articles of Organization*” means the articles of organization, as amended from time to time, filed by the Company under the Act.

“*Assignee*” means a Person holding an Interest who is not a Member (including Persons holding charging orders, but excluding Persons who hold only rights to receive distributions).

“*Event of Bankruptcy*” means, with respect to any Person, (a) the filing of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code or any other federal or state insolvency law, or the filing of an answer consenting to or acquiescing in any such petition; (b) the making of any general assignment for the benefit of its creditors, or the admission in writing of its inability to pay debts as they become due; (c) the expiration of 30 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal, state or foreign insolvency law, provided that the same shall not have been vacated, set aside or stayed within such 30-day period; (d) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other similar agent for the Person or for any substantial part of the Person’s assets or property; and (e) the ordering of the winding up or liquidation of the Person’s affairs.

“*Business Day*” means any day except a Saturday, Sunday or other day on which commercial banks are authorized by law to be closed.

“*Capital Account*” means each capital account maintained for a Person holding an Interest pursuant to Section 3.4.

“*Capital Contributions*” means the sum of the values of cash and property contributed to the Company by all Persons holding Interests, or any one Person holding an Interest, as the case may be (or the predecessor holders of any Interests in the Company).

“*Code*” means the Internal Revenue Code of 1986, as amended, as in effect from time to time.

“*Company*” means the limited liability company identified in Section 1.2.

“*Company Property*” means all property, tangible and intangible, owned, leased or beneficially held by the Company from time to time.

“*Distributable Property*” means, with respect to any period, the excess of cash and property on hand over the amount that the [Members] [Managers] determine in their sole and absolute discretion is required to be retained as a reasonable reserve to meet any Company obligations or proposed expenditures that are accrued or reasonably foreseeable or that is reasonably necessary to be retained. Distributable Property includes the net cash realized by the Company from the sale, refinancing, or other disposition of all or substantially all the Company’s Property, after retirement of existing encumbrances and transactional expenses.

“*Family Trust*” in respect of any Person means any trust, partnership, limited liability company or other entity, the beneficiaries, partners, members or other equity owners of which (as the case may be), comprise solely members of that Person’s family, by blood or marriage.

“*Interest*” means a Person’s share of the Tax Items of, and the right to receive distributions from, the Company. [A Person having a zero or negative balance in his or her Capital Account has a zero balance.]

“*Manager*” means the Person or Persons appointed by the Members under Article 5 to manage the business and affairs of the Company.

“*Member*” means the Person signing this Agreement and any Person who subsequently is admitted as a Member of the Company.

“*Membership Rights*” means all of the rights of a Member in the Company, including a Member’s: (a) Interest; (b) rights as enumerated in Section 6.2 of this Agreement; (c) right to participate and vote on matters coming before the Members as provided in this Agreement or required by the Act; and (d) unless this Agreement provides to the contrary, right to act as an agent of the Company.

“*Person*” means a natural person, partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, trust, estate, association or corporation.

“*Required Vote*” means the vote or consent of a majority of [the Interests] [the positive balances of all Capital Accounts] held by Members and outstanding as of the vote or first consent (unless a prior record date is established for determining Members eligible to vote).

“*Tax Item*” means each item of income, gain, loss, deduction, or credit of the Company for Federal tax purposes, as separately stated and calculated pursuant to the Code.

# ARTICLE 3

## Capital Contributions

3.1. *Initial Contributions*. The Members receiving the Interests have agreed to fund the Company by contributing the amounts as set forth on Schedule A.

3.2. *Additional Capital Contributions*.

(a) If the Company requires additional capital for any purpose, as determined by the [Members] [Managers], the Company may accept additional Capital Contributions on terms and conditions and with repayment priorities as authorized by the Managers and approved by the Members.

(b) If the Company desires to accept additional Capital Contributions, the Company hereby grants to the Members the right of first refusal to purchase a pro rata share (equaling the Member’s respective Interest on the day before such additional Capital Contributions are to be accepted) of the additional Capital Contribution that the Company proposes to accept. If the Company proposes to accept such additional Capital Contributions, it shall give the Members written notice of its intention, describing the price and terms upon which the Company proposes to accept the capital. Each Member has 15 days from the date such notice is sent by the Company to agree to contribute the portion of the additional Capital Contribution that it is entitled to contribute for the price and upon the terms so specified in the notice. Such notice must be in writing and must specify the Member’s ratable portion of the proposed contribution. If any Member fails to exercise the right of first refusal within the 15-day period, the Company has the right thereafter to accept additional Capital Contributions upon terms no more favorable to the contributors than specified in the Company’s notice to Members.

3.3. *Return of Capital Contributions*. The Company shall expend the Capital Contributions in furtherance of its business. The Company pays its costs and expenses from its funds. No interest is paid on Capital Contributions, provided that the Managers and Members may grant preferences in exchange for such Capital Contributions through an amendment of this Operating Agreement. No Manager has any personal liability for the repayment of any Capital Contribution to a Member.

3.4.  *Capital Accounts*.

(a) The Company maintains a separate Capital Account for each Person holding an Interest. Each Capital Account increases by (i) the amount of all Capital Contributions by the Person, (ii) the income and gain allocated to the Person, and (iii) the amount of any Company liabilities assumed by such Person or secured by any Company Property distributed to the Person, and decreases by (iv) the amount of any cash and the value of any Company Property distributed to the Person under Section 4.1, (v) the loss and deductions allocated to the Person, and (vi) the amount of any liabilities of such Person assumed by the Company or secured by any property contributed by such Person to the Company.

(b) For purposes of this Section, the determination of any liability is made in accordance with Section 752(a) of the Code and any other applicable provisions of the Code. Property contributed by a Person is credited to such Person’s Capital Account at the fair market value of such property. No credit is made to the Capital Accounts for services rendered except as may be specifically set forth in this Agreement.

(c) An Assignee of an Interest will succeed to the Capital Account relating to the Interest transferred.

(d) At such times as may be permitted or required by Treasury Regulations issued pursuant to Section 704 of the Code, the Capital Accounts are revalued and adjusted to reflect the then fair market value of Company Property and the Capital Accounts are maintained to comply with Treasury Regulations Section 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation are made consistent with that regulation, and to the extent not inconsistent, the allocation provisions of Section 4.2.

(e) The foregoing definitions of Capital Account and certain other provisions of this Agreement are intended to comply with Treasury Regulations Section 1.704-1(b), and are interpreted and applied in a manner consistent with that regulation. Such regulation contains additional rules governing maintenance of capital accounts, which are incorporated by this reference into this Agreement.

3.5. *Loans*.

(a) The Company may borrow additional capital from any source, including any Member. No Member is obligated to make a loan to the Company.

(b) If the Company requires additional capital for any purpose related to the business of the Company, the [Managers] [Members] authorized to cause the Company to borrow such capital, on terms and conditions as they deem reasonable, subject to the provisions of Section 5.2. If the Company proposes to borrow such capital from a Member (the “*Loan Amount*), each Member is given the opportunity, but is not obligated, to loan its share of the Loan Amount to the Company. A Member’s share of the Loan Amount is the Loan Amount multiplied by the Member’s Interest. The participating Members shall make the loans within ten days after the [Managers’] [Members’] request. Such request shall be in writing and shall specify the Loan Amount and the proposed terms and conditions. If a Member does not loan [his, her or its] share of the Loan Amount (the “*Shortfall Amount*”) and another Member loans [his, her or its] share (a “*Participating Member*”), the Participating Members have the right, exercisable within ten days after notice, to loan the Company the Shortfall Amount. The loans to the Company by the Participating Members are unsecured, evidenced by promissory note of the Company, accrue interest at a rate determined by the [Managers] [Members], are payable on a pro rata basis solely from cash flow before any distributions to Members, and shall not contain any default interest or penalty provisions.

# ARTICLE 4

## Allocations and Distributions

4.1. *Distributions*.

1. *Nonliquidating Payments and Distributions*. The [Members] [Managers] determine when and if the Company’s Distributable Property is paid and distributed; provided that the [Members] [Managers] will consider quarterly distributions to the Members in accordance with their Interests if necessary to cover any tax liabilities arising from net income allocated to the Capital Accounts. [The Company’s Distributable Property is paid and distributed at least quarterly to the Members in accordance with their Interests.]

(b) *Liquidating Distributions*. Distributions made in connection with the sale or exchange of all or substantially all of the Company assets and all distributions made in connection with the liquidation of the Company are made to the Members in accordance with their relative capital account balances at the time of distribution and any excess in accordance with their Interests.

4.2. *Allocations of Income, Gain and Losses*. The Company allocates income, gain and losses for each accounting period among the Persons holding Interests as follows: (a) losses for the period are allocated in the ratio of the positive balances in the Capital Accounts; (b) income and gain for the period are allocated in the ratio of deficit balances in the Capital Accounts until any deficit balances are eliminated; (c) [then income, gain and losses for the period are allocated in the ratio of the cash distributions during such period (to the extent of such cash distributions); and finally (d) ]income, gain and losses for the period are allocated in the ratio of the Interests set forth on Exhibit A. Gain or loss from disposition of all or substantially all the Company Property are excluded from the foregoing and are allocated to bring the balances of the Capital Accounts into the ratio of the Interests. No allocation eliminates any discrepancy in the Capital Accounts resulting from the failure to make any required contribution or from any distribution contrary to this Agreement. Income, gain and losses are allocated consistently with the foregoing provisions after giving due consideration to differing requirements of the Code, including the requirements of Section 704(c) dealing with variation of the value and tax basis of property contributed to the Company and the requirements of Section 704(c) detailed below.

4.3. *Special Allocations*. The following provisions are interpreted consistently with the qualified income offset and minimum gain chargeback provisions of the regulations under Section 704(b) of the Code.

(a) *Limitations on Losses Allocations*. Notwithstanding Section 4.2 above, no loss is allocated to a Member if such allocation would cause such Member’s adjusted capital account to become negative or to increase the negative balance thereof to an amount in excess of the deficit for which the Member would have personal liability to the Company and the gain (the “*minimum gain*”) that the Company would recognize and allocate to the Member if the Company transferred all of its assets securing liabilities for which no Member has any personal liability to its creditors in satisfaction of those liabilities. If a Member or a related party has made a loan to the Company for which no other Member has any personal liability and which is treated as “*partner nonrecourse debt*” by the regulations under Section 704(b) of the Code, the minimum gain shall include the “*partner minimum gain*” related to such debt.

(b) *Qualified Income Offset*. If any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-l(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Company income and gain are specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balance of the adjusted capital account of such Member as soon as possible, provided that an allocation pursuant to this Section 4.3(b) is made only if and to the extent such Member would have a deficit balance in its adjusted capital account after all other allocations provided for in Section 4.2 and Section 4.3 have been made as if this Section 4.3(b) were not in this Agreement.

(c) *Gross Income Allocation*. If any Member has a deficit Capital Account at the end of any accounting period which is in excess of the sum of: (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, if any, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Sections l.704-2(g)(1) and 1.704-2(i)(5), each such Member is 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 4.3(c) is made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Section 4.2 and Section 4.3 have been made as if Section 4.3(b) hereof and this Section 4.3(c) were not in this Agreement.

(d) *Code Section 754 Adjustments*. To the extent an adjustment to the adjusted tax basis of any Company Property under Code Section 734(b) or Code Section 743(b) is required for determining Capital Accounts under Treasury Regulations Section l.704-l(b)(2)(iv)(m), any such adjustment to the Capital Accounts is treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss is specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(e) *Curative Allocations*. Notwithstanding any other provision of this Agreement, the allocations pursuant to the foregoing provisions of this Section and the Code (the “*Regulatory Allocations*”) are taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member are equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 4.3(e) are made only with respect to allocations pursuant to Section 4.3(d) hereof to the extent the Managers reasonably determine that such allocations would otherwise be inconsistent with the economic agreement among the parties to this Agreement.

[4.4. *Section 754 Election*. The [Members] [Managers] have the power, but not the obligation, to make such income tax elections, including elections under Section 754 of the Code, as the [Members] [Managers] deem appropriate.]

[4.5. *Section 83 Election*. The Company, each Member and each Manager hereby agrees to be legally bound by the provisions of this Section and further agrees that, in the [Managers’] [Members’] sole discretion, the Company and all of its Members may elect a safe harbor under which the fair market value of the Membership Rights transferred as compensation for the performance of services is treated as being equal to the liquidation value of the Membership Rights for transfers on or after the date final regulations providing the safe harbor are published in the Federal Register. If the [Members] [Managers] determine that the Company and all of its Members will elect the safe harbor, which determination may be made solely in the best interests of the Members, the Company, each Manager and each Member further agrees that:

(a) The Company is authorized and directed to elect the safe harbor;

(b) The Company and each of its Members (including any Person to whom Membership Rights are transferred as compensation for the performance of services) shall comply with all requirements of the safe harbor with respect to all Membership Rights transferred as compensation for the performance of services while the election remains effective; and

(c) The [Members] [Managers], in their sole discretion, may cause the Company to terminate the safe harbor election.]

# ARTICLE 5

## Management and Operation of Business

5.1.  *Management by Members*.  The Members manage the business of the Company. A Member or Members may exercise all the powers of the Company whether derived from law, the Articles of Organization or this Agreement. A person may rely in good faith on the apparent authority of a Member to act on behalf of the Company. The Member’s act binds the Company regardless of whether the act was properly authorized, unless the person relying on the act had actual knowledge that the act was unauthorized.

5.2. [Option 1: *Limitations on Authority of Members*. No single Member has the authority to do the following acts without a Required Vote of the Members:

(a) Borrow money in excess of $50,000.00, provided that this limitation does not restrict \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[any specific authorizations];

(b) Sell any Company Property having a fair market value over $50,000.00;

(c) Enter into any contract that is not terminable at will, involving an anticipated total expenditure of over $50,000.00, provided that this limitation does not restrict \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[any specific authorizations];

(d) Do any act that would make it impossible to carry on the ordinary business of the Company;

(e) Compromise any claim over $50,000.00;

(f) Admit a Person as a Member, except as provided in this Agreement; or

(g) Affect the status of the Company for Federal income tax purposes; or

(h) Knowingly perform any act that would subject a Member to personal liability.

[Option 2: *Limitations on Authority of Members*. No single Member has the authority to do the following acts without the consent of the other Members:

(a) Do any act that would make it impossible to carry on the ordinary business of the Company;

(b) Do any act that is specifically reserved to the Member under the Act;

(c) Affect the status of the Company for Federal income tax purposes; or

(d) Knowingly perform any act that would subject a Member to personal liability.]

5.3.  *Competing Interests*.

(a) Each Member and his or her Affiliates may have business interests and engage in business activities for his or her own account or for the account of others in addition to those relating to the Company, including business interests and activities in direct competition with the Company. No provision of this Agreement is deemed to prohibit the Member from conducting such businesses and activities. Neither the Company nor the other Members have any rights by this Agreement in any business ventures of the competing Member.

(b) No contract or transaction between the Company and one or more of its Members or Affiliates of a Member, is void or voidable solely due to their relationship, or solely because the Member is present at or participates in the meeting that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

(i) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the disinterested Members, and the disinterested Members in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Members [(by Interest)] [(by Capital Accounts)], even though the disinterested Members be less than a quorum; or

(ii) The contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the disinterested Members.

(c) The Members may in their discretion delegate all or any portion of the authorization, approval or ratification process to a committee or special independent counsel chosen for such purpose. Common or interested Members may be counted in determining the presence of a quorum at a meeting of the Members that authorizes the contract or transaction.

(d) In any contract or transaction authorized, approved or ratified under this Section, the Members are not accountable to the Company for it any profit or benefit derived by him or her from the contract or transaction.

[*ALTERNATIVE*: 5.3.  *Outside Activities*.  Each Member or his or her Affiliates may have business interests and engage in business activities for their own account or for the account of others in addition to those relating to the Company, including business interests and activities in direct competition with the Company. No provision of this Agreement is deemed to prohibit the Member or his or her Affiliates from conducting such businesses and activities. Neither the Company nor the Members have any rights by this Agreement in any business ventures of the competing Member or his or her Affiliates.]

[*ALTERNATIVE*: 5.3. *Outside Activities.* Each Member agrees to give the Company the first opportunity to participate in any business opportunity within the scope of business then being conducted by the Company; provided that decision of the other Members to decline such opportunity is conclusive.]

5.4.  *Limitation on Liability*.  No Member of the Company is liable to the Company or its other Members for monetary damages for breach of fiduciary duty; provided, however, that nothing contained in this Agreement eliminates or limits the liability of a Member (a) for any breach of his or her duty of loyalty to the Company or its Members, (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law and (c) for any transaction from which the Member derived an improper personal benefit.

[PROVISIONS FOR MANAGER MANAGEMENT]

5.1.  *The Managers*.  The business and affairs of the Company are managed by its Managers, who are appointed and removed by the Members. [\_\_\_\_\_\_\_\_\_\_\_\_] and [\_\_\_\_\_\_\_\_\_\_\_\_] are the initial Managers. The Managers have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company’s business to the extent provided or limited by this Agreement.

5.2.  *Limitations on Authority*.  The following matters require the Members’ approval:

[Option 1:]

1. Adopting an operating budget for the Company that provides for capital expenditures exceeding the previous year’s budget for capital expenditures by more than 20%;
2. Accepting additional Capital Contributions or the right to make additional Capital Contributions or to acquire, directly or indirectly, an Interest in the Company;
3. Repurchasing or redeeming an Interest in the Company;
4. Making an agreement (or modifying an agreement) or transaction between the Company and any Member or its Affiliate;
5. Borrowing money in excess of $50,000.00, provided that this limitation does not restrict the taking of draws on credit facilities approved by the Members;
6. Authorizing a liquidation or dissolution of the Company or the decision to cause the Company to incur an Event of Bankruptcy;
7. Amending the Articles of Organization or this Agreement; provided, however, that this Agreement may not be amended to create any obligation to contribute capital to the Company without the consent of each affected Member;
8. Authorizing a sale, exchange or other disposition of more than 20% of the Company Property as part of a single transaction or plan, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution;
9. Authorizing a merger of the Company with another limited liability company, a limited partnership, a general partnership, or a corporation; provided in no event is a Member required to become a general partner in a merger with a limited partnership or a general partnership without his or her express written consent;
10. Do any act that would make it impossible to carry on the ordinary business of the Company;
11. Admit a Person as a Member, except as provided in this Agreement;
12. Do any act that is specifically reserved to the Members under the Act; and
13. Knowingly perform any act that would subject a Member to personal liability.

[Option 2:]

* 1. Do any act that would make it impossible to carry on the ordinary business of the Company;
  2. Do any act that is specifically reserved to the Members under the Act;
  3. Affect the status of the Company for Federal income tax purposes; or
  4. Knowingly perform any act that would subject a Member to personal liability.]

5.3.  *Number, Term and Qualifications*.  Each Manager holds office until his or her successor has been appointed. If all Managers have resigned or have been removed from office, the Members manage the business of the Company until they appoint successor Managers and those appointed have qualified.

5.4.  *Standard of Care; Limitation on Liability*.  In performing his or her duties, a Manager conducts the Company’s business in good faith, with due care and in a manner he believes to be in the best interests of the Company and its Members. A Manager is not liable to the Company or a Member for monetary damages for breach of fiduciary duty; provided, however, that nothing contained in this Agreement eliminates or limits the liability of a Manager for (a) any breach of his or her duty of loyalty to the Company or the Members, (b) acts or omissions not in good faith or that involve gross negligence, reckless or intentional misconduct or a knowing violation of the law, (c) any harassment or oppression of a minority Member, and (d) any transaction from which the Manager derived an improper personal benefit.

5.5.  *Manner of Acting*.  If the Company has more than one Manager, the Managers strive in good faith to obtain consensus in all material decisions affecting the Company. This obligation does not, however, impair the validity of any action by an individual Manager exercising his or her business judgment. If the Managers are unable to obtain consensus about a matter, the Members may decide the matter and cause such action to be taken as is necessary or appropriate.

The Manager or Managers may record their decisions in resolutions reciting the action authorized, approved or ratified. Such resolutions may be adopted either by a written consent signed by the Managers or at a meeting at which at least a majority of the Managers are present. The Managers may adopt such procedural rules for the taking of action as they deem appropriate for the conduct of the Company’s business.

5.6. *Resignation*. A Manager may resign at any time by giving written notice to the Members. Unless otherwise specified in the notice, the resignation takes effect upon receipt, and the acceptance of the resignation is not necessary to make it effective. Upon the resignation, retirement, death or removal of a Manager, the Members nominate and appoint a replacement Manager.

5.7. *Time Devoted to Business*. The [Managers] [Manager] shall devote such time to the business of the Company as [they deem] [he or she deems] necessary for the efficient carrying on of the Company’s business.

*[Option 2: Provisions for LLC Officers – changes 5.4 –5.8. If adopting, delete 5.4 - 5.7 above.]*

5.4. *Appointment of Officers*. The Manager may appoint Officers of the Company, which may include: (a) a President; (b) one or more Vice Presidents; (c) a Secretary; and (d) a Treasurer or Chief Financial Officer. The Manager may delegate his or her day-to-day management responsibilities to any such Officers, and such Officers will have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as authorized by the Manager in any job description created by the Manager. All Officers hold office at the pleasure of the Manager and until their successors are duly elected and qualified, unless sooner removed. The Manager may remove any Officer at any time. If an office becomes vacant for any reason, the Manager may fill the vacancy.

5.5.  *Standard of Care; Limitation on Liability*.  In performing his or her duties, a Manager or Officer conducts the Company’s business in good faith, with due care and in a manner he or she believes to be in the best interests of the Company and its Members. A Manager or Officer is not be liable to the Company or a Member for monetary damages for breach of fiduciary duty; provided, however, that nothing contained in this Agreement eliminates or limits the liability of a Manager or Officer for (a) any breach of his or her duty of loyalty to the Company or the Members, (b) acts or omissions not in good faith or that involve gross negligence, reckless or intentional misconduct or a knowing violation of the law, (c) any harassment or oppression of a minority Member, and (d) any transaction from which the Manager or Officer derived an improper personal benefit.

5.6.  *Manner of Acting*.  If the Company has more than one Manager, the Managers strive in good faith to obtain consensus in all material decisions affecting the Company. This obligation does not, however, impair the validity of any action by an individual Manager exercising his or her business judgment. If the Managers are unable to obtain consensus about a matter, the Members may decide the matter and cause such action to be taken as is necessary or appropriate.

The Manager or Managers may record their decisions in resolutions reciting the action authorized, approved or ratified. Such resolutions may be adopted either by a written consent signed by the Managers or at a meeting at which at least a majority of the Managers are present. The Managers may adopt such procedural rules for the taking of action as they deem appropriate for the conduct of the Company’s business.

5.7. *Time Devoted to Business*. The [Managers] [Manager] shall devote such time to the business of the Company as [they deem] [he or she deems] necessary for the efficient carrying on of the Company’s business.

5.8. *Resignation*. A Manager may resign at any time by giving written notice to the Members. An Officer may resign at any time by giving written notice to the Managers. Unless otherwise specified in the notice, the resignation takes effect upon receipt, and the acceptance of the resignation is not necessary to make it effective. Upon the resignation, retirement, death or removal of a Manager, the Members nominate and appoint a replacement Manager.

*[Option 1:]* [5.8 or 5.9.  [*Competing Interests; Related Transactions*].

[EITHER] (a) Each Manager and his or her Affiliates may have business interests and engage in business activities for his or her own account or for the account of others in addition to those relating to the Company, provided that no Manager or an Affiliate may provide material services to, loan or contribute material capital to, disclose proprietary or other confidential information to, or otherwise material aid a Person competing directly with the Company. Neither the Company, the Members nor the other Managers have any rights because of their capacities in the permitted business ventures of the Manager.

[OR]

(a) Each Manager and his or her Affiliates may have business interests and engage in business activities for his or her own account or for the account of others in addition to those relating to the Company, including business interests and activities in direct competition with the Company. No provision of this Agreement is deemed to prohibit the Manager from conducting such businesses and activities. Neither the Company, the Members nor the other Managers have any rights by this Agreement in any business ventures of the competing Manager.

[OR]

(a) Each Manager agrees to give the Company the first opportunity to participate in any business opportunity within the scope of business then being conducted by the Company; provided that the decision of the Members to decline such opportunity is conclusive.]

*[Option 2:]* 5.8.  ] *Duties to Company; Related Transactions*.

(a) Each Manager will devote his or her undivided business time, attention and skill to the Company’s business, will use his or her best efforts to promote the success of the Company’s business, and will cooperate fully with the Members in advancing the Company’s best interests. Each Manager agrees not to engage in any other business activities except with the approval of the Members.

[*choose one of the above (a)’s and (b)*]

(b) No contract or transaction between the Company and one or more of its Managers or Affiliates of a Manager, is void or voidable solely due to their relationship, or solely because the Manager is present at or participates in the meeting that authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(i) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the disinterested Members, and the disinterested Members in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Members [(by Interest)] [(by Capital Accounts)], even though the disinterested Members be less than a quorum; or

(ii) The contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the disinterested Members.

(c) The Members may in their discretion delegate all or any portion of the authorization, approval or ratification process to a committee or special independent counsel chosen for such purpose. Common or interested Members may be counted in determining the presence of a quorum at a meeting of the Members that authorizes the contract or transaction.

(d) In any contract or transaction authorized, approved or ratified under this Section, a Manager is not accountable to the Company for any profit or benefit derived by him or her from the contract or transaction.

# ARTICLE 6

## Rights and Obligations of the Members

6.1.  *Limitation on Liability*.  A Member is not liable for any debts, obligations or liabilities of the Company, whether arising in tort, contract or otherwise, solely by reason of being a Member or acting (or omitting to act) in such capacity or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the Company. Each of the Members is liable only to make payment of his or her respective Capital Contribution and other payments as expressly provided in this Agreement. No Member is required to lend funds to the Company or, after such Member’s Capital Contribution has been paid and except as required by this Agreement, to pay any further Capital Contribution, assessment or payment to the Company.

6.2.  *Rights of Member Relating to the Company*.

(a) Subject to the restrictions of Section 6.3, only the Members may amend this Agreement.

(b) In addition to other rights provided by this Agreement or by applicable law, a Member has the right on demand and at such Member’s own expense:

(i) To obtain any and all information regarding the status of the business and financial condition of the Company;

(ii) Promptly after becoming available, to obtain a copy of the Company’s Federal, state, and local income tax returns for each year;

(iii) To have furnished to him, her or it a current list of the name and last known business, residence or mailing address of each Member;

(iv) To obtain information regarding the Capital Contributions made by each Member;

(v) To receive a copy of this Agreement and the Articles of Organization and all amendments, together with copies of any powers of attorney pursuant to which this Agreement, the Articles of Organization, and all amendments that have been executed; and

(vi) To inspect and copy any of the Company’s books and records and obtain such other information regarding the affairs of the Company during normal business hours.

(c) The Company reimburses each Member for reasonable expenses directly incurred for the Company and, if the [other Members] [Managers] agree, may compensate each Member for services rendered. Compensation paid to Members is reported for tax purposes on Schedule K-1 to Form 1065.

6.3.  *Restrictions on Powers*.

1. Except as otherwise provided in this Agreement or required by law, a Member, in its capacity as a Member, does not participate in the control, management, direction or operation of the affairs of the Company and has no power to bind the Company.
2. No Member has a right to withdraw under this Agreement. The Company may assert a claim for damages against a Member that withdraws. No Assignee has a right to withdraw or otherwise force a redemption or repurchase of his or her Interest under this Agreement.

6.4.  *Indemnification*.

(a) *Company Indemnity*.  The Company may indemnify and hold harmless its Members, their respective Affiliates, its Managers, employees and agents from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys’ fees and disbursements), judgments, fines, settlements, penalties and other expenses actually and reasonably incurred by the person being indemnified (an “*Indemnitee*”) in connection with any and all claims, demands, actions, suits, or proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that the Indemnitee is or was a Member or Manager of the Company or is or was an employee or agent of the Company, including Affiliates of the foregoing, arising out of or incidental to the business of the Company, provided (i) the Indemnitee’s conduct did not constitute gross negligence, reckless or intentional misconduct or a knowing violation of the law, (ii) the Indemnitee did not breach his, her or its duty of loyalty to the Company or the Members, or derive an improper personal benefit, (iii) the Indemnitee acted in good faith and in a manner he, she or it reasonably believed to be in, or not opposed to, the best interests of the Company and within the scope of such Indemnitee’s authority, (iv) the action is not based on a breach of this Agreement, and (v) with respect to a criminal action or proceeding, the Indemnitee had no reasonable cause to believe that his, her or its conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendre*, or its equivalent, does not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified above.

(b) *Advancement of Expenses*.  The Company may advance expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 6.4 before final disposition of such claim, demand, action, suit or proceeding if the Company determines that the Indemnitee will more likely than not be able to demonstrate compliance with the standard of conduct set forth in subsection (a) and receives an undertaking by the Indemnitee to repay amounts advanced if such person is ultimately determined to be not entitled to indemnification. The determination is made by the disinterested [Members,] [Managers,] a committee appointed by the [Members,] [Managers,] or special legal counsel specifically retained for the making of the determination.

(c) *Non-Exclusivity*.  The indemnification provided by this Section is in addition to any other rights to which the Indemnitee may be entitled under any agreement, vote of the [Members] [Managers], as a matter of law or equity, or otherwise, and this indemnification inures to the benefit of the successors, assignees, heirs, personal representatives and administrators of the Indemnitee.

(d) *Insurance*.  The Company may purchase and maintain insurance, at the Company’s expense, on behalf of any Indemnitee against any liability that may be asserted against or expense that may be incurred by an Indemnitee in connection with the activities of the Company regardless of whether the Company would have the power to indemnify such Indemnitee against such liability under the provisions of this Agreement.

# ARTICLE 7

## Books, Records, Accounting, and Reports

7.1.  *Books and Records*.  The Company shall keep appropriate books and records with respect to its business, including, without limitation, all books and records necessary to provide to the Member any information, lists and copies of documents required to be provided pursuant to Section 6.2, at its principal office or at such other places as agreed to by the [Members] [Managers]. Without limiting the foregoing, the following is maintained at the Company’s principal office: (a) a current list of the full name and last known business address of each Member[ and Manager (if any)], (b) copies of records that would enable a Member to determine the relative voting rights of the Members, (c) a copy of the Articles of Organization, and any amendments, (d) copies of the Company’s Federal, state and local income tax returns and reports, if any, for the three most recent years, (e) the minutes of all meetings of the Members, all written consents in lieu of meetings, and all minutes, consents or other records relating to actions of the Managers, if any, and (f) copies of any financial statements of the Company for the three most recent fiscal years. The Company may maintain its records kept in the regular course of its business on, or be in the form of, electronic image, computer database, photographs or any other information storage device, provided that the records so kept are convertible into clearly legible written form within a reasonable period of time.

7.2.  *Accounting*.  The Company maintains its books in accordance with generally accepted accounting principles, provided that the Company may use accounting methods and principles permitted for income tax purposes, including the cash method of accounting, and maintains the Capital Accounts in compliance with Section 704 of the Code.

# ARTICLE 8

## Tax Matters

8.1.  *Taxable Year*.  If permitted by the Code, the taxable year of the Company is the calendar year, unless otherwise determined by the [Members] [Managers].

8.2.  *Tax Matters Partner*.  The [Member] [Manager] having principal responsibility for keeping the financial accounts of the Company (or in the absence of such person, the [Member] [Manager] acting as the chief executive officer of the Company) has the sole and complete duty to collect, remit, or withhold all sales, use, income, or other taxes payable by the Company, and is the “*Tax Matters Partner*” (as defined in Section 6231 of the Code). [If the Manager designated above as the Tax Matters Partner is not a Member of the Company, then the Member holding the largest Interest, is the Tax Matters Partner.] The Tax Matters Partner is authorized and required to represent the Company, at the Company’s expense, in connection with all examinations of the Company’s affairs by tax authorities, including resulting administrative and judicial proceedings. Each Member [and Manager] agrees to cooperate with the Tax Matters Partner, and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner to conduct such proceedings.

8.3.  [*Taxation as a Partnership*.  No election is made by the Company or any Member [or Manager] of the Company to be excluded from the application of any provision of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.][*Taxation as S Corp*.  The Company may elect under Section 301 to be taxed as a corporation under the Code by filing a Form 2553 and further elects under Section 1372(a) of the Code, with the consent of all Members, to be treated as a “*small business corporation*” (also called an S Corporation) for tax purposes. The Company’s election for Federal tax purposes shall not affect its status as a limited liability company formed and existing under the Act.]

# ARTICLE 9

## Transfers, Right of First Refusal and Repurchases

9.1. *Transfers of Membership Rights*.

(a) Subject to and except as permitted by this Article 9, without the written consent of the [Members] [Managers], no Member may Transfer any of his, her or its Membership Rights in the Company [(including, without limitation, the right to receive a share of profits, losses and other allocations and distributions of the Company)], and no transferee, assignee or legatee may receive (by conveyance, operation of law or otherwise) any Membership Rights[; provided that this restriction on transfer does not prohibit a Member from assigning some or all of the economic rights associated with his, her or its Interest]. Any purported Transfer of any Membership Rights in the Company in violation of this Article is null and void. The granting or denial of a request for such written consent is within the absolute discretion of the [Members] [Managers].

(b) Notwithstanding the provisions of Section 9.1(a), each Member is permitted to (i) grant participations in such Member’s Interest to his or her heirs or to a Family Trust for estate planning purposes, but no such participant has any rights as a Member or any consent rights under this Agreement, and (ii) assign such Member’s Membership Rights to an entity solely owned and controlled by the Member.

(c) *Direct and Indirect Transfers*. For purposes of this Agreement, a “*Transfer*” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

9.2. *Substitution of a Member*.

1. No Assignee (by conveyance, operation of law or otherwise) has the right to become a substituted Member without the consent of the [Members] [Managers]. The granting or denial of a request for such written consent is within the absolute discretion of the [Members] [Managers]. When admitted, a substituted Member succeeds to all the Membership Rights of the Member/assignor. An Assignee is entitled only to the Capital Account and the distributions to which the Member/assignor would have been entitled.

(b) If a Member is dissolved, merged or consolidated, its successor in interest has the rights of an Assignee and may not become a substituted Member without the prior written consent of the [other Members] [Managers].

(c) As conditions to its substitution as a Member, the transferee must: (i) assume the Member/assignor’s obligations to the extent of the Membership Rights transferred and agree to be bound by all the terms and conditions of this Agreement, (ii) execute and deliver such instruments, in form and substance satisfactory to the Managers, as the Managers deem necessary, and (iii) pay all reasonable expenses in connection with its admission as a substituted Member.

9.3. *Right of First Refusal*.

1. *Initial Offer*. If a Member proposes to sell, assign or otherwise transfer all or any part of the Member’s Interest in the Company, other than a transfer permitted under Section 9.1, the Member (“*Offeror*”) must first make a written offer to sell such Interest in the Company to the other Members on the same terms and subject to the same conditions as those on which the Offeror proposes to transfer the Interest in the Company (the “*Offer*”). The Offer must state the name of the proposed transferee and all the terms and conditions of the proposed transfer, including the price to the proposed transferee.
2. *Acceptance of Offer*. For 30 days after receipt of the offer, or such longer period as may be required under this subsection (a), the other Members have the right to elect to purchase all of the Interest in the Company offered. In exercising their right to purchase, the other Members may divide the Interest offered in any manner to which they all agree and in the absence of an agreement the offered Interest is divided among the Members in proportion to the relative Interests of the Members who choose to participate. To exercise their rights to purchase, the other Members give written notice to the Offeror. Upon the exercise of a right to purchase and provided the right is exercised with respect to all of the Interest in the Company offered, the purchase shall be closed and payment made on the same terms and conditions as those on which the Offeror proposes to transfer the Interest in the Company.
3. *Failure to Accept Offer*. If the other Members do not elect to purchase all of the Interest in the Company offered, the Offeror may transfer the offered Interest to the proposed transferee named in the offer to the Company. If that transfer is not made within 90 days after the end of the period provided for in subsection (b), a new offer shall be made to the other Members and the provisions of this Article will again apply.
4. *Cash Equivalents*. If the proposed offer under subsection (a) is for consideration other than cash or cash plus deferred payments of cash, the purchasing Members may pay the present value cash equivalent of such other consideration or may pay using the same instrument as contemplated by the proposed offer. The Offeror and the purchasing Members shall attempt to agree upon a cash equivalent of such other consideration. If they cannot agree within 20 days after the beginning of the 30-day period under subsection (b), any of such Members may, by five days’ written notice to the others, initiate arbitration proceedings for determination of the cash equivalent without regard to income tax consequences to the Offeror as a result of receiving cash rather than the other consideration. The purchasing Members may elect to purchase the Interest at the determined cash equivalent by notice of such election to the Offeror within ten days after the arbitrator’s decision.

9.4.  *Repurchase of a Dissociated Member’s Membership Rights*.

* 1. Upon a [death, [disability], [termination of employment,] [withdrawal], [expulsion], [divorce], [Event of Bankruptcy], [change of control] or [dissolution] of a Member (such Member called a “*Dissociated Member*” and the event called an “*Event of Dissociation*”), the remaining Members may elect, within 30 days of notice or actual knowledge of the Event of Dissociation, to purchase the Dissociated Member’s Membership Rights on such terms and conditions as the remaining Members and the Dissociated Member or the legal representative of the Dissociated Member may agree.
  2. If the remaining Members and the Dissociated Member (or such legal representative) do not agree, the remaining Members have an option (to be exercised within 90 days after the Event of Dissociation, by giving notice to the Dissociated Member, or such legal representative) to purchase the Membership Rights for a cash purchase price reasonably determined by the Company based on the value of the Capital Account of the Dissociated Member, as of the end of the calendar month preceding the Event of Dissociation, adjusted as if: (i) the Company was valued at fair market value based on generally accepted business valuation methods, (ii) no discount is taken for minority interest or the Company’s closely-held nature, and (iii) any reasonable damages suffered by the Company because of the dissociation or wrongful acts of a Dissociated Member were reduced to judgment and charged against the Dissociated Member’s Capital Account (as adjusted, the “*Repurchase Price*”).
  3. If the Membership Rights of the Dissociated Member are not purchased by negotiated transaction or option exercise, the Company pays the Dissociated Member the Repurchase Price for its Capital Account by retiring the Repurchase Price out of distributions that would have been allocable to the Dissociated Member but for the dissociation until the amount due by reason of the dissociation is paid in full; provided, however, that the Repurchase Price must be paid in full no later than five years after the effective date.
  4. Except in a negotiated transaction, the purchasing Members in an option exercise or the Company in a mandatory repurchase shall deliver to the Dissociated Member at closing (i) a release from all personal liability as a guarantor of any contractual obligations of the Company, (ii) a release from the Company covering claims by it, and (iii) the Company’s indemnification against third party claims. The Company’s release may be subject to the Dissociated Member’s acceptance of a damage set-off as provided under subsection (b) and the indemnification may be limited by the required standard of conduct provided in Section 6.4.
  5. From and after the effective date, the Dissociated Member is considered a creditor of the Company (subject to the subordination provisions of Section 11.2(b)) and all other statutory or contractual rights associated with the Dissociated Member’s Membership Rights cease.
  6. [When an Event of Dissociation occurs as the result of a divorce or separation, if the Units are divided between the former spouses, the non-Family member is deemed the Dissociated Member for the purposes of this Section.] [In addition to the events enumerated in subsection (a) as Events of Dissociation, a divorce is an Event of Dissociation if the Interest is divided between the former spouses. In such event, the former spouse who was less active in the Company before the divorce is deemed the Dissociated Member for the purposes of this Section.] [In addition to the events enumerated in subsection (a) as Events of Dissociation, a Member’s divorce is an Event of Dissociation if the former spouse of the Member acquires an Interest as a result of the divorce. In such event, the former spouse who has acquired an Interest is deemed the Dissociated Member for the purposes of this Section.] [In addition to the events enumerated in subsection (a) as Events of Dissociation, a divorce is an Event of Dissociation if the Interest is divided between the former spouses. In such event, the Member holding the lesser Interest or, if the two Members hold equal Interests, the Member who is less active in the Company, is deemed the Dissociated Member for the purposes of this Section.]
  7. Under this Section:

1. A “*termination of employment*” occurs when a Member’s employment with the Company or its designated Affiliates terminates, whether for cause or not, if the termination is not as a result of a dissolution and liquidation of the Company or its designated Affiliates. The designated Affiliates are: [xxx].
2. A “*change of control*” occurs when: (A) a person or group (within the meaning of Section13(d)(3) of the Securities Exchange Act of 1934) who is not an Affiliate of the Member attains the beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of an equity interest representing at least 50% of the voting power within the Member, unless the Manager has approved the attainment; or (B) the Member, directly or indirectly, consolidates or merges with any other Person or sells or leases its properties and assets substantially in an entirety to any other Person who is not an Affiliate of the Member, unless approved by the Manager.

# ARTICLE 10

## Admission and Expulsion of Members

10.1.  *Admission of Additional Members*.  The Company may admit a Person as an additional Member by accepting Capital Contributions from such Person on terms and conditions approved by the [Members] [Managers – change 5.2 if choosing Managers]. No Person has a preemptive or other right to make a Capital Contribution unless authorized by contract or the consent of the [Members] [Managers– change 5.2 if choosing Managers].

10.2. *Expulsion of Members*. By a Required Vote, the [Members] [Managers] may expel a Member with or without cause [subject to the provisions of Section 9.4].

# ARTICLE 11

## Dissolution and Liquidation

11.1.  *Events of Dissolution*.  The Company dissolves and its affairs are wound up upon the earlier of: (a) the effective date of articles of dissolution adopted by a Required Vote of the Members; (b) the entry of a decree of judicial dissolution under Section 2038 of the Act, or (c) the entry of an arbitrator’s decision and award of dissolution under Section 14.7. The Company thereafter conducts only activities necessary to wind up its affairs as provided under the Act.

11.2.  *Method of Winding Up*.  Upon dissolution of the Company, the Company liquidates and winds up its affairs. Persons holding Interests continue to share profits and losses during the period of liquidation and winding up in the same proportion as before commencement of winding up and dissolution (subject to the provisions in Article 4). The Company takes the following steps in liquidating and winding up its affairs:

(a) The Company pays, satisfies or discharges all of its debts, liabilities, claims and obligations (including all expenses incurred in liquidation and winding up and the creditor claims of Members) or otherwise make adequate provision for payment and discharge of claims or obligations (including reasonable provision for known claims and obligations, whether contingent, conditional or unmatured); and

(b) Then (and only then), it distributes the balance to Persons holding Interests, in accordance with Article 4, and to Persons whose claims arise from a former Member’s dissociation.

Unless the [Members] [Managers] determine otherwise, all distributions are to be made in cash, and none of the Company Property is to be distributed in kind to the Members.

11.3.  *Filing Articles of Dissolution*.  When an event set forth in Section 11.1 occurs, the Company files Articles of Dissolution as required by the Act, and takes whatever other action may be advisable or proper to carry out the liquidation and winding up of the Company.

11.4.  *Return of Capital*.  The return of Capital Contributions is made solely from Company Property.

# ARTICLE 12

## Action by Members; Meetings; Consents

12.1.  *Action by Members*.  Whenever this Agreement references an approval or other action to be taken by the Members, such reference presumes that a Required Vote of the Members is necessary and sufficient to take such action, unless a different vote is specifically required by this Agreement.

12.2.  *Meetings*.  Any Member [or Manager] may call a meeting by giving at least five days’ prior notice of the time, place and purpose of the meeting to all Members.

12.3.  *Adjournment*.  When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken, and such adjournment does not extend for more than 45 days. At the adjourned meeting, the Company may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days, a notice of the adjourned meeting shall be given in accordance with Section 12.2.

12.4.  *Waiver of Notice; Consent to Meeting*.  The action taken at any meeting, however called and noticed, and whenever held, is as valid as though the action was taken at a meeting duly held, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each Member entitled to vote, but not present in person or by proxy, approves by signing a written waiver of notice or an approval to the holding of the meeting or an approval of the minutes thereof. The Company shall record all waivers, consents, and approvals as part of the minutes of the meeting. A Member’s attendance at a meeting constitutes a waiver of notice of the meeting, except when such Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

12.5.  *Quorum*.  Members holding a majority of [the Interests] [the positive balances of all Capital Accounts] held by all Members, represented in person or by proxy, constitute a quorum at a meeting of Members. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the Members represented either in person or by proxy, but no other matters may be proposed, approved or disapproved, except as provided in Section 12.6.

12.6.  *Action without a Meeting*.  Any action that may be taken at a meeting of the Members may be taken without a meeting if a consent to such action is signed by those Members sufficient in number to have taken action at a meeting. Prompt notice of the taking of any action without a meeting shall be given to those Members who have not consented in writing.

# ARTICLE 13

## Investment Representations

13.1. *Investment Purpose*. In acquiring an Interest in the Company, each Member represents and warrants to the Company that [he][she][it] is acquiring such Interest for [his][her][its] own account for investment and not with a view to its sale or distribution. Each Member recognizes that investments such as those contemplated by the Company are speculative and involve substantial risk. Each Member further represents and warrants that [he][she][it] has not received any guaranty or representation upon which [he][she][it] has relied concerning the possibility or probability of profit or loss as a result of its acquisition of an Interest in the Company.

13.2. *Investment Restriction*. Each Member recognizes that: (a) [his][her][its] Interest has not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption from such registration, (b) a Member may not sell, offer for sale, transfer, pledge or hypothecate all or any part of [his][her][its] Interest in the Company in the absence of an effective registration statement covering such Interest under the Securities Act of 1933, as amended, unless such sale, offer of sale, transfer, pledge or hypothecation is exempt from registration under the Securities Act of 1933, as amended, (c) the Company has no obligation to register any Member’s Interest for sale, or to assist [him][her][it] in establishing an exemption from registration for any proposed sale, and (d) the restrictions on transfer may severely affect the liquidity of a Member’s investment.

# ARTICLE 14

## Mediation and Arbitration

14.1.  *Resolutions of Controversies and Claims*. If any controversy or claim, whether based on contract, tort, statute, or other legal or equitable theory (including any claim of fraud, misrepresentation, or fraudulent inducement), arising out of or related to the corporate contract between and among the Company, its Members, Managers, employees, or agents (as the contract is embodied under the Articles of Organization, this Agreement, resolutions, the Act, and the common law at the time of the acts giving rise to the controversy or claim)(“*Dispute*”), the parties agree to resolve the Dispute as provided in this Article.

14.2. *Mediation*. If the Dispute cannot be resolved by negotiation, the parties agree to submit the Dispute to mediation by a mediator mutually selected by the parties. If the parties are unable to agree upon a mediator, the American Arbitration Association appoints the mediator. In any event, the mediation shall take place within 30 days of the date that a party gives the other party written notice of its desire to mediate the Dispute.

14.3 *Arbitration*.

(a) If not resolved by mediation, the parties shall resolve the Dispute by arbitration pursuant to this Article and the then-current rules and supervision of the American Arbitration Association. The arbitration shall be held in [Oklahoma City, Oklahoma] [the nearest metropolitan location of the party not initiating the arbitration], before a single arbitrator who is knowledgeable about the laws relating to business entities. The arbitrator may order the parties to exchange copies of non-rebuttal exhibits and copies of witness lists in advance of the arbitration hearing. The arbitrator has no other power, however, to order discovery or depositions unless and then only to the extent that (i) a party would be entitled as a Member or Manager to inspect or copy documents or other information of the Company under the Act, or (ii) all parties otherwise agree in writing. The arbitrator’s decision and award are final and binding and may be entered in any court having jurisdiction. The arbitrator does not have the power to award, and no one subject to this Article may seek, an award of, punitive, exemplary, or consequential damages, or any damages excluded by or in excess of any damage limitations expressed in this Agreement or any subsequent agreement between the parties. To prevent irreparable harm, the arbitrator may grant temporary or permanent injunctive or other equitable relief.

(b) Issues of arbitrability are determined in accordance with the Federal substantive and procedural laws relating to arbitration. All other aspects of the Agreement are interpreted in accordance with, and the arbitrator applies and is bound to follow, the substantive laws of the State of [Oklahoma]. Each party bears its own attorneys’ fees associated with negotiation, mediation, and arbitration, and other costs and expenses are borne as provided by the rules of the American Arbitration Association. If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposes such proceedings must pay all associated costs, expenses, and attorneys’ fees reasonably incurred by the other party.

14.4. *Confidentiality*. Neither a party, witness, nor the arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation, or arbitration without the prior written consent of all parties, except as necessary (and then only to the extent required) to enforce or challenge the settlement agreement or the arbitration award or to comply with legal, financial or tax reporting requirements.

14.5. *Limitations on Actions*. No party may bring a claim or action, regardless of form, arising out of or related to this Agreement, including any claim of fraud, misrepresentation, or fraudulent inducement, more than one year after the cause of action accrues, unless the injured party could not have reasonably discovered, and did not discover, the basic facts supporting the claim within one year.

14.6. *Covered Parties*. The duties to mediate and arbitrate extend to any Member, Manager, Officer, employee, shareholder, principal agent, trustee in bankruptcy or otherwise, affiliate, subsidiary, third-party beneficiary, or guarantor of a party making or defending a claim that would otherwise be subject to this Article. Unless the context otherwise requires, references to party or parties within this Article include the foregoing persons, provided, however, that the specific provisions regarding the allocation of costs in subsection (b) of Section 14.2 do not preclude any rights to indemnification, reimbursement, contribution or other similar benefits held by the foregoing persons.

14.7. *Deadlock*. If the Members are equally divided (based on their respective Interests) over a material matter affecting the operations of the Company (a “*Deadlock*”), one or more Members may notify the other Member or Members of the existence of a Deadlock. The Members shall immediately and continuously endeavor in good faith to resolve the Deadlock. If after six months the Members have failed to resolve the Deadlock, the Deadlock is deemed a Dispute, which cannot be resolved by negotiation. If not resolved by mediation, the parties shall resolve the Dispute by arbitration pursuant to this Article. In the arbitration, a Member may tender an offer to buy the Interest of another Member or all of the assets of the Company. The arbitrator has the power and authority to resolve the Deadlock and may do so by compelling the sale of one or more Interests (either to a tendering Member or a third party) or the dissolution and liquidation of the Company, by such means and at such prices as the arbitrator determines to be in the best interests of the Company and its Members. The arbitrator may compel production of documents, order reports, or retain experts to assist him in the arbitration, and the costs are allocated among the Members as the arbitrator determines. The provisions of this Section 14.7 do not limit the remedies that the arbitrator may otherwise award.

14.8. *Severability*. If any part of this Article is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate and arbitrate or any other part of this Article.

# ARTICLE 15

## General Provisions

15.1.  *Notices*.  Any notice, demand, request or report required or permitted to be given or made to a Member or Manager under this Agreement must be in writing and is deemed given or made when delivered in person or when sent by first class mail, overnight delivery, facsimile or e-mail transmission, or other suitable means to the Member or Manager to the mailing address, facsimile number or e-mail address shown on the records of the Company. Any notice, payment, or report to be given or sent to a Member or Manager is deemed conclusively to have been given or sent, upon posting or transmitting of such notice, payment, or report to the mailing address, facsimile number or e-mail address shown on the records of the Company, regardless of any claim by a Person who may have an Interest by reason of an assignment or otherwise.

15.2. *Amendments*.  By a Required Vote, the Members may amend this Agreement, unless the provision to be amended requires action by a greater vote, in which case the same greater vote is required to amend that provision. The Managers record all amendments or repeals of this Agreement by making the required changes on the Company’s copy of the Agreement and either noting the effective time of the change (and all other changes following the last restatement of the Agreement) in a parenthetical following the amended or deleted Section or restating and certifying an amended and restated version of the then effective Agreement.

15.3. *Mergers, Consolidations, Conversions and Asset Sales*.  Any merger, consolidation or conversion of the Company or the sale of all or substantially all of the assets of the Company is authorized [by a Required Vote of the Members] [by the Managers and approved by a Required Vote of the Members].

15.4. *Other Terms; Headings; Interpretations*. The captions of the articles and sections of this Agreement are for convenience only and are not deemed part of the text of this Agreement. All references to “*Articles*” and “*Sections*” contained in this Agreement are, unless specifically indicated otherwise, references to articles, sections, subsections, and paragraphs of this Agreement. Whenever in this Agreement the singular number is used, the same includes the plural where appropriate (and vice versa), and words of any gender includes each other gender where appropriate. All pronouns and any variations refer to the masculine, feminine, neuter, singular or plural as required for the identification of the Person or Persons. All references in this Agreement to dollars means United States dollars. Any day or deadline or time period that falls on a weekend or a national holiday refers to the first Business Day following such day. As used in this Agreement, the following words or phrases have the meanings indicated: (a) “*or*” means “*and/or*”; (b) “*day*” means a calendar day; and (c) “*including*” or “*include*” means “*including, without limitation*”. Whenever any provision of this Agreement requires or permits the [Members] [Managers] to take or omit to take any action, or make or omit to make any decision, unless the context clearly requires otherwise, such provision is interpreted to authorize an action taken or omitted, or a decision made or omitted, by the [Members] [Managers] acting alone and in good faith. Whenever a provision of this Agreement provides that the [Members] [Managers] is authorized to take or omit to take any action, or make or omit to make any decision, in its “*sole judgment*”, “*sole discretion*” or “*absolute discretion*” such authority supersedes any limiting or conflicting standard that might otherwise be applicable under this Agreement, the Act or otherwise.

15.5.  *Further Actions.*  The parties to this Agreement shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

15.6.  *Binding Effect*.  This Agreement is binding upon and inures to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assignees.

15.7.  *Integration*.  This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements and understandings pertaining to this Agreement.

15.8.  *Waiver*.  No failure by any party to insist upon the strict performance of any covenants, duty, agreement or condition of this Agreement or to exercise any right or remedy arising from a breach constitutes waiver of any such breach or any other covenant, duty, agreement or condition.

15.9.  *Counterparts*.  This Agreement may be executed in counterparts, all of which together constitutes an agreement binding on all the parties, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party becomes bound by this Agreement immediately upon affixing its signature, independently of the signature of any other party.

15.10.  *Applicable Law*.  Except as provided in Article 14, this Agreement is construed in accordance with and governed by the laws of the State of Oklahoma, without regard to its principles of conflict of laws.

15.11.  *Invalidity of Provisions*.  If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions are not affected.

[The signature page follows.]

The Members sign this Operating Agreement, for themselves individually and on the Company’s behalf, as of the effective date of this Agreement [by execution of the attached signature pages].

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| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  , President |

**[NAME]**

**SUBSCRIPTION SIGNATURE PAGE**

This subscription is made by and between [Name], an Oklahoma limited liability company (the “*Company*”), and the undersigned. In consideration of the Company’s agreement to accept the undersigned as a Member of the Company upon the terms and conditions set forth in the Company’s Operating Agreement, the undersigned agrees and represents as follows:

1. The undersigned is contributing to the Company capital in the amount (and if other than cash, in the nature) set forth on Exhibit A.

2. The undersigned represents and warrants to, and agrees with the Company, as follows:

(a) The undersigned affirms the representations and warranties made in Article 13 of the Operating Agreement.

(b) The undersigned has been furnished with and has carefully read the Operating Agreement and fully understands the rights and obligations associated with ownership of the Interest.

(c) The Company has made available to the undersigned all documents and information that the undersigned has requested relating to the Interest.

(d) The undersigned has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the Interest in the Company and of making an informed decision.

3. This Subscription Agreement and the Operating Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede any and all prior or contemporaneous representations, warranties, agreements and understandings in connection therewith. This agreement may be amended only by a writing executed by all parties.

4. The undersigned has executed this Subscription Page this [date].

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Purchaser | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Spouse (if applicable) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Spouse’s Tax ID No. (Social Sec. No.) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Tax ID No. (Social Sec. No.) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Mailing Address | Subscription accepted by the Company this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Manager |

# EXHIBIT A

|  |  |  |  |
| --- | --- | --- | --- |
| **Name and Address      of Member** | **Capital Contribution  Commitment** | **Initial**  **Capital**  **Contribution** | **Income**  **Interest** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

In addition to the Capital Contribution set forth above, the Member may contribute additional property (including cash or securities) as provided under the Operating Agreement. When and if such addition contributions are made, the Member shall identify the property contributed on a schedule attached to this Agreement, which shall be amended from time to time to reflect the contribution, purchase, sale or transfer of any such property.