

## **Investor Operating Agreements**

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# INVESTOR OPERATING AGREEMENT OF

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THIS OPERATING AGREEMENT of \_\_\_\_\_ (the “Company”), a limited liability company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the date set forth on the signature page of this Operating Agreement.

## ARTICLE I FORMATION OF THE COMPANY

1.1. *Formation.* The Company was formed on \_\_\_\_\_ (the “Date of Organization”) upon the filing with the North Carolina Secretary of State of the Articles of Organization of the Company.

1.2. *Name.* The name of the Company is \_\_\_\_\_. The Sole Member may change the name of the Company from time to time as it deems advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

1.3. *Registered Office and Registered Agent.* The Company’s registered office within the State of North Carolina and its registered agent at such address shall be as the Sole Member may from time to time deem necessary or advisable.

1.4. *Principal Place of Business.* The principal place of business of the Company within the State of North Carolina shall be at such place or places as the Sole Member may from time to time deem necessary or advisable.

1.5. *Purposes and Powers.*

- (a) The purpose of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act.
- (b) The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

1.6. *Term.* The duration of the Company shall be unlimited, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

1.7. *Nature of Member's Interest.* The interest of the Sole Member in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company.

IN WITNESS WHEREOF, the undersigned \_\_\_\_\_ has caused this Agreement to be duly adopted by the Company as of the \_\_\_\_\_.

**SOLE MEMBER AND MANAGER:**

\_\_\_\_\_  
Insert Typed Name (SEAL)

**SCHEDULE I**

Name and Address of Member(s)	Capital Contribution	Membership Interest
Total	\$	%

# OPERATING AGREEMENT OF

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THIS OPERATING AGREEMENT of \_\_\_\_\_ (the “Company”), a limited liability company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the date set forth on the signature page of this Operating Agreement.\_\_\_\_\_, a citizen and resident of \_\_\_\_\_ County, North Carolina, is the sole member of the Company (“the Sole Member”). Solely for federal and state tax purposes and pursuant to Treasury Regulations Section 301.7701, The Sole Member intends the Company to be disregarded as an entity that is separate from the Sole Member. For all other purposes (including, without limitation, limited liability protection for the Sole Member from Company liabilities), however, the Sole Member and the Company intend the Company to be respected as a separate legal entity that is separate and apart from the Sole Member.

## ARTICLE I FORMATION OF THE COMPANY

1.1. *Formation.* The Company was formed on \_\_\_\_\_ (the “Date of Organization”) upon the filing with the North Carolina Secretary of State of the Articles of Organization of the Company.

1.2. *Name.* The name of the Company is\_\_\_\_\_. The Sole Member may change the name of the Company from time to time as it deems advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

1.3. *Registered Office and Registered Agent.* The Company’s registered office within the State of North Carolina and its registered agent at such address shall be as the Sole Member may from time to time deem necessary or advisable.

1.4. *Principal Place of Business.* The principal place of business of the Company within the State of North Carolina shall be at such place or places as the Sole Member may from time to time deem necessary or advisable.

1.5. *Purposes and Powers.*

- (a) The purpose of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act.
- (b) The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

1.6. *Term.* The duration of the Company shall be unlimited, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

1.7. *Nature of Member's Interest.* The interest of the Sole Member in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company.

## ARTICLE II DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“*Act*” means the North Carolina Limited Liability Company Act, as the same may be amended from time to time.

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

“*Articles of Organization*” means the Articles of Organization of the Company filed with the Secretary of State, as amended or restated from time to time.

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

“*Manager*” means \_\_\_\_\_.

“*Member*” means \_\_\_\_\_.

“*Person*” means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

“*Property*” means (i) any and all property acquired by the Company, real and/or personal (including, without limitation, intangible property), and (ii) any and all of the improvements constructed on any real property.

“*Secretary of State*” means the Secretary of State of North Carolina.

“*Sole Member*” means \_\_\_\_\_.

*"Tax Matters Manager"* means the person who is the "tax matters partner," as that term is defined in the Code and the Treasury Regulations.

*"Treasury Regulations"* means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

### ARTICLE III MANAGEMENT OF THE COMPANY

3.1. *Management. Management by Sole Member.* The Sole Member, by virtue of his status as Sole Member, shall also be the Manager of the Company for all purposes. Except as otherwise expressly provided in this Agreement, the Articles of Organization or the Act, all decisions with respect to the management of the business and affairs of the Company shall be made by the Sole Member.

3.2. *Indemnification of Member for Management Services.* The Company shall indemnify the Sole Member or his authorized delegate(s) in connection with their services as Managers of the Company to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by such person upon the approval of the Sole Member.

### ARTICLE IV RIGHTS AND OBLIGATIONS OF SOLE MEMBER

4.1. *Name and Address of Sole Member.* The name, address, and Membership Interest of the Sole Member is reflected in *Schedule I* attached hereto.

4.2. *Limited Liability.* The Member shall not be required to make any contribution to the capital of the Company except as set forth in *Schedule I*, nor shall the Member in its capacity as such be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of its interest in the Company and the obligation to return distributions made to them under certain circumstances as required by the Act. The Member shall be under no obligation to restore a deficit Capital Account upon the dissolution of the Company or the liquidation of Membership Interest.

### ARTICLE V CAPITAL CONTRIBUTIONS AND LOANS

The Sole Member has contributed cash to the Company in the amounts set forth as the initial Capital Contribution opposite his name on *Schedule I* attached hereto.

### ARTICLE VI ALLOCATIONS, ELECTIONS, AND REPORTS

All allocations of profit and loss of the Company and all assets and liabilities of the Company shall, *solely* for state and federal tax purposes, be treated as that of the Sole Member pursuant to Treasury Regulations Section 301.7701, but for no other purpose (including, without limitation, limited liability protection for the Sole Member from Company liabilities).

## ARTICLE VII DISTRIBUTIONS

Distributions of assets shall be made on such basis and at such time as determined by the Manager.

## ARTICLE VIII DISSOLUTION AND LIQUIDATION OF THE COMPANY

8.1. *Dissolution Events.* The Company will be dissolved upon the happening of any of the following events:

- (a) All or substantially all of the assets of the Company are sold, exchanged, or otherwise transferred (unless the Sole Member has elected to continue the business of the Company);
- (b) The Sole Member signs a document stating its election to dissolve the Company;
- (c) The entry of a final judgment, order, or decree of a court of competent jurisdiction adjudicating the Company to be bankrupt and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal;

Or

- (d) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

8.2. *Liquidation.* Upon the happening of any of the events specified in Section 8.1 and, if applicable, the failure of the Sole Member to continue the business of the Company, the Sole Member, or any liquidating trustee designated by the Sole Member, will commence as promptly as practicable to wind up the Company's affairs unless the Sole Member or the liquidating trustee (either, the "Liquidator") determines that an immediate liquidation of Company assets would cause undue loss to the Company, in which event the liquidation may be deferred for a time determined by the Liquidator to be appropriate. Assets of the Company may be liquidated or distributed in kind, as the Liquidator determines to be appropriate. The Sole Member will continue to be entitled to Company cash flow and Company profits during the period of liquidation. The proceeds from liquidation of the Company and any Company assets that are not sold in connection with the liquidation will be applied in the following order of priority:

- (a) To payment of the debts and satisfaction of the other obligations of the Company, including, without limitation, debts and obligations to the Sole Member;
- (b) To the establishment of any reserves deemed appropriate by the Liquidator for any liabilities or obligations of the Company, which reserves will be held for the purpose of paying liabilities or obligations and, at the expiration of a period the Liquidator deems appropriate, will be distributed in the manner provided in Section 8.2(c); and, thereafter
- (c) To the Sole Member.

8.3. *Articles of Dissolution.* Upon the dissolution and commencement of the winding up of the Company, the Sole Member shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the Secretary of State, and the Sole Member shall execute, acknowledge, and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

## ARTICLE IX MISCELLANEOUS

9.1. *Records.* The records of the Company will be maintained at the Company's principal place of business or at any other place the Manager selects, provided the Company keeps at its principal place of business the records required by the Act to be maintained there.

9.2. *Survival of Rights.* Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

9.3. *Interpretation and Governing Law.* When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend, or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina without giving effect to the conflicts of laws provisions thereof.

9.4. *Severability.* If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

9.5. *Agreement in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

9.6. *Tax Matters Manager.* For purposes of this Agreement, \_\_\_\_\_ shall be the Tax Matters Manager.

9.7. *Creditors Not Benefited.* Nothing in this Agreement is intended to benefit any creditor of the Company. No creditor of the Company will be entitled to require the Member to solicit or accept any loan or additional capital contribution for the Company or to enforce any right which the Company may have against a Member, whether arising under this Agreement or otherwise.

IN WITNESS WHEREOF, the undersigned, being the Sole Member of the Company, has caused this Agreement to be duly adopted by the Company as of the \_\_\_\_\_.

**SOLE MEMBER AND MANAGER:**

\_\_\_\_\_  
Insert Typed Name (SEAL)

**SCHEDULE I**

Name and Address of Member(s)	Capital Contribution	Membership Interest
Total	\$	%

## INVESTOR OPERATING AGREEMENT

THIS OPERATING AGREEMENT of \_\_\_\_\_ (the "Company"), a limited liability company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the date set forth on the signature page of this Operating Agreement. We, being all the members of \_\_\_\_\_, a North Carolina limited liability company in good standing on the date hereof, hereby consent to the following resolution, in lieu of a Meeting assembled for such purposes, to wit:

The purpose of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act.

The Company and its members shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

Be it resolved, that in order to make closing of North Carolina real estate easier to accomplish, the Members agree that each Member of the Company signing below is hereby authorized to execute real estate contracts, deeds, closing statements, and all other documents necessary for the purchase, refinance and/or sale of real estate owned or to be owned by the company.

This agreement stands to supersede any agreements that are in existence prior to the signing of this document.

This \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Insert Typed Name (SEAL)

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**FOR**

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**DATE:**

**PARTIES:**

**RECITALS:**

**A.** The parties to this agreement (the “members”) are entering into this agreement for the purpose of forming a limited liability company (the “company”) under the NORTH CAROLINA Limited Liability Company Act, Chapter 57C: North Carolina Limited Liability Company Act [Repealed.] (the “act”).

**B.** The members intend to make an election to have the company classified as a corporation for federal income tax purposes that is taxed as an S corporation. This election will be made immediately after the company is formed and will be effective on the first day of the company’s first fiscal year.

**AGREEMENTS:**

**1. FORMATION**

- 1.1. **Name.** The name of the company is \_\_\_\_\_.
- 1.2. **Articles of Organization.** Articles of organization or certificate of formation for the company were filed with the office of the Secretary of State for the state of NORTH CAROLINA.
- 1.3. **Duration.** The company will exist until dissolved as provided in this agreement.
- 1.4. **Registered Office and Registered Agent.** The company’s initial registered office will be as stated in the formation documents file with the secretary of state of NORTH CAROLINA. The company’s registered agent and registered office can only be changed by filing a notice of the change with the secretary of state for the state of NORTH CAROLINA.
- 1.5. **Purposes and Powers.** The company is formed for the purpose of engaging in any lawful business in the state of NORTH CAROLINA, or in such other states that the company chooses to do business. The company has the power to do all things necessary, incident, or in furtherance of that business.
- 1.6. **Title to Assets.** Title to all assets of the company will be held in the name of the company; although a Manager may temporarily take title for financing purposes in his name and transfer title to the company as soon as practical thereafter. No member has any right to the assets of the company or any ownership interest in

them except indirectly as a result of the member's ownership of shares in the company. No member has any right to partition any assets of the company or any right to receive any specific assets on the winding up of the business of the company or on any other distribution from the company. Assets of the company may not be commingled with those of a member or any other person.

## 2. MEMBERS, CONTRIBUTIONS AND SHARES.

- 2.1. **Initial Members.** The names and addresses of the initial members of the company and their ownership shares are as set forth in the attached Schedule "A" hereto.
- 2.2. **Additional Members.** Except as otherwise provided in the section of this agreement relating to substitution, additional members of the company may be admitted only with the members' unanimous approval.
- 2.3. **Additional Contributions.** Except as otherwise provided in the act, no member is required to contribute additional capital to the company without the member's consent. Additional capital contributions may be made by members only if they unanimously approve the contributions and agree how they will affect members' ownership shares.
- 2.4. **No Interest on Capital Contributions.** No interest will be paid on capital contributions.
- 2.5. **Capital Accounts.** Because the company will be taxed as an S corporation and not as a partnership, no capital accounts will be maintained for the members.

## 3. ALLOCATION OF PROFITS AND LOSSES.

- 3.1. **Net Profit or Loss.** The net profit or net loss of the company for each fiscal year will be determined according to the accounting principles employed in the preparation of the company's federal income tax information return. No special provision will be made for tax-exempt or partially tax-exempt income. The profit or loss, as well as any items thereof that must be separately stated under IRC § 1366(a), will be allocated to the members in proportion to the ownership shares held by each of them.
- 3.2. **Membership Changes.** If a member has not been a member during a full fiscal year of the company, or if the number of ownership shares held by a member changes during a fiscal year, the net profit or net loss for the year will be allocated to the members based on their pro rata shares, as defined in IRC § 1377(a). But if any member's interest in the company is terminated during a fiscal year, the company may elect to treat the company as having two taxable years—one ending on the date the member's interest is terminated and the other ending on the last day of the company's fiscal year. In this case, the net profit or loss for each taxable year will be allocated only between those who were members during that taxable year. This

election is available under IRC § 1377(a)(2) and requires the consent of the member whose interest is terminated as well as that of the company and other members.

3.2.1.1. If a member's interest is terminated as a result of death or disability, the company and all other members must consent to an IRC § 1377(a)(2) election at the request of the terminated member or the terminated member's successor in interest.

3.2.1.2. If a member's interest is terminated for another reason, the terminated member must consent to making an IRC § 1377(a)(2) election at the request of other members holding a majority of the ownership shares of the other members.

#### 4. **DISTRIBUTIONS.**

4.1. **Annual Distributions.** To enable the members to pay taxes on income of the company, the company must distribute cash during each fiscal year in an amount equal to the product of: (a) the amount of the taxable income of the company for the year and (b) the highest aggregate rate of federal, state, and local income and self-employment tax imposed on any member's share of the income. Distributions must be paid quarterly at times that coincide to the extent possible with the members' payment of estimated taxes, and the amount of each distribution is to be based on the anticipated taxable income of the company for the fiscal year of the distribution and the anticipated tax rates of members, as determined at the time the distribution is made.

4.2. **Additional Distributions.** Additional distributions of cash or assets may be made by the company to the members at such times and in such amounts as the members determine.

4.3. **Allocation and Limitation.** All annual distributions and additional distributions must be made to members in proportion to their ownership shares. No distribution, including an annual distribution, may be made to the extent it would violate the act's restrictions on distributions.

#### 5. **MEMBERS, CONTRIBUTIONS AND SHARES.**

5.1. **Classes of Shares.** The company will have one class of ownership shares.

5.2. **Initial Members.** The names and addresses of the initial members of the company, the amounts of their capital contributions made in consideration for the issuance of each type of ownership share, and their ownership of each type of ownership share are as indicated on the annex Schedule "A" to this Agreement.

5.3. **Initial Capital Contributions.** The capital contributions of the members must be paid to the company, in collected funds or assets, immediately after all members have signed this agreement.

- 5.4. **Additional Members.** Except as otherwise provided in the section of this agreement relating to substitution, additional members of the company may be admitted only with the members' unanimous approval.
- 5.5. **Additional Contributions.** Except as otherwise provided in the act, no member is required to contribute additional capital to the company without the member's consent. Additional capital contributions may be made by members only if they unanimously approve the contributions and agree on the number of percentage of ownership shares that will be issued in exchange.
- 5.6. **No Interest on Capital Contributions.** No interest will be paid on capital contributions.
- 5.7. **Capital Accounts.** Because the company will be taxed as an S corporation and not as a partnership, no capital accounts will be maintained for the members.

## 6. ALLOCATION OF PROFITS AND LOSSES.

- 6.1. **Net Profit or Loss.** The net profit or net loss of the company for each fiscal year will be determined according to the accounting principles employed in the preparation of the company's federal income tax information return. No special provision will be made for tax-exempt or partially tax-exempt income. The profit or loss, as well as any items thereof that must be separately stated under IRC § 1366(a), will be allocated to the members in proportion to the ownership shares held by each of them.
- 6.2. **Membership Changes.** If a member has not been a member during a full fiscal year of the company, or if the number of ownership shares held by a member changes during a fiscal year, the net profit or net loss for the year will be allocated to the members based on their pro rata shares, as defined in IRC § 1377(a). But if any member's interest in the company is terminated during a fiscal year, the company may elect to treat the company as having two taxable years—one ending on the date the member's interest is terminated and the other ending on the last day of the company's fiscal year. In this case, the net profit or loss for each taxable year will be allocated only between those who were members during that taxable year. This election is available under IRC § 1377(a)(2) and requires the consent of the member whose interest is terminated as well as that of the company and other members.
  - 6.2.1. If a member's interest is terminated as a result of death or disability, the company and all other members must consent to an IRC § 1377(a)(2) election at the request of the terminated member or the terminated member's successor in interest.
  - 6.2.2. If a member's interest is terminated for another reason, the terminated member must consent to making an IRC § 1377(a)(2) election at the request of other members holding a majority of the ownership shares of the other members.

## 7. DISTRIBUTIONS.

- 7.1. **Annual Distributions.** To enable the members to pay taxes on income of the company, the company must distribute cash during each fiscal year in an amount equal to the product of: (a) the amount of the taxable income of the company for the year and (b) the highest aggregate rate of federal, state, and local income tax imposed on any member's share of the income. Distributions must be paid quarterly at times that coincide to the extent possible with the members' payment of estimated taxes, and the amount of each distribution is to be based on the anticipated taxable income of the company for the fiscal year of the distribution and the anticipated tax rates of members, as determined at the time the distribution is made.
- 7.2. **Additional Distributions.** Additional distributions of cash or assets may be made by the company to the members at such times and in such amounts as the managers determine.
- 7.3. **Allocation and Limitation.** All annual distributions and additional distributions must be made to members in proportion to their ownership shares. No distribution, including an annual distribution, may be made to the extent it would violate the act's restrictions on distributions.

## 8. ADMINISTRATION OF COMPANY BUSINESS.

- 8.1. **Management.** The company will be managed by managers. The number of managers serving at any given time will be the number elected by the members, but the number may not be less than one or more than three. Managers may be entities as well as individuals and need not be members.
- 8.2. **Initial Managers.** The company appoint Managers at its first Meeting of the Members of the Company.
- 8.3. **Election and Term of Managers.** Managers will be elected at meetings of the members called for the purpose of electing managers. The notice of any meeting of members at which managers are elected must state that electing managers is a purpose of the meeting. Each manager, including each of the initial managers named in this agreement, will serve for a term ending at the next meeting of members called for the purpose of electing managers, or until the manager's earlier death, resignation, or removal.
- 8.4. **Resignation and Removal of Managers.** A manager may resign at any time by delivering a written resignation to the members and the other managers. The resignation will be effective when received by all members and managers unless the resignation specifies a later effective date. The members may remove any manager at any time, with or without cause. But a manager may be removed by the members only at a meeting of the members called for the purpose of removing the manager, and the notice of the meeting must state that removing a manager is a purpose of the meeting. The resignation or removal of a manager who is also a member will not constitute a withdrawal or expulsion of the manager as a member of the company or

otherwise affect the manager's rights as a member. If a manager resigns or is removed, a meeting of members to elect a successor must be called promptly and held as soon as reasonably possible.

**8.5. Authority of Managers.** The managers are vested with the exclusive authority to manage the company's business and affairs, and except as otherwise provided in this agreement, the members have no right to participate in the management of the company's business and affairs unless they are also managers. Subject to the limitations imposed by the act, this agreement, or action of the managers, each manager is an agent of the company and has authority to bind the company in the ordinary course of its business. For example, a manager may:

8.5.1. Expend the company's funds in the conduct of its business;

8.5.2. Sign and deliver all agreements and documents that are necessary or desirable to carry out the company's business, including documents transferring title to, leasing, or granting a security interest in any of the company's assets, without additional signatures being required;

8.5.3. Borrow money for use in the company's business and sign and deliver promissory notes or other negotiable or nonnegotiable evidences of the company's indebtedness along with mortgages, trust deeds, security agreements, pledge agreements, or other documents securing the indebtedness with assets of the company; and

8.5.4. Appoint officers, such as President, Vice President, Secretary and Treasurer to carry out functions as determined by the Managers to be in the best interest of the Company, including the ability to sign contracts, agreements, obligations, and/or have signing authority on bank accounts.

8.5.5. Engage such persons as may be advisable to operate the company's business.

**8.6. Actions by Managers.** If there is more than one manager serving, all decisions requiring action of the managers or relating to the business or affairs of the company will be decided by the affirmative vote or consent of a majority of the managers. Managers may act with or without a meeting, and any member may participate in any meeting by written proxy or by any means of communication reasonable under the circumstances.

**8.7. Approval of Members.** No manager has authority to do any of the following without the unanimous written consent of the members:

8.7.1. To sell, lease, exchange, mortgage, pledge, or otherwise transfer or dispose of all or substantially all of the assets of the company.

8.7.2. To merge the company with any other entity;

- 8.7.3. To amend the articles of organization of the company or this agreement;
  - 8.7.4. To incur indebtedness by the company other than in the ordinary course of business;
  - 8.7.5. To authorize a transaction involving an actual or potential conflict of interest between a member and the company;
  - 8.7.6. To change the nature of the business of the company; or
  - 8.7.7. To commence a voluntary bankruptcy case for the company.
  - 8.7.8. The managers may refer other matters to the members for approval but are not required to do so.
- 8.8. **Compensation and Reimbursement of Managers.** The managers will be paid such salaries and other compensation as may be fixed by the members from time to time. Managers are also entitled to reimbursement from the company for reasonable expenses incurred on its behalf, including expenses incurred in the formation, dissolution, and liquidation of the company.
- 8.9. **Outside Activities of Managers.** The managers must devote so much time and attention to the business of the company as they deem appropriate, consistent with their fiduciary duties. Managers are not expected to devote their full time to the business of the company, and except as otherwise provided in the section of this agreement relating to fiduciary duties of managers, they may engage in business and investment activities outside the company. Neither the company nor any member has any right to the profits or benefits of such activities.
- 8.10. **Fiduciary Duties of Managers.** Each manager owes the fiduciary duties of care and loyalty to the company and the members and must discharge these duties in accordance with the standards set forth in the section of this agreement relating to outside activities of managers as well as the following standards:
- 8.10.1. In conducting or winding up the company's business, a manager must act in a manner that the manager reasonably believes to be in the best interest of the company and must use the care that a person in like position would reasonably believe appropriate under the circumstances;
  - 8.10.2. A manager must account to the company, and hold as trustee for the company, any profit or benefit derived by the manager in the conduct or winding up of the company's business or derived from use by the manager of the company's property, including the appropriation of a company opportunity;
  - 8.10.3. Except as otherwise provided in the section of this agreement relating to self-interest of managers, a manager must refrain from dealing with the

company in the conduct or winding up of its business either personally or on behalf of a party having an adverse interest to the company; and

8.10.4. A manager may not compete with the company in the conduct of its business prior to the time the company is dissolved.

**8.11. Self-Interest.** A manager or member does not violate any duty or obligation to the company merely as a result of engaging in conduct that furthers the interest of the manager or member. Managers and members may lend money or transact other business with the company, and, in this case, the rights and obligations of a manager or member will be the same as those of a third party, so long as the loan or other transaction has been approved or ratified by the members if a manager is involved in the transaction or by the managers if a member is involved. Unless otherwise provided by applicable law, a manager or member with a financial interest in the outcome of a particular action is nevertheless entitled to vote thereon.

**8.12. Indemnification.** The company must indemnify each of the managers against all liabilities, losses, and costs (including attorneys' fees) incurred or suffered by the manager in connection with the company or in connection with the manager's participation in any other entity, association, or enterprise at the request of the company. The company may, by action of the managers, provide indemnification to employees and agents who are not managers. The indemnification required in this section is not exclusive of that required by any statute, agreement, resolution of members, contract, or otherwise. Notwithstanding any other provision of this agreement, the company has no obligation to indemnify a manager for any liability arising out of: (a) a breach of the manager's fiduciary duties to the company or the members; (b) an act or omission not in good faith that involves intentional misconduct or a knowing violation of law; or (c) an unlawful distribution under the act.

**8.13. Members' Duties.** A member may not compete with the company in the operations of its business before it is dissolved, but a member otherwise owes no fiduciary duty to the company or the other members solely by reason of being a member of the company. Members may engage in business and investment activities outside the company, and neither the company nor any member has any rights to the profits or benefits of such activities.

**8.14. Limited Liability.** Except as otherwise provided in the act or this agreement, no member has any personal liability for any obligation, expense, or liability of the company including the obligation to indemnify managers.

## 9. MEMBER MEETINGS.

**9.1. Meetings.** A meeting of members may be called by the managers or by members holding at least 10% of the ownership shares. If a meeting is called by members, the members give notice demanding a meeting to the managers, and the notice must state the purposes for which the meeting is to be held. Meetings of the members will

be held at the principal office of the company, or at another place within 25 miles of the principal office that is fixed by action of the managers and is set forth in the notice of the meeting.

- 9.2. **Notice of Meetings.** Notice of the date, time, and place of all meetings of members must be given to each member in writing not earlier than 60 days or less than 10 days before the meeting date. The notice must include a description of the purpose or purposes for which the meeting is called. The notice must be mailed to each member at the address for giving notice to the member under the section relating to notice.
- 9.3. **Record Date.** The members who are entitled to notice of a meeting of members and to vote at the meeting, and their respective ownership shares, must be determined as of the record date for the meeting. The record date may be selected by the managers and may not be more than 70 days nor less than 10 days before the meeting. If the managers do not select a record date, it will be the date on which the initial notice of the meeting was mailed to the members.
- 9.4. **Quorum and Voting.** A member may be represented at a meeting of members, and may vote, in person or by written proxy. The presence at a meeting of members, in person or by proxy, of members holding more than 50% of the ownership shares entitled to vote at the meeting constitutes a quorum. Except as otherwise provided in the company's articles of organization, this agreement, or the act, a matter submitted to a vote at a meeting of the members will be approved if a majority of the ownership shares entitled to vote on a matter are voted in its favor.

## 10. ACTION BY MANAGERS OR MEMBERS.

- 10.1. **Meetings without Notice.** Notwithstanding any other provision of this agreement, if all of the managers or all of the members hold a meeting at any time or place and no manager or member objects to the lack of notice, the meeting will be valid even if there was no notice or the notice given was insufficient, and any action taken at the meeting will be the action of the managers or members, as the case may be.
- 10.2. **Actions without Meeting.** Any action required or permitted to be taken by the managers or by the members at a meeting may be taken without a meeting if a written consent setting forth the action taken is signed by all of the managers or members, as the case may be. Written consents of the managers and members must be retained as part of the company's records of meetings.
- 10.3. **Meetings by Telephone.** Meetings of the managers or members may be held by telephone conference call or by any other means of communication by which all participants can hear each other simultaneously during the meeting. A manager or member who participates in a meeting by a means authorized by this section will be considered to be present at the meeting in person.

## **11. ACCOUNTING AND RECORDS.**

- 11.1. Books and Records.** The managers must keep such books and records relating to the operation of the company as are appropriate and adequate for the company's business and carrying out this agreement. At a minimum, the following must be maintained at the principal office of the company: (a) financial statements for the three most recent fiscal years; (b) federal, state, and local income tax returns for the three most recent fiscal years; (c) a register showing the names and current addresses of the members and the number of ownership shares owned by each; (d) the company's articles of organization and any amendments; (e) this agreement and any amendments; (f) minutes of all meetings of managers or members; and (g) all consents to action by managers or members. All members will have access to the company's books and records at all times.
- 11.2. Banking.** All funds of the company must be deposited in accounts in the company's name at banks or other financial institutions selected by the managers. Funds may be withdrawn from the accounts on the signature of a person or persons designated by the managers.
- 11.3. Fiscal Year.** The fiscal year of the company will be the calendar year.
- 11.4. Accounting Reports.** Within 90 days after the close of each fiscal year, the company must deliver to each member an unaudited report of the activities of the company for the year, including a copy of a balance sheet of the company as of the end of the year and a profit and loss statement for the year.
- 11.5. Tax Returns.** The company must prepare and file on a timely basis all required federal, state, and local income tax and other tax returns. Within 90 days after the end of each fiscal year, the company must deliver a Schedule K-1 to each member showing the amounts of any income, deductions, credits, or other items allocated to the member for the fiscal year.

## **12. DISSOCIATION OF MEMBERS.**

- 12.1. Withdrawal.** No member may withdraw voluntarily from the company prior to the expiration of the term of the company.
- 12.2. Expulsion.** A member may be expelled from the company by an affirmative vote of the members holding a majority of the ownership interests held by members other than the expelled member. But a member may be expelled only if the member: (a) has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the company; (b) has willfully or persistently committed a material breach of the articles of organization of the company or this agreement; or (c) has otherwise breached a duty owed to the company or to the other members to the extent that it is not reasonably practicable to carry on the business or affairs of the company with the member. The right to expel a member under the provisions of

this section does not limit or adversely affect any right or power of the company or the other members to recover damages from the expelled member or to pursue other remedies available under applicable law or in equity. In addition to any other remedies, the company or the other members may offset any damages suffered against any amounts otherwise distributable or payable to the expelled member.

**12.3. Events of Dissociation.** A member dissociates from the company if the member is expelled or becomes bankrupt. A member who is an individual also dissociates from the company if the member dies or becomes incapacitated, and a member that is an entity dissociates if it is dissolved or terminated.

12.3.1. A member will be considered to be incapacitated if a guardian of the member or a conservator of the member's estate is appointed. A member serving as the managing member will also be considered to be incapacitated if the member has been unable to perform the essential functions of the managing member of the company, with or without reasonable accommodation, for a consecutive period of 180 days, or it has been determined with reasonable medical certainty that the member will be unable to perform those functions for a consecutive period of 180 days.

12.3.2. A member will be considered bankrupt if: (a) the member makes an assignment for the benefit of creditors; (b) the member files a voluntary petition in bankruptcy; (c) the member is adjudicated as being bankrupt or insolvent; (d) the member files a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, or dissolution for the member, or similar relief under any statute, law, or regulation; (e) the member files an answer or other pleading admitting or failing to contest the material allegations in any proceeding of the foregoing nature filed against the member, or the proceeding is not dismissed within 120 days after it is commenced; or (f) the member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member, or of all or any substantial part of the member's property, or the appointment of such a trustee, receiver, or liquidator without the member's consent is not vacated or stayed within 120 days after the appointment or after the expiration of a stay.

**12.4. Effect of Dissociation.** The "dissociation date" with respect to a dissociating member is the effective date of the member's expulsion. If another event causes the dissociation, the dissociation date is the later of the date of the event, or the first day the company has knowledge of the event. Within 60 days after the dissociation date, the company may elect to purchase all or part of the dissociating member's ownership interest by giving notice of the election to the dissociating member and all other members. If the company does not elect to purchase all of the dissociating member's interest, one or more of the other members may elect to purchase the remaining interest by giving written notice to the dissociating member, the company, and the other members. This notice must be given within 15 days after the 60-day period for the company to purchase the interest expires. If more than one member elects to make the purchase, the electing members have the right to

purchase the interest pro rata in accordance with their ownership interests or on such other basis as they agree. No election to purchase a dissociating member's interest will be effective unless the election is made by the company or the other members to purchase the dissociating member's entire interest. But a failure to purchase the interest of a dissociating member will not cause the company to dissolve.

**12.5. Status of Member.** A member ceases to be a member of the company on the dissociation date. After that, the dissociating member has no rights as a member in the company, including the right to vote or otherwise participate in the management of the company, to act on behalf of the company, or to inspect records of the company.

**12.6. Definitions.** For purposes of this agreement, the term "dissociating member" includes a dissociating member's successor in interest. If there is more than one purchaser of a dissociating member's interest, the term "purchaser" includes all of them.

## 13. PURCHASE PRICE.

13.1. The purchase price for a dissociating member's ownership shares may be determined by agreement between the dissociating member and the purchaser, whether the purchaser is the company or other members. If an agreement is not reached within 30 days following the election to purchase the shares, they must be valued by a third-party appraiser selected by the purchaser who is reasonably acceptable to the dissociating member, and the purchase price will be the value determined by that appraisal. In appraising the shares, the appraiser must consider the greater of the liquidation value of the company or its value as a going concern. The appraiser must also consider the appropriate minority interest, lack of marketability, and other discounts. If the appraisal is not completed within 180 days following the election to purchase a dissociating member's shares, the dissociating member may apply to a court of competent jurisdiction for the appointment of another appraiser, in which case the court-appointed appraiser must appraise the shares in accordance with the standards set forth in this section, and the purchase price will be the value determined by that appraisal. One-half of the costs of all appraisals must be paid by the dissociating member, and the purchaser must pay the other half.

## 14. PAYMENT.

14.1. **Terms.** Whether a dissociating member's ownership shares are purchased by the company or other members, the purchase price for the shares will be paid as provided in this section.

14.1.1. The price will be paid in accordance with a promissory note of the purchaser providing for the payment of the principal amount in 60 equal monthly installments, including interest on the unpaid balance at the prime rate of interest as quoted in *The Wall Street Journal* for the last business day before the closing. If there is more than one purchaser, the purchasers will be

jointly and severally liable for payment of the note. The first installment on the note will be due one month after the date of closing, and an additional installment will be due on the same day of each succeeding month until the note is paid in full. The note will provide that if any installment is not paid when due, the holder may declare the entire remaining balance, together with all accrued interest, immediately due and payable. Partial or complete prepayment of the remaining balance due under the note will be permitted at any time without penalty, but no partial prepayment will affect the amount or regularity of payments coming due thereafter.

14.1.2. The promissory note will be secured by one or more security agreements in a form reasonably acceptable to the lawyer for the dissociating member in which the collateral is a percentage of each type of the outstanding ownership shares of the company sold by the dissociating member. If one or more other members purchase the dissociating member's shares, the collateral furnished by each member will be the number and type of shares purchased by the member. If the company purchases the shares, each of the other members must sign a separate security agreement securing the company's payment of the purchase price. In this case, the collateral for each security agreement will be a percentage of each type of the signing member's ownership shares, as they exist after the purchase, equal to the percentage of the type of outstanding ownership shares being purchased by the company. All security agreements must provide that if there is a default and the security interest in the ownership shares serving as collateral is foreclosed or the shares are retained by the secured party in satisfaction of the secured indebtedness, the shares will be transferable without the consent of the members or tender of the shares for sale to the company or other members. In addition, the security agreement must permit a person to whom shares are transferred to be admitted as a member of the company without consent of the members so long as the person agrees in writing to be subject to this agreement, as amended prior to the transfer.

14.2. **Closing.** The purchase must be closed within 30 days following the determination of the purchase price. At the closing, the dissociating member must sign and deliver to the purchaser a written assignment transferring the dissociating member's ownership shares free and clear of all encumbrances. The assignment must contain warranties of title and good right to transfer. The purchaser must sign and deliver to the dissociating member the promissory note, one or more security agreements, and signed financing statements sufficient to perfect the security interests created by the security agreements. All security agreements must be signed by all of the other members evidencing their consent to the creation of the security interest, transfer of the ownership shares constituting the collateral in the event of a default, and admission of the dissociating member following a default.

14.3. **Indebtedness, Guarantees and Security Interests.** If all of a member's ownership shares are as a result of a dissociation or the tender of the shares to the company for sale, all obligations of the company and other members owed to the dissociating member must be paid in full at the time of the closing, and all obligations of the

dissociating member owed to the company or other members must also be paid in full. In addition, the company and other members must make reasonable efforts to obtain the release of the dissociating member from any guaranty of indebtedness or obligations of the company and to obtain the release of any trust deed, mortgage, pledge, security interest, or other security device in any form on any property or interest in property of the dissociating member that secures the indebtedness or obligations. If these releases cannot be obtained, the company and the other members must, at the time of the closing, agree to indemnify and hold the seller harmless from any loss, liability, or expense, including reasonable attorneys' fees, arising out of or related to the indebtedness or obligations.

## 15. **LIFE INSURANCE.**

- 15.1. **Funding Source.** The company may insure the life of any member for purposes of funding the purchase of ownership shares of deceased members under this agreement, and the members consent to the company's purchase of such insurance.
- 15.2. **Policy Ownership.** The company will be the sole owner of any life insurance policies that it purchases and may use any dividends declared and paid on a policy for the payment of premiums on the policy. The company may name itself as beneficiary of any life insurance policies purchased, but death benefits received by the company must be held in trust for the purposes of this agreement.
- 15.3. **Death of Insured.** If the company owns insurance on the life of a member at the time of his or her death and the price for the purchase of the member's ownership shares is determined by appraisal, the insurance must be valued for purposes of the appraisal at its cash surrender value on the day preceding the member's death. Whether the purchase price is determined by agreement or appraisal and whether the purchase is made by the company or the other members, the purchase price for all of a deceased member's ownership shares may not be less than the amount of the death benefits received by the company, and a down payment must be made when the purchase of the decedent's shares is closed equal to the amount of such death benefits. The amount of this down payment will reduce the amount of the promissory note or notes representing the obligation to purchase the decedent's shares.
- 15.4. **Dissociation of Insured.** The company may retain ownership of insurance on the life of any member who ceases to be a member of the company. But if a member dissociates from the company for a reason other than death, the member has the right to purchase any insurance on his or her life. This option may be exercised at any time after the member's dissociation by giving notice of exercise to the company. The price for any insurance policy purchased will be its cash surrender value on the date of its purchase, less the balance of any loans outstanding against the policy on that date. The sale of the policy must be closed promptly after notice of exercise of the option is given, and the purchase price must be paid in collected funds. The company is not obligated to retain ownership of any policy on the life of a member for more than 60 days after his or her dissociation.

## 16. TRANSFER OF OWNERSHIP SHARES.

- 16.1. Effectiveness of Transfers.** No member may transfer any portion of the member's ownership shares except as permitted in this section. Any purported transfer of an ownership share in violation of this agreement will be void and of no effect unless:
- (a) the transfer will not cause the company's S corporation election to terminate and
  - (b) the transfer is otherwise permitted under this agreement. A "transfer" includes a sale, exchange, pledge, or other disposition, whether voluntary, involuntary, or by operation of law, and specifically includes the transfer of a member's shares incident to a dissolution of the member's marriage or a legal separation from his or her spouse.
- 16.2. Securities Law Restriction.** Each member acknowledges that the member's ownership shares have not been registered under the Securities Act of 1933 or applicable state securities laws in reliance on exemptions from registration and that the resale or other transfer of the shares is restricted by applicable provisions of those laws. Each member agrees that the member's ownership shares may not be offered for sale, sold, transferred, pledged, or otherwise disposed of unless the shares are registered under the Securities Act of 1933 and applicable state securities laws or unless an exemption from registration is otherwise available.  
**NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, A MEMBER'S OWNERSHIP SHARES IN THE COMPANY MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGERS THAT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.**
- 16.3. Permitted Transfers.** A member may transfer all or part of the member's ownership shares with the prior written consent of all other members. If the other members do not consent, the member may make the transfer if:
- (a) the shares have been tendered for sale to the company;
  - (b) the tender has not been accepted by the company or the other members within the time limits set forth in this agreement;
  - (c) the transfer is made to the transferee named in the notice of tender within 180 days after the notice is given; and
  - (d) the transfer is at a price and on terms no more favorable to the transferee than those set forth in the notice.
- 16.4. Tender of Shares.** If a member wants to transfer all or part of the member's ownership shares and the other members do not consent, the shares may be tendered for sale by giving notice to the company. The notice must contain the name and address of the proposed transferee, the price to be paid for the shares, if any, and the terms of the proposed transfer. If a member's shares are transferred involuntarily or by operation of law, the successor in interest to the transferring member may give notice of a tender to the company at any time following the transfer. Another member may also give notice of a tender on behalf of the successor in interest. In this case, the notice must be given to the successor in interest as well as the company, and the successor in interest will be deemed to have given the notice of a

tender at the time it is given by the member. For purposes of this agreement, the term “tendering member” includes a successor in interest to a member whose ownership interest has been transferred.

- 16.5. **Acceptance of Tender.** Within 60 days after a notice of tender is given, the company may accept the tender by giving notice to the tendering member. The company will then have the right to purchase the tendered ownership shares for the lesser of the price set forth in the notice of tender (if the proposed transfer is to be by sale) or the price determined under this agreement as if the tendering member dissociated from the company on the date of the tender. The purchase will be closed and the price paid on the terms that would apply under this agreement if the tendering member had dissociated on the date of the tender, unless the proposed transfer involves a sale, in which case the company may choose to pay the purchase price on the terms set forth in the notice of tender or in this agreement.
- 16.6. **Purchase by Members.** If the company fails to exercise its right to accept a tender, any member may accept the tender and purchase the tendered shares at the same price and on the same terms that would apply to a purchase by the company. Notice of acceptance of tender by a member must be given to all other members as well as to the tendering member within 15 days following the expiration of the 60-day period for the company to accept the tender. If more than one member accepts the tender, the accepting members have the right to purchase the tendered shares pro rata in accordance with their ownership of the company’s outstanding shares.
- 16.7. **Purchase of Entire Interest Required.** No acceptance of a tender will be effective unless the tender is accepted by the company or by other members as to all of the ownership shares tendered. A tendering member is not required to sell only a part of the shares that have been tendered.
- 16.8. **Effect of Tender.** The member tendering ownership shares will cease to be a member with respect to the shares when the tender is accepted by the company or other members. Thereafter, the tendering member will have no rights as a member in the company, except the right to have the tendered shares purchased in accordance with this agreement.
- 16.9. **Substitution.** If part or all a member’s ownership shares are transferred, the transferee may be admitted as a member of the company if the transferee commits in writing to be subject to this agreement, as amended prior to the transfer. But a transferee will be admitted only if all members consent to the admission, and they may withhold their consent reasonably or unreasonably. If a transferee is not admitted as a member, the transferee will be allocated the portion of the company’s profits or losses allocated to the ownership shares that have been transferred and will have the right to receive distributions from the company with respect to the shares. But the transferee will not have the other rights of a member, including the right to vote or otherwise participate in the management of the company, to act on behalf of the company, or to inspect records of the company. If the transferee is the only member of the company following the transfer, the transferee will be admitted

as a member without the need for an agreement to be bound by this operating agreement or the consent of members.

## 17. DISSOLUTION AND WINDING UP.

**17.1. Causes of Dissolution.** The company will dissolve on the earliest of the following events: (a) the expiration of the period of time for the company and other members to elect to purchase the ownership shares of a dissociating member if neither the company nor the other members have exercised this election; (b) approval of a dissolution of the company by unanimous consent of the members; or (c) at such time as the company has no members.

**17.2. Liquidation after Dissolution.** Following the dissolution of the company, the members must wind up its affairs. A full account must be taken of the assets and liabilities of the company, and assets of the company must be liquidated except those that will be distributed to creditors or members in kind. The assets of the company must then be applied and distributed in the following order of priority:

17.2.1. To the creditors of the company in satisfaction of liabilities and obligations of the company, including, to the extent permitted by law, liabilities and obligations owed to members as creditors (except liabilities for unpaid distributions).

17.2.2. To any reserves set up for contingent or unliquidated liabilities or obligations of the company deemed reasonably necessary by the members, which reserves may be delivered to an escrow agent to be held for disbursement in satisfaction of the liabilities and obligations of the company, with any excess being distributed to the members as provided in the following subsection; and

17.2.3. To the members in proportion to the ownership shares held by each.

**17.3. Distribution of Assets in Kind.** Assets of the company may be distributed in kind in the process of winding up with the unanimous approval of the members. The fair market value of any assets distributed in kind must be determined, and that value will be charged against the amount distributable to the member receiving the assets.

**17.4. Limited Liability.** If the assets of the company are insufficient to discharge the liabilities of the company after it is dissolved, no member will have any obligation to contribute capital to the company to cover the shortfall.

## 18. PRESERVATION OF S CORPORATION ELECTION.

**18.1. Consent to Revocation.** No member may sign a consent to the revocation of the company's election to be taxed as an S corporation for federal income tax purposes unless members holding at least 75% of the ownership shares consent to the revocation.

**18.2. Limitations on Company Action.** The company may not, without approval of the members holding at least 75% of the ownership shares, take any action that would result in its failure to qualify as an S corporation, including without limitation, the issuance of a second class of ownership shares, issuance of shares to more than 100 members, or issuance of shares to a person who is not eligible to own stock of an S corporation.

**18.3. Inadvertent Termination.** If the company's S corporation election is terminated and the termination is inadvertent within the meaning of IRC § 1362(f), each member must make any adjustments required by the Internal Revenue Service in order for the company to be treated as if its S corporation election remained in effect. But no member is required to make any adjustment that will adversely affect the member, considering the position the member would have been in had the company's S corporation election not terminated, unless the company or the other members indemnify and hold the member harmless against the adverse consequences. The obligations of this subsection are binding on all members who are parties to this agreement or become members of the company in the future, whether or not any such member holds ownership shares at the time the required adjustments are to be made.

## 19. ENDORSEMENT ON SHARE CERTIFICATES.

19.1. The Company may, but is not required to issue membership certificates.

19.2. The following must be endorsed on all certificates representing ownership shares of the company: *The ownership shares evidenced by this certificate are subject to and transferable only upon compliance with the terms of the operating agreement of the company issuing this certificate. Any transfer in violation of that agreement is invalid, and the agreement is automatically binding on anyone who acquires ownership shares. A copy of the operating agreement is available for inspection at the company's office.*

## 20. REPRESENTATIONS AND WARRANTIES OF MEMBERS.

20.1. Each member represents and warrants to the company and the other members that the member has acquired ownership shares for the member's own account for investment and not with a view to distribution of the shares.

## 21. CROSS OFFER.

21.1. **Cross Offer Notice.** If the managers are unable to make decisions about the management of the company as a result of deadlock for a period of 180 days and the members are unable to resolve the deadlock, any member (the "initiating member") may give notice (the "cross offer notice") to all other members of the initiating

member's intent to either purchase the ownership shares of all other members in the company or sell the initiating member's ownership shares to the other members. The cross offer notice must set forth a proposed price and terms of payment, and the price and terms will apply whether the initiating member makes a purchase or a sale. A cross offer notice can only be given while the members are unable to make decisions, and no such notice may be given while another member's offer to purchase or sell under a cross offer notice is outstanding.

**21.2. Response.** The other members can elect to either sell their shares or purchase those of the initiating member. The election requires the consent of other members who hold a majority of the shares other than those held by the initiating member. The election must be made by giving notice thereof to the initiating member within 30 days after the cross offer notice is given. If the other members fail to make an election or fail to provide timely notice of the election, the other members will be deemed to have elected to sell their shares to the initiating member.

**21.3. Dissenting Members.** If members holding a majority of the shares other than those of the initiating member elect to purchase the initiating member's shares, any member who did not consent to the election may give notice of dissent to the remaining other members. If a notice of dissent is given within 15 days after an election is made to purchase the initiating member's shares, the dissenting member's shares must be purchased by the other members. The purchase will be made at the same price and on the same terms as the purchase of the initiating member's shares and will be closed at the same time as that purchase.

**21.4. Closing of Purchase or Sale.** A purchase or sale resulting from a cross offer notice must be closed within 30 days after the other members give notice to the initiating member of their response to the cross offer notice, or if no response is given, 30 days from the expiration of the period for the other members to respond.

## **22. MISCELLANEOUS PROVISIONS.**

**22.1. Amendment.** The members may amend or repeal all or part of this agreement by unanimous written agreement; it cannot be amended or repealed by oral agreement.

**22.2. Binding Effect.** The provisions of this agreement are binding on and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the members. This section is, however, not a modification of any restriction on transfer set forth in this agreement.

**22.3. Notice.** Except as otherwise provided in other sections of this agreement, any notice or other communication required or permitted to be given under this agreement must be in writing and personally delivered or mailed by certified mail, return receipt requested, with postage prepaid. Notices mailed to a member must be addressed to the member's address listed in the section of this agreement relating to initial members, or if there is none, the address of the member shown on the records of the company. Notices mailed to the company must be addressed to its principal office. The address of a party to which notices are to be mailed may be changed by the

party's giving written notice to the other parties. All mailed notices and other communications will be deemed to be given at the expiration of three days after the date of mailing unless the recipient acknowledges receipt prior to that time.

- 22.4. **Specific Performance.** The members declare that it is impossible to measure in money the damages that will accrue if any member or the successors or assigns of any member should fail to perform any of the obligations contained in the provisions of this agreement relating to transfer of ownership shares and preservation of S corporation status, including a tendering member's obligation to vote the member's shares in favor of the company's purchase of the shares at the request of the other members. Therefore, those provisions may be specifically enforced in equity, and all members waive the claim or defense that the remedy at law is adequate if they are breached.
- 22.5. **Litigation Expense.** If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party will be entitled to recover a reasonable attorneys' fee in the proceeding, or any appeal, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.
- 22.6. **Additional Documents.** Each member must execute all additional documents and take all actions as are reasonably requested by the other members in order to complete or confirm the transactions contemplated by this agreement.
- 22.7. **Counterparts.** This agreement may be executed in two or more counterparts, which together will constitute one agreement.
- 22.8. **Governing Law.** This agreement will be governed by the law of the state in which the articles of organization of the company have been filed and must be construed in accordance with the law of that state.
- 22.9. **Third Party Beneficiaries.** The provisions of this agreement are intended solely for the benefit of the members and create no rights or obligations enforceable by any third party, including any creditor of the company, except as otherwise provided by applicable law.

*(The remainder of this page intentionally left blank)*

Executed by the Members this \_\_\_\_ Day of \_\_\_\_\_.

\_\_\_\_\_  
**Insert Typed Name** (SEAL)

\_\_\_\_\_  
**Insert Typed Name** (SEAL)

#### **SCHEDULE A: MEMBER(S) OF THE COMPANY**

Name and Address of Member(s)	Capital Contribution	Membership Interest
Total	\$	%