

**FORM 6.2**

**MODEL OPERATING AGREEMENT (GENERIC) FOR  
MANAGER-MANAGED MULTI-MEMBER LIMITED LIABILITY COMPANY**

- (i) WHICH HAS THREE OR MORE MEMBERS;**
- (ii) WHICH IS MANAGED BY A MANAGER-MEMBER UNDER A  
SIMPLE LIMITED PARTNERSHIP MANAGEMENT STRUCTURE;**
- (iii) WHICH IS CONTROLLED BY ITS MEMBERS;**
- (iv) WHICH IS TAXABLE AS A PARTNERSHIP; AND**
- (v) WHICH IS NOT TAILORED FOR USE  
UNDER PROP REG. §1.1402(a)-2\***

**(VERSION DATED AS OF DECEMBER 9, 2009)**

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\*Internal Revenue Service Proposed Regulation § 1.1402(a)-2. When an individual is both a manager and a member of a non-professional manager-managed multi-member LLC taxable as a partnership, an Internal Revenue Service proposed regulation designated Proposed Regulation § 1.1402(a)-2 (the “Prop. Reg.”) can be useful in reducing the individual’s Social Security Tax liability (technically, the individual’s “Self-Employment Tax” liability) on his or her share of LLC income. Chapter 18 of this book contains an extensive discussion of the Prop. Reg., and it contains model provisions under the Prop. Reg. that can be included in LLC agreements to provide the above savings.

However, an election by the LLC to be taxable as an S corporation can often achieve the same Social Security Tax saving goal more simply. Lawyers who are not tax specialists but who wish to assist the above individuals in reducing their Self-Employment Tax liability on their shares of income of the above types of LLCs should consult with a tax professional whose expertise includes both Subchapter S and the Prop. Reg.

**OPERATING AGREEMENT  
[OR LIMITED LIABILITY COMPANY AGREEMENT  
OR OTHER APPLICABLE STATUTORY TERM UNDER  
THE GOVERNING LIMITED LIABILITY COMPANY ACT]  
OF \_\_\_\_\_, LLC**

**A MANAGER-MANAGED MULTI-MEMBER [STATE] LIMITED LIABILITY COMPANY  
TAXABLE AS A PARTNERSHIP**

Dated as of \_\_\_\_\_

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**OPERATING AGREEMENT  
[OR LIMITED LIABILITY COMPANY AGREEMENT OR OTHER APPLICABLE  
STATUTORY TERM UNDER THE GOVERNING LIMITED LIABILITY COMPANY  
ACT] OF \_\_\_\_\_, LLC**

**A MANAGER-MANAGED MULTI-MEMBER  
[STATE] LIMITED LIABILITY COMPANY  
TAXABLE AS A PARTNERSHIP**

**DATE OF AGREEMENT; PARTIES**

This limited liability company operating Agreement (the “Agreement”), dated as of \_\_\_\_\_, is among the following parties (the “members”):

1. [NAME OF MEMBER], an individual, a resident of the State of [STATE], residing at \_\_\_\_\_;
2. [NAME OF MEMBER], an individual, a resident of the State of [STATE], residing at \_\_\_\_\_; and
3. [NAME OF MEMBER], an individual, a resident of the State of [STATE], residing at \_\_\_\_\_.

Promptly after the formation of \_\_\_\_\_, LLC (the “LLC”), the LLC shall be automatically added as a party to the Agreement under Section 2.3.

**STATEMENT OF BACKGROUND**

1. The members intend to form the LLC under the [STATE] Limited Liability Company Act (the “LLC Act”), [CITATION OF LLC STATUTE].
2. The principal purpose of the LLC is to [STATE PURPOSE HERE].
3. This Agreement sets forth the agreement among the parties about their respective rights and duties as parties to the Agreement and about the business, internal affairs and taxation of the LLC.

**TERMS AND CONDITIONS**

The parties, intending to be legally bound, agree as follows:

**Section 1 INTRODUCTORY PROVISIONS CONCERNING THE LLC**

**1.1 LLC’s NAME**

The name of the LLC shall be \_\_\_\_\_.

## **1.2 IDENTIFICATION OF INITIAL MEMBERS; ADMISSION OF ADDITIONAL MEMBERS**

On the date of formation of the LLC, the members shall be the only members of the LLC. Additional members shall be added to the LLC only in accordance with Sections 10 and 11 (concerning, respectively, grants and transfers of membership rights).

## **1.3 FILING OF ARTICLES**

On or promptly after the effective date of this Agreement (as defined in Section 2.1), the members shall cause the Articles of Organization (the "Articles") [OR OTHER OFFICIAL FORM] to be filed with the Secretary of State (the "Secretary of State") [OR OTHER APPROPRIATE STATE OFFICIAL] of the State of [STATE]. The Articles as filed shall be substantially identical in form and content to that set forth in Exhibit A.

## **1.4 ENTITY STATUS OF LLC; OWNERSHIP OF LLC ASSETS**

Upon its formation, the LLC shall be a legal entity separate and distinct from its members. The LLC shall own all of its assets in its own name and no member shall have any direct interest in those assets.

## **1.5 LLC'S PRINCIPAL PURPOSE**

The LLC's principal purpose shall be as set forth above. The LLC may also pursue any other purpose permitted by law and approved by the majority vote of the members.

## **1.6 LLC'S POWERS**

In pursuing its lawful purposes, the LLC shall have the power to do all things that LLCs are permitted to do under the LLC Act.

## **1.7 LLC'S DURATION**

The existence of the LLC shall begin on the date of filing of the Articles. The duration of the LLC shall be indefinite and shall terminate only as set forth in Section 24 (concerning the LLC's dissolution, winding-up and liquidation).

## **1.8 LLC'S PRINCIPAL PLACE OF BUSINESS**

Upon the LLC's formation, the address of the LLC's principal place of business shall be \_\_\_\_\_. The members may change the LLC's principal place of business from time to time by the majority vote of the members.

## **1.9 LLC'S REGISTERED AGENT AND REGISTERED OFFICE**

The LLC's registered agent and registered office shall be as set forth in the Articles. The LLC may change its registered agent and office from time to time by the majority vote of the members. The manager shall amend the Articles [OR FOLLOW OTHER APPLICABLE STATE PROCEDURES] to reflect the change.

#### **1.10 MANAGEMENT OF LLC BY A MEMBER-MANAGER; APPOINTMENT OF MANAGER**

- (a) Management Structure. The LLC shall be managed by a member-manager (the “manager”) in accordance with the terms of this Agreement.
- (b) Appointment of Manager. Under the terms and conditions of this Agreement:
  - (1) The LLC hereby appoints [NAME OF MANAGER] as its initial manager; and
  - (2) [NAME OF MANAGER] hereby accepts this appointment.

#### **1.11 LIMITED LIABILITY OF MEMBERS AND THE MANAGER**

Neither the members as members nor the manager shall be personally obligated to any third party for any debt, obligation or liability of the LLC solely because of being a member or manager.

#### **1.12 FEDERAL AND STATE TAXATION OF LLC AND MEMBERS**

- (a) Federal Income Taxation
  - (1) The LLC. For all federal income tax purposes, the LLC shall be subject to federal income tax treatment as a partnership under Internal Revenue Code (“IRC”) Subchapter K (“Subchapter K”).
  - (2) The Members. On their respective shares of LLC income, losses, deductions, credits and other tax items (collectively, the LLC’s “tax items”), the members shall be subject to federal income tax treatment as partners under Subchapter K.
- (b) Self-Employment Taxation of Members Who Are Individuals. Individuals who are members of the LLC shall be subject to Self-Employment Tax on their respective shares of LLC income as provided in IRC §§ 1401 and 1402 and Internal Revenue Service Prop. Reg. § 1.1402(a)-2.
- (c) Construction of Agreement. This Agreement shall be construed and applied so as to ensure full compliance with the provisions of (i) Subchapter K; (ii) IRC §§ 1401 and 1402; and (iii) federal tax authorities thereunder as in effect from time to time.
- (d) State Taxation. The LLC and the members shall be taxable under the laws of [RELEVANT STATES] as provided by those laws and by the regulations thereunder.

#### **1.13 LLC’S ANNUAL ACCOUNTING PERIOD**

The LLC’s annual accounting period for financial and tax purposes shall be the calendar year [OR OTHER APPROPRIATE PERIOD].

#### **1.14 LLC’S ACCOUNTING METHOD**

- (a) Use of Federal Income Tax Definitions, Etc. In computing its income, deductions and other tax and financial items, the LLC shall use federal income

tax definitions and rules to the extent available under applicable federal tax authorities.

- (b) Cash [ACCRUAL, ETC.] Basis for Recognizing Income, Etc. In determining when to recognize income, expenses and other tax items, the LLC shall use the cash [OR ACCRUAL OR OTHER] basis.

#### **1.15 LLC's ACCOUNTING FIRM**

The LLC's accounting firm shall be [NAME OF ACCOUNTING FIRM]. The members may terminate the LLC's relation with this firm and may choose another firm as its accounting firm upon the majority vote of the members.

#### **1.16 LLC's PRINCIPAL TAX ADVISER**

The LLC's principal tax adviser shall be [NAME OF TAX ADVISER]. The members may terminate the LLC's relation with this principal tax adviser and may choose another principal tax adviser upon the majority vote of the members.

#### **1.17 LLC's PRINCIPAL LAWYER**

The LLC's principal lawyer shall be [NAME OF LAWYER OR LAW FIRM]. The members may terminate the LLC's relation with this lawyer and may choose another lawyer upon the majority vote of the members.

## **Section 2 INTRODUCTORY PROVISIONS CONCERNING THIS AGREEMENT AND THE ARTICLES**

### **2.1 BINDING EFFECT OF AGREEMENT; EFFECTIVE DATE**

This Agreement shall bind the members when each of them has signed it. The effective date of the Agreement (the "Effective Date") shall be the date on which the last of the members to sign and date it shall have done so.

### **2.2 MEMBERS' ACCEPTANCE OF ARTICLES**

Each member has reviewed and hereby approves and accepts the Articles.

### **2.3 ADDITION OF LLC AS PARTY TO AGREEMENT**

Upon the formation of the LLC, the LLC shall automatically become a party to this Agreement.

## **Section 3 MEMBERS' CONTRIBUTIONS TO THE LLC**

### **3.1 CONTRIBUTION—DEFINITION**

For purposes of this Agreement, a contribution shall mean any cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services that a person contributes to the LLC in exchange for the person's membership rights (as

defined in Section 3.2).

### **3.2 MEMBERSHIP RIGHTS—DEFINITION**

For purposes of this Agreement, the membership rights of a member shall mean the totality of the member's rights as a member under the Agreement and the LLC Act, including both:

- (a) Economic rights; and
- (b) Non-economic rights (such as voting rights, rights to receive notice of, to attend and to participate in meetings, rights with respect to LLC information, fiduciary rights and dispute resolution rights).

A member's economic rights shall include, but shall not necessarily be limited to, the member's LLC interest (as defined in Section 3.3).

### **3.3 LLC INTEREST—DEFINITION**

A member's LLC interest shall mean the member's right under this Agreement and under the LLC Act to receive:

- (a) Allocations of the LLC's income and losses; and
- (b) Distributions of the LLC's cash and other assets.

### **3.4 MEMBERS' CONTRIBUTIONS TO THE LLC IN EXCHANGE FOR THEIR MEMBERSHIP RIGHTS**

- (a) Initial Contributions. Promptly after the LLC's formation, the members shall, in exchange for their membership rights, make contributions to the LLC of the cash, property, services and promises of cash, property and services identified in the attached Exhibit B and in accordance with all other terms set forth in that exhibit.
- (b) Documentation of Contribution. Promptly after any member makes a contribution to the LLC, the LLC shall file in its records one or more documents, such as photocopies of cancelled checks, documentary evidence of bank transfers, or photocopies of executed bills of assignment, showing that the member has made the contribution.\_
- (c) No Capital Calls. No member shall be obligated to make a contribution to the LLC except as provided in Exhibit B and written amendments thereto.
- (d) Subsequent Member Contributions. Members admitted to the LLC after its formation shall make contributions in exchange for their membership rights as set forth in amendments to Exhibit B.

### **3.5 NO INTEREST ON CONTRIBUTIONS OR ON ACCRUED ALLOCATIONS**

The members shall earn no interest on their contributions under this Section 3 or on amounts allocated to them under Section 4.

### **3.6 VALUATION OF NON-CASH CONTRIBUTIONS**

Before any member makes a contribution to the LLC in a form other than cash, the members shall agree by unanimous vote as to the value of that contribution.

### **3.7 REQUIREMENT OF SIGNED WRITING AS CONDITION FOR ENFORCEABILITY OF PROMISES TO MAKE CONTRIBUTIONS**

No promise by a member to make a contribution to the LLC shall be enforceable unless it is set forth in this Agreement or in another writing signed by the member.

### **3.8 REQUIREMENT OF UNANIMOUS VOTE OF OTHER MEMBERS IN ORDER TO AMEND PROMISE TO MAKE CONTRIBUTION**

No term of any promise by a member in this Agreement to make a contribution to the LLC shall be amended except with the unanimous vote of the other members.

### **3.9 MEMBERS' DUTY TO MAKE PROMISED CONTRIBUTIONS EVEN IF THEY ARE DISABLED, ETC.**

Each member and the member's representative or successor shall be obligated to perform any promise by the member to make a contribution to the LLC even if the member is prevented from doing so because of disability, death, or otherwise.

### **3.10 CERTAIN DUTIES OF MEMBERS CONTRIBUTING PROPERTY TO THE LLC**

- (a) No Conflict as to Contribution. A member obligated to contribute property other than cash to the LLC under this Agreement shall, before making any such contribution, ensure:
  - (1) That there is no conflict between this obligation and any obligation of the member to any other person, including an obligation under any other agreement or under any testamentary instrument of the member; and
  - (2) That the contribution is consistent with any applicable laws concerning fraudulent transfers.
- (b) Warrant of No Conflict, Etc. By signing this Agreement, the member shall warrant the absence of any conflict or inconsistency referred to in Section 3.10(a).

### **3.11 PENALTIES FOR FAILURE TO MAKE PROMISED CONTRIBUTIONS**

- (a) Penalties. If a member (the "defaulting member") fails to make a contribution in accordance with Exhibit B, the non-defaulting members may impose upon the defaulting member any penalty that the non-defaulting members believe to be reasonable in the circumstances. Penalties may include:
  - (1) Reduction or elimination of the defaulting member's membership rights;
  - (2) Forfeiture of all or a portion of the defaulting member's membership rights; or



- (3) Sale of all or a portion of the defaulting member's membership rights.
- (b) Consultation with Principal Tax Adviser and Principal Lawyer. In determining a penalty to apply under this Section 3.11, the non-defaulting members shall use reasonable efforts to consult in advance with the LLC's principal tax adviser and principal lawyer.

### **3.12 CONTRIBUTIONS INCLUDE ONLY CONTRIBUTIONS ACTUALLY MADE, ETC.**

For purposes of this Agreement, the contributions of a member shall include only contributions that the LLC has actually received from the member and has not returned to the member.

## **Section 4 LLC'S ALLOCATIONS TO THE MEMBERS**

### **4.1 ALLOCATIONS—IN GENERAL**

- (a) Allocation—Definition. For purposes of this Agreement, an allocation by the LLC to a member of the LLC's tax items shall mean an apportionment of these items to the member's capital account (as defined in Section 6).
- (b) Items Allocable to the Members. The dollar items of the LLC that the LLC shall allocate to the members under this Agreement shall be the LLC's tax items (as defined in Section 1.12(a)(2)).

### **4.2 FORMULA FOR LLC ALLOCATIONS**

The LLC shall allocate its tax items among the members in proportion to their respective contributions to the LLC. However:

- (a) Allocations Disproportionate to Capital Contributions. If the LLC allocates any of its tax items to a member in a manner that is disproportionate to the member's share of LLC contributions, the LLC shall make this allocation in compliance with the requirements of IRC § 704(b) and the U.S. Treasury Regulations (the "Regulations") thereunder (governing allocations disproportionate to capital contributions).
- (b) Allocations in Respect of Contributed Property. If a member makes a contribution of property other than cash to the LLC, the LLC shall allocate its tax items among the contributing member and the non-contributing members in respect of this contribution in compliance with IRC § 704(c)(1)(A) and the Regulations thereunder (governing allocations relating to contributed property that has appreciated or depreciated in the hands of its contributor before its contribution).

## **Section 5 LLC DISTRIBUTIONS TO THE MEMBERS**

### **5.1 DISTRIBUTION, ETC. —DEFINITIONS**

For purposes of this Agreement:

- (a) Distribution—Definition. A distribution by the LLC to a member shall mean any

transfer of its cash or other assets to the member except:

- (1) Payments to a member relating to transactions covered by IRC § 707(a) (concerning transactions of the LLC with members acting in capacities other than as members);
  - (2) Payments to a member under IRC § 707(c) (concerning guaranteed payments to a member for services to or for the LLC or for the LLC's use of the member's capital); and
  - (3) Reimbursements of expenses to a member under Section 5.12.
- (b) Interim Distribution—Definition. An interim distribution to a member shall mean any distribution except a liquidating distribution (as defined in Sections 5.1(c)(1) and (2)).
- (c) Liquidating Distribution—Definition. A liquidating distribution shall mean a distribution in connection with:
- (1) The LLC's partial or complete redemption of a member's membership rights; or
  - (2) The LLC's dissolution and liquidation.

## **5.2 FORMULA FOR LLC ALLOCATIONS OF INTERIM DISTRIBUTIONS AMONG THE MEMBERS**

The LLC shall allocate interim distributions among the members in compliance with the formula on the basis of which it allocates its tax items among them under Section 4.2.

## **5.3 INTERIM DISTRIBUTIONS—IN GENERAL**

Except as otherwise provided in Section 5.4, the following matters shall be determined by the unanimous vote of the members:

- (a) Whether the LLC shall make an interim distribution to the members;
- (b) The amount of any such distribution; and
- (c) The timing of the distribution.

## **5.4 TAX DISTRIBUTIONS**

- (a) Distributions for Members' Tax Obligations. To the extent that the LLC's financial condition and other relevant factors permit, the LLC shall make interim distributions ("tax distributions") to the members at such times and in such amounts as to enable them to pay federal, state and other taxes on their shares of LLC income on time and in full.
- (b) Same Basis as Income Allocations. The LLC shall allocate tax distributions among the members on the basis on which the LLC allocates its income among them.
- (c) Highest Tax Rate on Member Assumed. In computing the amount of each such distribution to each member, the LLC shall assume that the member is obligated to pay the highest combined federal and state marginal rate of tax on the

member's share of LLC income.

## **5.5 LIQUIDATING DISTRIBUTIONS—GENERAL RULES**

- (a) Redemption. The LLC shall make liquidating distributions to members in connection with its redemption of their membership rights in compliance with Section 9 (concerning redemptions and cross-purchases of membership rights).
- (b) Liquidating Distributions after LLC's Dissolution. The LLC shall make liquidating distributions to the members in connection with the liquidation of the LLC in compliance with Section 5.6.

## **5.6 PAYMENTS AND DISTRIBUTIONS OF LLC ASSETS TO BE MADE BY LLC IN CONNECTION WITH ITS LIQUIDATION**

- (a) Order of Payments and Distributions. Upon completion of the LLC's winding-up (as defined in Section 24.1(b)), the LLC shall pay out its cash and other assets in connection with its liquidation to the following persons in the following order:
  - (1) Payment of Creditors. The LLC shall pay (or shall make adequate provision to pay) its creditors, including members who are creditors.
  - (2) Distributions to the Members. The LLC shall distribute any remaining LLC assets to the members in such a manner that after these distributions, each member shall have a capital account of zero.
- (b) Timing of Payments; Compliance with IRC § 704(b), Etc. To the extent reasonably practicable, the LLC shall make the above payments on or before the date of termination of the LLC's legal existence. It shall make all such payments in compliance with (i) all applicable provisions of IRC § 704(b) and the Regulations; and (ii) other applicable federal and state law.

## **5.7 STATUS OF MEMBERS AS UNSECURED CREDITORS OF LLC WITH RESPECT TO DISTRIBUTIONS**

Each member shall have the status of an unsecured creditor with respect to distributions to which the member is entitled under the Agreement.

## **5.8 RESTRICTIONS ON DISTRIBUTIONS IN KIND**

If this Agreement or applicable law requires the LLC to make a distribution to any member, then:

- (a) The member may not compel the LLC to make the distribution except in the form of cash; and
- (b) The LLC may not compel a member to accept the distribution except in the form of cash.

## **5.9 QUALIFIED INCOME OFFSETS WHEN MEMBERS HAVE DEFICIT CAPITAL ACCOUNTS**

- (a) Qualified Income Offset

- (1) Special Allocation to Eliminate Deficit Capital Account. If any member unexpectedly receives an adjustment, allocation, or distribution described in Regulations §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6) that results in the member's having a deficit capital account, the LLC shall specially allocate items of LLC income and gain to the member in an amount and manner sufficient to eliminate, to the extent required by applicable Regulations, the deficit capital account of the member as quickly as possible.
- (2) Restriction on Allocations to Cure Deficit Capital Accounts. However, an allocation under Section 5.9(a)(1) of this Agreement shall be made only if and to the extent that the member would have a deficit capital account after all other allocations provided for in this Section and elsewhere in this Agreement and its exhibits have been tentatively made as if Section 5.9(a)(1) were not in this Agreement.
- (b) Offsetting Allocations to the Other Members. If the LLC makes an allocation to a member under Section 5.9(a)(1) for any relevant taxable year of the LLC, it shall, to the extent permitted by the Regulations, make offsetting allocations to the other members as soon as reasonably possible thereafter.

#### **5.10 PROHIBITION AGAINST UNLAWFUL DISTRIBUTIONS**

- (a) No Unlawful Distributions. The LLC shall make no unlawful distribution of its assets (as defined in Sections 5.10(a)(1) and (2)) to any member.
- (b) Unlawful Distribution – Definition. A distribution shall be an unlawful distribution within the meaning of Section 5.10(a) in either of the following circumstances:
  - (1) Net Worth Test. A distribution shall be an unlawful distribution if, immediately after the distribution, the sum of the LLC's liabilities would exceed the aggregate fair market value of its assets.
  - (2) Solvency Test. A distribution shall be an unlawful distribution if, as a result of the distribution, the LLC would be unable to pay its reasonably foreseeable obligations as they become due.

#### **5.11 LIABILITY OF MANAGER AND MEMBERS FOR AUTHORIZING OR RECEIVING UNLAWFUL DISTRIBUTIONS**

A manager who votes to authorize an unlawful distribution and members who receive such a distribution shall be liable for legal sanctions as provided in the LLC Act.

#### **5.12 MEMBERS' RIGHT TO REIMBURSEMENT OF EXPENSES**

If any member reasonably incurs an expense on behalf of the LLC and reasonably documents this expense to the LLC, the LLC shall reimburse the member for this expense as promptly as reasonably possible after receiving this documentation.

## **Section 6 MEMBERS' CAPITAL ACCOUNTS**

### **6.1 CAPITAL ACCOUNT— DEFINITION**

A member's capital account shall mean the dollar amount of the member's respective portion of the equity of the LLC as determined in accordance with U.S. Treasury Regulation Section 1.704-1(b)(iv) and other applicable Regulations as in effect from time to time.

### **6.2 LLC'S DUTY TO COMPUTE MEMBERS' CAPITAL ACCOUNTS, ETC.**

The LLC shall compute the capital account of each member:

- (a) At its own expense, whenever required to do so by federal and state tax law; and
- (b) At any other time upon reasonable request by a member, but the requesting member shall pay the LLC in advance the reasonable costs of complying with the request.

### **6.3 METHOD OF COMPUTING MEMBERS' CAPITAL ACCOUNTS**

Except as otherwise required by applicable Regulations, the LLC shall compute the capital account of each member as follows:

- (a) Addition of Amount of Contributed Cash. The LLC shall add to the member's capital account the amount of any cash that the member contributes to the LLC.
- (b) Addition of Fair Market Value of Contributed Property. The LLC shall add to the member's capital account the fair market value of any property that the member contributes to the LLC (net of liabilities secured by this property that the LLC assumes or takes subject to within the meaning of IRC § 752).
- (c) Addition of Allocations. The LLC shall add to the member's capital account any LLC income that it allocates to the member under Section 4.
- (d) Subtraction of Losses. The LLC shall subtract from the member's capital account any LLC loss that it allocates to the member under Section 4.
- (e) Subtraction of Distributed Cash. The LLC shall subtract from the member's capital account the amount of any cash that it distributes to the member.
- (f) Subtraction of Fair Market Value of Distributed Property. The LLC shall subtract from the member's capital account the fair market value of any property that it distributes to the member (net of liabilities secured by that property).

### **6.4 REVALUATIONS OF LLC ASSETS AND OF MEMBERS' CAPITAL ACCOUNTS**

The LLC shall revalue the LLC's assets and shall correspondingly revalue the members' capital accounts whenever a revaluation of the LLC's assets:

- (a) Is required under applicable Regulations; or
- (b) Is permitted under these Regulations and is approved by the majority vote of the members.

## **Section 7 MEMBER DISSOCIATIONS AND SUSPENSIONS**

### **7.1 DISSOCIATION—DEFINITION**

Except as provided in Section 7.7 (concerning assignments of entire LLC interests), the dissociation of a member shall mean the termination of all of the member's membership rights except:

- (a) The member's LLC interest (as defined in Section 3.3);
- (b) The rights identified in Section 7.2(a); and
- (c) Any rights the member may have under Section 9 ("Redemptions and Cross-purchases of Membership Rights").

### **7.2 CERTAIN EFFECTS OF DISSOCIATION UPON THE RIGHTS OF DISSOCIATED MEMBERS**

- (a) Certain Continuing Rights. If, after dissociation, a former member retains all or any part of the former member's LLC interest, the former member shall be, subject to any contrary order by an arbitrator under Section 28, entitled to the following rights:
  - (1) Information Rights. Subject to reasonable restrictions as determined from time to time by the manager, the former member shall be entitled to inspect and copy at the former member's own expense all information reasonably relevant to allocations and distributions to the former member in respect of this LLC interest.
  - (2) Dispute Resolution Rights. The former member shall be entitled to invoke the dispute resolution provisions of Sections 27 and 28 with respect to the former member's LLC interest.
- (b) Termination of Duties. Subject to any contrary provision in Section 18 (relating to the duty of loyalty) and Section 19 (relating to the duty of confidentiality), a person who has been dissociated from the LLC shall have no fiduciary or other duties to the LLC.
- (c) Liabilities. A person who has been dissociated from the LLC shall have no liabilities to the LLC except liabilities that accrued to the member before the member's dissociation.

### **7.3 EVENTS OF DISSOCIATION—IN GENERAL**

A member shall be subject to dissociation from the LLC only upon the occurrence of an event identified in Sections 7.4 through 7.10. The effective date of each such dissociation shall be as set forth in this Section 7.

### **7.4 DISSOCIATION UPON RESIGNATION**

- (a) Resignation—Definition. For purposes of this Section 7, the resignation of a member shall mean the member's voluntary renunciation of all of the member's membership rights except the rights identified in Section 7.1.
- (b) Resignation—in General; Effective Date. A member shall be dissociated upon

resigning from the LLC in compliance with Section 7.4(c). The effective date of the dissociation shall be the effective date of the resignation.

- (c) Notice; Effective Date. A member may resign as a member of the LLC by giving written notice of resignation to the other members. The resignation shall be effective \_\_\_\_ days after the other members have received the notice. The member shall incur no liability to the other members or the LLC merely by reason of the resignation.

## **7.5 DISSOCIATION UPON DEATH**

A member shall be dissociated upon the member's death. The effective date of the dissociation shall be the date of the member's death.

## **7.6 OPTIONAL DISSOCIATION OF ENTITY MEMBER UPON DISSOLUTION**

Upon (i) the dissolution of a member that is an entity or (ii) the occurrence of any condition or event terminating that member's legal existence, the other members shall have the option to dissociate that member if they reasonably determine that the dissociation is in the LLC's best interest.

## **7.7 OPTIONAL DISSOCIATION UPON ASSIGNMENT OF ENTIRE LLC INTEREST**

If a member assigns the member's entire LLC interest to a third party, the other members shall have the option to dissociate the assigning member. Notwithstanding Section 7.1, the dissociated member shall no longer have any rights or liabilities as a member except for any rights or liabilities which accrued to the member prior to the dissociation. The dissociation shall be effective on or after the effective date of the assignment as determined by the other members.

## **7.8 OPTIONAL DISSOCIATION UPON MEMBER DISABILITY**

- (a) Disability—Definition. For purposes of this Section 7.8, a disability means any physical or mental impairment incurred by a member that substantially prevents the member from performing the member's responsibilities to the LLC for a period of \_\_\_\_ consecutive days.
- (b) Option to Dissociate. If a member incurs a disability (as defined in Section 7.8(a)), the other members shall have the option to dissociate that member if they reasonably determine that the dissociation is in the LLC's best interest.
- (c) Right of Members to Appoint Proxy. If, because of a disability or otherwise, a member is unable to exercise the member's rights as a member under this Agreement, the member or the member's legal representative may appoint a proxy to exercise these rights if the other members approve this appointment by majority vote.

## **7.9 OPTIONAL DISSOCIATION UPON MEMBER BANKRUPTCY**

The other members shall have the option to dissociate a member if:

- (a) The member files for bankruptcy or any similar relief; or
- (b) One or more creditors of a member file a petition to have the member declared

bankrupt or any similar petition and this petition is not dismissed within 60 days after being filed; and

- (c) The non-bankrupt members reasonably determine that the dissociation is in the LLC's best interest.

#### **7.10 DISSOCIATION UPON EXPULSION**

- (a) Expulsions—in General; Effective Date. A member shall be dissociated upon being expelled from membership in the LLC in compliance with Sections 7.10(b) and (c). The effective date of the expulsion shall be determined by the other members.

- (b) Expulsions—Substantive Grounds. Subject to the provisions of Section 7.10(c), the other members shall have an option to expel a member from the LLC on any of the following grounds:

- (1) Breach of Agreement. The other members shall have the option to expel a member if they reasonably determine that:
  - (A) The member (“the breaching member”) has materially breached a duty of the member under this Agreement (including any duty to provide personal services to or for the LLC);

(B) The non-breaching members have given the breaching member written notice of this breach; and

(C) The breaching member has failed to cure the breach, if curable, within a reasonable period after receiving this notice.

- (2) Breach of Trust. A breach of the Agreement by a member that has a material adverse effect on the other members' trust of the breaching member shall be deemed to be a noncurable breach.

- (3) Misconduct Affecting the LLC's Reputation. The other members shall have the option to expel a member if they reasonably determine that the member has engaged in misconduct that has caused or is likely to cause a material adverse impact on the reputation of the LLC or on its business or internal affairs.

- (4) Serious Illegal or Immoral Conduct. The other members shall have the option to expel a member if they reasonably determine that the member has engaged in serious illegal or immoral conduct.

- (c) Expulsions—Procedural Requirements. Before expelling a member, the other members shall accord the member reasonable notice and a reasonable opportunity to be heard.

#### **7.11 MEMBERS' DUTY TO ACT ON OPTIONS WITH REASONABLE PROMPTNESS; DEADLINE FOR AGREEMENT ON TERMS OF REDEMPTION, ETC.**

- (a) General Rule. The remaining members shall exercise all options available to the member under Sections 7.6 through 7.10 and shall take all other actions under



this Section or relating to a dissociated member with reasonable promptness.

- (b) Determination of Buy-out Price; Closing of Buy-out. Within \_\_ days after the effective date of a member's dissociation under this Section 7, the remaining members and the dissociated member (or that member's heir or legal representative, as the case may be) shall do the following:

- (1) They shall determine the price and non-price terms of any redemption or cross-purchase permitted or required under Section 9, Exhibit C; and
- (2) They shall close any such redemption or cross-purchase.

#### **7.12 MEMBER SUSPENSIONS—GROUNDS**

- (a) Requirement of Reasonable Grounds for Suspension. At the request of a member, an arbitrator may suspend another member under this Section 7.12 if the arbitrator determines that there is a substantial possibility that the other member can be validly expelled under Section 7.10.
- (b) Terms of Suspension. No suspension under this Section 7.12 shall be valid unless its duration and its other terms are determined to be reasonable in mediation under Section 27 or arbitration under Section 28. The terms of a member's suspension may include, if reasonable, a complete or partial suspension of allocations, distributions and compensation to the suspended member.

#### **7.13 REQUIREMENT TO AMEND AGREEMENT UPON CHANGE IN NUMBER OF MEMBERS**

If, for any reason, the number of members changes after the Effective Date, the member or members (as the case may be) shall, with reasonable promptness, consult with the LLC's principal lawyer and, if necessary, cause this Agreement to be amended so as to be suitable for the resulting number of members.

#### **7.14 EFFECT OF DISSOCIATIONS RESULTING IN THE LLC'S HAVING NO MEMBERS**

If, for any reason, all of the members are dissociated from the LLC at the same or approximately the same time, their successors as members or their legal representatives (as the case may be) shall be deemed to have succeeded to all of their respective membership rights for all purposes of this Agreement and the legal existence of the LLC shall continue.

#### **7.15 REQUIREMENT OF MAJORITY VOTE**

All actions by the other members relating to the dissociation or suspension of a member shall be taken by majority vote of the other members.

## **Section 8    TRANSFERS, REDEMPTIONS AND GRANTS OF MEMBERSHIP RIGHTS—DEFINITIONS AND GENERAL RULES**

### **8.1    TRANSFER— DEFINITION**

- (a)    Transfer—Definition. For purposes of this Agreement, a transfer of membership rights by a member shall mean any voluntary or involuntary transfer or other disposition of all or any part of those rights to another person, with or without consideration, including:
- (1)            A transfer by sale;
  - (2)            A transfer by exchange;
  - (3)            A transfer by gift;
  - (4)            A transfer by assignment;
  - (5)            A transfer (whether by will, trust or otherwise) taking effect on the death of the member; and
  - (6)            A transfer by operation of law, by execution of legal process, or pursuant to a divorce or bankruptcy decree (including a transfer in connection with a merger of a member that is an entity into another entity).
- (b)    Exclusion of Redemptions and Pledges. Transfers shall not include redemptions and pledges of membership rights.

### **8.2    REDEMPTION— DEFINITION**

For purposes of this Agreement, a redemption of a member's membership rights shall mean the extinguishment of those rights in exchange for cash or other consideration from the LLC to the member.

### **8.3    CROSS-PURCHASE— DEFINITION**

As used in this Agreement, the cross-purchase of all or any of a member's membership rights shall mean the purchase of these rights by one or more other members.

### **8.4    GRANT— DEFINITION**

For purposes of this Agreement, the grant of membership rights means their issuance by the LLC to a member or other person.

### **8.5    OBTAINING OF ADVICE FROM THE LLC'S TAX ADVISER BEFORE ANY TRANSFER, REDEMPTION OR GRANT**

Before any transfer, redemption or grant of membership rights under this Agreement, the LLC shall use reasonable efforts to obtain the advice of its principal tax adviser about the federal and

state tax effects of the transfer, redemption or grant and to communicate this advice to the members. However, the LLC's failure to obtain this advice or to communicate it to any member shall not invalidate the transfer, redemption or grant.

#### **8.6 OBTAINING OF ADVICE FROM THE LLC'S PRINCIPAL LAWYER BEFORE TRANSFER, REDEMPTION OR GRANT**

- (a) Reasonable Efforts, Etc. Before any transfer, redemption or grant under this Agreement, the LLC shall use reasonable efforts to obtain the advice of its principal lawyer about the legal effects of the transfer, redemption or grant and to communicate this advice to the members. However, the LLC's failure to obtain this advice or to communicate it to any member shall not invalidate any such transfer, redemption or grant.
- (b) Loan Agreements, Etc. In providing this advice, the LLC's principal lawyer shall take into account the terms of this Agreement, all relevant loan agreements and other agreements to which the LLC is a party, and all other relevant legal instruments and considerations.

#### **8.7 SIGNED WRITING REQUIRED FOR TRANSFERS, CROSS-PURCHASES, REDEMPTIONS AND GRANTS**

No transfer, cross-purchase, redemption or grant of membership rights in the LLC (a "transaction") shall be valid unless made pursuant to a writing that sets forth all material terms of the transaction and that is signed by all parties to the transaction.

#### **8.8 REQUIREMENT THAT TRANSFEREES AND GRANTEEES SIGN THIS AGREEMENT**

No transfer or grant of membership rights under this Agreement shall be valid unless the transferee or grantee (as the case may be) signs this Agreement (as appropriately amended to take account of the terms of the transfer or grant in question).

#### **8.9 SECURITIES LAW COMPLIANCE**

No transfer, redemption or grant of membership rights in the LLC (a "transaction") shall be valid until:

- (a) The LLC has consulted with its principal lawyer about the compliance of the transaction with applicable securities laws; and
- (b) All the members are reasonably satisfied that the transaction complies with these laws.

### **Section 9 REDEMPTIONS AND CROSS-PURCHASES OF MEMBERSHIP RIGHTS**

#### **9.1 NO PUTS AND CALLS OF MEMBERSHIP RIGHTS EXCEPT AS PROVIDED IN THIS SECTION**

Except as expressly provided in this Section 9:

- (a) No Puts. A dissociated member shall have no right to require the LLC to redeem or the other members to cross-purchase all or any part of the dissociated

member's membership rights.

- (b) No Calls. The LLC shall have no right to redeem and the non-dissociated members shall have no right to cross-purchase all or any part of the membership rights of a dissociated member.

## **9.2 OPTION OF LLC TO REDEEM AND OTHER MEMBERS TO CROSS-PURCHASE THE MEMBERSHIP RIGHTS OF DISSOCIATED MEMBER**

Upon a member's dissociation from the LLC for any reason, the LLC shall have an option to redeem and the other members shall have an option to cross-purchase all (but not less than all) of the dissociated member's membership rights for the price and upon the other terms set forth in the attached Exhibit C.

## **9.3 OPTION OF DISABLED OR DECEASED MEMBER TO REQUIRE REDEMPTION OR CROSS-PURCHASE OF THE MEMBER'S MEMBERSHIP RIGHTS**

If a member is dissociated from the LLC by reason of death or disability, the dissociated member or the dissociated member's heir or other legal representative may require the LLC to redeem or the other members to cross-purchase all (but not less than all) of the dissociated member's membership rights in accordance with Exhibit C.

## **9.4 DEADLINE FOR DETERMINATION TO REDEEM OR CROSS-PURCHASE, ETC.**

The members and their representatives shall agree on whether to exercise the rights and options provided under this Section 9 and they shall complete all other actions necessary to implement the requirements of the section within the deadline imposed under Section 7.11(b).

## **9.5 CHOICE BETWEEN REDEMPTION AND CROSS-PURCHASE**

Wherever this Agreement permits a choice between the redemption of the membership rights of a dissociated member by the LLC or the cross-purchase of these rights by the other members, the other members shall by majority vote determine whether the transaction in question shall be a redemption, a cross-purchase or a combination of a redemption and a cross-purchase.

# **Section 10 LLC GRANTS OF MEMBERSHIP RIGHTS AFTER THE LLC'S FORMATION**

## **10.1 LLC GRANTS OF MEMBERSHIP RIGHTS TO THIRD PARTIES**

After the formation of the LLC, whether the LLC shall grant membership rights to third parties and the terms of any such grant shall be decided by the unanimous vote of the members.

## **10.2 LLC GRANTS OF ADDITIONAL MEMBERSHIP RIGHTS TO MEMBERS**

After the formation of the LLC, whether the LLC shall grant additional membership rights to a member and the terms of any such grant shall be decided by the unanimous vote of the members.

## **Section 11 MEMBERS' SALES AND OTHER TRANSFERS OF THEIR MEMBERSHIP RIGHTS TO THIRD PARTIES; PLEDGES**

### **11.1 REQUIREMENT OF UNANIMOUS VOTE OF OTHER MEMBERS FOR TRANSFERS OF MEMBERSHIP RIGHTS TO THIRD PARTIES**

No member shall transfer all or any part of the member's membership rights to any third party except with the unanimous vote of the other members.

### **11.2 REQUIREMENT OF MAJORITY VOTE OF OTHER MEMBERS FOR PLEDGES OF MEMBERSHIP RIGHTS**

- (a) Pledge—Definition. For purposes of this Agreement, pledges shall include mortgages and all other arrangements under which a member provides another person with an interest in all or any portion of the member's membership rights in order to secure an obligation of the member.
- (b) Requirement of Majority Vote of Other Members. No member shall pledge all or any part of the member's membership rights to any person except with the majority vote of the other members.

## **Section 12 MEMBER MEETINGS**

### **12.1 REQUIREMENT OF ANNUAL MEETINGS AMONG THE MEMBERS**

- (a) Annual Meetings of the Members. The members shall meet among themselves each calendar year on the date and at the time and place as decided by majority vote of the members from time to time.
- (b) Quorum. No action taken at any member meeting under this Section 12 shall be valid unless members holding a majority of member votes attend the meeting in person or by teleconference.
- (c) Purpose of Annual Meetings. At these meetings, the members shall:
  - (1) Discuss the condition of the LLC's business and internal affairs among themselves;
  - (2) Vote on all pertinent member matters (as defined in Section 13.2); and
  - (3) Conduct any other business that they determine to be appropriate.

Each member shall make every reasonable effort to participate in any meeting properly called under this Section 12 in person.

### **12.2 WHO MAY CALL SPECIAL MEETINGS OF THE MEMBERS; NOTICES OF MEETINGS**

Upon reasonable notice to the members, any member may call a special meeting of the

members at any reasonable time for any purpose reasonably related to the LLC's business and internal affairs. The notice shall state the date, time, place and purpose of the meeting. The other members shall use their reasonable efforts to meet in accordance with the notice or, if that is not possible, to negotiate alternate arrangements reasonably convenient to a quorum of the members.

### **12.3 MEETING PROCEDURES; MEMBERS' RIGHT TO BE HEARD AT MEETINGS AND OTHERWISE**

At the beginning of each meeting under this Section 12, the members shall appoint by majority vote a chairperson, who shall be responsible for the fair and orderly conduct of the meeting. At each such meeting, each member shall have a reasonable opportunity to be heard on each relevant member matter and on other matters pertinent to the LLC's business and internal affairs.

### **12.4 APPOINTMENT OF LLC SECRETARY; RECORDS OF MEETINGS AND DECISIONS**

Promptly after the LLC's formation, the members shall appoint by majority vote a secretary of the LLC. The secretary shall have responsibility for preparing and promptly circulating among the members for their approval written records of:

- (a) All votes by the members; and
- (b) All other significant business occurring at member meetings.

However, no delay or failure of the secretary to perform these functions shall affect the validity of any decision by the members.

### **12.5 PARTICIPATION IN MEETINGS VIA TELECONFERENCE**

A member who is unable to participate in person in any meeting properly called under this Section 12 shall make every reasonable effort to participate via teleconference.

## **Section 13 MEMBER VOTING**

### **13.1 VOTE, MAJORITY VOTE, ETC. — DEFINITIONS**

- (a) Vote. For purposes of this Agreement, the term "vote" shall mean any expression of consent or dissent, whether by voice, by show of hand, or in writing by a member on a member matter (as defined in Section 13.2).
- (b) Majority Vote of the Members. A majority vote of the members means an affirmative vote by members holding a majority of member votes. The number of member votes held by each member shall be determined under Section 13.3.
- (c) Majority Vote of the Other Members. A majority vote of the other members means an affirmative vote of members holding a majority of member votes exclusive of those held by a specified member.
- (d) Disinterested Member. With respect to any LLC matter, a disinterested member means a member with no material financial or other interest in the matter except in the member's capacity as a member.

### **13.2 RESERVATION OF CERTAIN MATTERS TO THE MANAGER; MATTERS ON WHICH THE MEMBERS MAY VOTE**

The decision of all matters concerning the day-to-day business of the LLC shall be reserved to the manager. The decision of all other matters relating to the LLC's business and internal affairs ("member matters") shall be reserved to the members.

### **13.3 NUMBER OF VOTES THAT EACH MEMBER MAY CAST**

- (a) Votes for Contributed Cash. Each member may cast one vote on each member matter for each dollar that the member actually contributes to the LLC in accordance with Exhibit B and that the LLC does not return to the member as a return of the member's contribution.
- (b) Votes for Contributed Property. Each member may cast one vote on each member matter for each dollar's worth of property that the member actually contributes to the LLC in accordance with Exhibit B and that the LLC does not return to the member as a return of the member's contribution.
- (c) Votes for Contributed Services. Each member may cast one vote on each member matter for each dollar's worth of services that the member contributes or promises to contribute to the LLC in accordance with Exhibit B.

### **13.4 NUMBER OF VOTES NECESSARY TO DECIDE MEMBER MATTERS**

Except as otherwise provided in this Agreement, each member matter shall be decided by the majority vote of the members.

### **13.5 VALIDITY OF LLC ACTIONS AND OF MEMBER VOTES**

- (a) Requirement of Vote; Call for Vote. No LLC action requiring a member vote shall be valid as between the members until that vote has been taken. Any member may call for a vote by the members on any member matter.
- (b) Meeting Not Required for Validity. Member votes otherwise in compliance with the provisions of this Section 13 shall be valid whether or not cast at a meeting.

### **13.6 MEMBERS' RIGHTS TO CERTAIN LLC INFORMATION IN CONNECTION WITH MEMBER VOTES**

Without limiting the rights of the members under Section 14 and subject to the manager's right to treat certain LLC records and information as confidential under Section 14.2(c), the manager shall make every reasonable effort to provide the other members on a timely basis with all information reasonably needed by the other members to cast votes on an informed basis and to monitor effectively the manager's plans, decisions and actions.

## **Section 14 MEMBERS' RIGHTS TO LLC RECORDS AND INFORMATION**

### **14.1 ACCESS TO LLC RECORDS, ETC.**

For any purpose reasonably related to a member's interest as a member (but only for such a purpose), each member shall (subject to the restrictions set forth in Section 14.2) have the following rights with respect to books and records in the possession or control of the LLC ("LLC records") and with respect to information relating to or in the possession or control of the LLC ("LLC information"):

- (a) Access to LLC Records. At any reasonable time during normal LLC business hours, upon a written request reasonably identifying specific LLC records and stating the purpose for which each such record is sought, each member shall be entitled to inspect and review each such record that is reasonably related to that purpose.
- (b) Obtaining of LLC Information. At any reasonable time during normal LLC business hours, upon a written request reasonably identifying specific LLC information and stating the purpose for which this information is sought, each member shall be entitled to obtain this information from the manager to the extent that the information is reasonably related to that purpose.
- (c) Copying of LLC Records, Etc. At any reasonable time during normal LLC business hours, each member shall be entitled to copy at the member's expense any LLC record that the LLC is required to disclose to the member under this Section 14.1.
- (d) Use of LLC Records and LLC Information. Each member may use LLC records and LLC information disclosed to the member under this Section 14 only for the purpose stated to the LLC as required under the above Sections 14.1(a) and (b).

### **14.2 RESTRICTIONS**

The rights of the members to access, obtain, copy and use LLC records and information under Section 14.1 shall be subject:

- (a) To the duty of confidentiality imposed by Section 19 of this Agreement;
- (b) To any applicable federal or state laws and regulations, including laws and regulations concerning the privacy of employee medical information; and
- (c) To restrictions reasonably imposed by the manager.

## **Section 15 MANAGER'S QUALIFICATIONS AND SUBSEQUENT APPOINTMENTS, ETC.**

### **15.1 MANAGER'S QUALIFICATIONS**

The manager shall be a natural person and shall be a member of the LLC. The members may change these qualifications from time to time by the majority vote of the members.



## **15.2 DURATION OF MANAGER'S TERM OF OFFICE**

The term of office of the manager shall be indefinite, but shall terminate upon the earliest of the date of the manager's (a) death; (b) resignation as a manager; (c) disability (as determined by the other members or in arbitration); or (d) removal as a manager.

## **15.3 METHOD OF APPOINTING MANAGER AFTER APPOINTMENT OF INITIAL MANAGER**

After the formation of the LLC, each new manager shall be appointed by the majority vote of the members.

## **15.4 MANAGER'S RIGHT TO RESIGN UPON NOTICE**

A manager may resign as a manager upon giving \_\_\_ days' written notice of resignation to the other members. A manager shall have no personal liability to the LLC or to the other members because of the manager's resignation. However, the resignation shall not absolve the manager from any liabilities to the LLC or to the other members arising on or before the effective date of the resignation.

## **15.5 MEMBERS' RIGHT TO REMOVE MANAGER**

The members may, without liability, remove a manager as a manager at any time with or without cause by majority vote of the other members.

# **Section 16 MANAGERS' TITLES, AUTHORITY, FUNCTIONAL RESPONSIBILITIES AND COMPENSATION, ETC.**

## **16.1 MANAGERS' TITLES**

In performing management functions for the LLC, the manager may use the title "manager" or any other title (including the title "president" or "chief executive officer") that the manager may determine from time to time.

## **16.2 AGENCY AUTHORITY OF MANAGER; RESTRICTION ON EXERCISE OF AGENCY AUTHORITY**

- (a) Manager's Exclusive Right to Sign Contracts. Subject to Section 16.2(b) and except to the extent of any delegation of the manager's management authority under Section 16.5, the manager shall have the exclusive right, power and authority to sign contracts on behalf of the LLC and otherwise to bind the LLC with third parties.
- (b) Requirement of Majority Vote of Other Members to Sign Certain Contracts. Except with the majority vote of the other members, the manager shall not bind the LLC:
  - (1) In any matter or related series of matters (including contract matters) involving an aggregate financial commitment by the LLC exceeding \$\_\_\_\_; or
  - (2) In any matter outside the ordinary course of the LLC's business.

- (c) Manager's Representations about the LLC. Except with the majority vote of the other members, the manager shall make no representation concerning the LLC that is likely to have a material impact on the LLC's business or reputation.

### **16.3 MANAGER'S RIGHTS WITH RESPECT TO LLC RECORDS AND INFORMATION**

- (a) Access to LLC Records, Etc. For any purpose reasonably related to the manager's interests as a manager (but only for such a purpose), the manager shall, to the extent necessary or appropriate for the performance of the manager's duties and responsibilities under this Agreement and subject to the restrictions set forth in Section 16.3(b), have the following rights with respect to books and records in the possession or control of the LLC ("LLC records") and to information relating to or in the possession or control of the LLC ("LLC information"):
  - (1) Access to LLC Records. The manager shall have access to all LLC records and all LLC information.
  - (2) Copying and Use of LLC Records, Etc. The manager may copy and use any LLC record or LLC information.
- (b) Restrictions. The right of the manager to access, obtain, copy and use LLC records and information under Section 16.3(a) shall be subject (i) to the duty of confidentiality imposed by Section 19 of this Agreement; and (ii) to any applicable federal or state laws and regulations, including laws and regulations concerning the privacy of employee medical information.
- (c) Disclosure. Under appropriate terms of confidentiality, the manager may disclose these records and this information to the other members and to third parties.

### **16.4 MANAGER'S GENERAL RESPONSIBILITY FOR MANAGING THE LLC**

The manager shall have general responsibility for managing the business and internal affairs of the LLC.

### **16.5 DELEGATIONS OF MANAGEMENT AUTHORITY**

- (a) Requirement of Unanimous Vote of Other Members. With the unanimous vote of the other members, the manager may, to the extent permitted by the LLC Act, delegate the manager's management rights, power and authority from time to time to one or more officers or agents and may amend or terminate any such delegation.
- (b) No Duty to Record Delegations in Writing. The manager shall use the manager's best efforts to confirm the fact and terms of each such delegation and of each such amendment and termination in a writing signed by the manager and filed in the LLC's records; but no failure to do so shall invalidate the delegation.

#### **16.6 MANAGER'S RESPONSIBILITY TO OBTAIN TAX IDENTIFICATION NUMBERS, ETC.**

Before or promptly after the LLC begins its business activities, the manager shall do the following:

- (a) Tax Identification Numbers. The manager shall obtain for the LLC a federal tax identification number and any necessary state tax identification numbers.
- (b) Bank Accounts. The manager shall open any necessary bank accounts for the LLC.
- (c) Insurance. The manager shall obtain on commercially reasonable terms insurance policies covering all reasonably foreseeable LLC insurable risks.
- (d) Miscellaneous. The manager shall do all other things necessary or appropriate in connection with the commencement of the LLC's business.

#### **16.7 MANAGER'S DUTY TO ENSURE LLC'S COMPLIANCE WITH LAWS, ETC.**

Before the LLC conducts business in any relevant state and at all times while it is conducting this business, the manager, in cooperation with the LLC's principal tax adviser and principal lawyer, shall ensure that the LLC is in compliance with all applicable federal, state and local laws, regulations and ordinances, including:

- (a) Federal and state tax and securities laws;
- (b) Laws governing the registration and taxation of foreign LLCs; and
- (c) Regulations governing specific professions, trades and businesses.

#### **16.8 MANAGER'S COMMITMENT OF TIME TO LLC**

- (a) Devotion of Time to LLC. The manager shall devote sufficient time to the performance of the manager's duties to the LLC to ensure that the manager performs these duties competently.
- (b) Devotion of Time to Other Activities. The manager may devote significant time to professional and business activities other than LLC activities and to charitable activities only with the majority vote of the other members.

#### **16.9 SPECIFIC FUNCTIONAL RESPONSIBILITIES OF THE MANAGER**

The specific functional responsibilities of the manager to the LLC shall be as set forth in the attached Exhibit D.

#### **16.10 MANAGER'S COMPENSATION AND FRINGE BENEFITS**

The compensation and fringe benefits to which the manager shall be entitled under this Agreement shall be as set forth in the attached Exhibit E. The members shall review Exhibit E promptly after the end of each 12-month period during which the manager is a manager and shall amend the exhibit from time to time upon the majority vote of the members in order to take account of the manager's performance and other relevant factors.

## **Section 17 MANAGER'S FIDUCIARY DUTY OF CARE**

### **17.1 MANAGER'S FIDUCIARY DUTY OF CARE; STANDARD OF CARE**

The manager shall owe a duty of care to the LLC and to the other members. The standard of care shall be competence (as defined in Section 17.2).

### **17.2 COMPETENCE— DEFINITION**

The manager shall be deemed to perform the manager's duties under this Agreement competently if the manager performs them with the knowledge, judgment, skill, diligence, initiative and timeliness that an ordinarily competent person in a like position would use under similar circumstances.

## **Section 18 MANAGER'S FIDUCIARY DUTY OF LOYALTY**

### **18.1 MANAGER'S FIDUCIARY DUTY OF LOYALTY—GENERAL RULE**

- (a) Fiduciary Duty of Loyalty. In all matters arising under or relating to this Agreement or relating to the business and internal affairs of the LLC, the manager shall, except as expressly provided in this Section 18, owe a fiduciary duty of loyalty to the LLC and to the other members
- (b) Fiduciary Duty of Loyalty—Definition. For purposes of this Agreement, the manager's fiduciary duty of loyalty means the manager's fiduciary duty to act in a manner that the manager reasonably believes to be in or not opposed to the best interest of the LLC and of the other members.

### **18.2 MANAGER'S DUTY NOT TO COMPETE AGAINST THE LLC, ETC.**

- (a) Non-competition. In any geographical area where the LLC is engaged in business or has definite plans (as evidenced by LLC records) to engage in business, a manager during the period of the manager's tenure as a manager and until the second anniversary of the date on which the manager ceases to be a manager shall not directly or indirectly (whether in person, through an entity that the manager partially or wholly owns or otherwise) do the following:

- (1) Compete against the LLC;
- (2) Induce or seek to induce any other member or any employee of the LLC to work for any other business; or
- (3) Otherwise interfere or seek to interfere with the LLC's business relations, including its relations with any person identified in the above Section 18.2(a)(2).

The manager acknowledges that the purpose, duration, geographical scope and other terms of the restrictions imposed on the manager under this Section 18.2(a) are reasonable.

- (b) Competition, Etc., Permitted Upon Majority Vote of Disinterested Members. However, a manager may take an action inconsistent with Sections 18.2(a)(1), (2)

or (3) if (i) the manager discloses in advance to the other members all material facts concerning the action; and (ii) the other members approve the action in advance by majority vote of the disinterested members.

### **18.3 MANAGER'S FIDUCIARY DUTY WITH RESPECT TO LLC BUSINESS OPPORTUNITIES**

If, in performing management responsibilities for the LLC, a manager learns of a business opportunity that may be of material value to the LLC (whether or not the opportunity may involve competition with the LLC), the manager shall promptly disclose the opportunity to the other members and shall not exploit it for the manager's personal benefit except in the following circumstances:

- (a) Within \_\_ business days after receiving notice of it from the manager, the other members decide by majority vote of the disinterested members that the manager may exploit the opportunity; or
- (b) After the disinterested members decide that the LLC should exploit it:
  - (1) The LLC fails to begin material implementation of this decision within \_\_ days after it is made; or
  - (2) The LLC begins this implementation but fails to make meaningful efforts to continue it.

### **18.4 MANAGER'S FIDUCIARY DUTY IN DOING BUSINESS WITH THE LLC**

- (a) Duty of Disclosure. The manager shall not engage directly or indirectly in any business transaction with the LLC on the manager's own behalf or on behalf of any disclosed or undisclosed third party unless:
  - (1) The manager makes full advance disclosure to the other members about the transaction; and
  - (2) The other members approve the transaction by majority vote of the disinterested members.
- (b) Arm's-length Terms. The terms of any business transaction permitted under this Section 18.4 shall be arm's-length terms.

### **18.5 MANAGER'S FIDUCIARY DUTY TO AVOID IMPROPER PERSONAL BENEFITS**

- (a) Duty to Disclose Personal Benefits, Etc. If a manager receives an improper personal benefit (as defined in Section 18.5(b)), the manager shall promptly disclose this benefit to the other members and, except as provided in Section 18.5(c), shall promptly transfer it to the LLC.
- (b) Improper Personal Benefit – Definition. For purposes of this Agreement, an improper personal benefit shall mean a material amount of cash or anything else of material value:
  - (1) That a manager receives from any third party (i) in connection with the manager's performance of the manager's responsibilities under this Agreement; or (ii) by reason of the manager's status as a manager; and

- (2) That, at the time of its receipt, is not approved as a benefit to the manager under this Agreement.
- (c) Conditions for Retention of Personal Benefits. A manager may retain an otherwise improper personal benefit, and the benefit shall not be deemed to be improper, if the manager is authorized to retain it by this Agreement or by majority vote of the disinterested members.

#### **18.6 MANAGER'S FIDUCIARY DUTY IN USING LLC PROPERTY, ETC.**

The manager shall make no use of LLC property, cash or services (including LLC records, information or intellectual property) or of the manager's position as a manager for any purpose except to benefit the LLC unless:

- (a) The manager first advises the other members of the manager's intent to do so; and
- (b) The other members approve the use by majority vote of the disinterested members.

#### **18.7 MANAGER'S FIDUCIARY DUTY OF GOOD FAITH**

In all matters relating to the business and internal affairs of the LLC, the manager shall act in good faith.

### **Section 19 MANAGER'S FIDUCIARY DUTY OF CONFIDENTIALITY**

#### **19.1 MANAGER'S FIDUCIARY DUTY OF CONFIDENTIALITY**

In the absence of a final order to the contrary by a court or other governmental authority of competent jurisdiction, the manager shall maintain in confidence all information relating to the LLC and all information in the possession or control of the LLC that is reasonably identified as confidential in the LLC's records or that the manager knows or reasonably should know requires confidentiality in the LLC's best interest.

#### **19.2 BINDING EFFECT OF THIS SECTION; TERMINATION OF BINDING EFFECT**

This Section 19 shall bind the manager while the manager is a manager and permanently thereafter except with respect to confidential information that becomes publicly known through no fault of the manager.

## **Section 20 MANAGER'S FIDUCIARY DUTY OF DISCLOSURE**

### **20.1 MANAGER'S FIDUCIARY DUTY OF DISCLOSURE IN CONNECTION WITH THE LLC'S FORMATION**

In connection with the LLC's formation, the manager shall affirmatively disclose to the other members any information known to the manager that is objectively material to the other members in deciding whether to become a member.

### **20.2 MANAGER'S FIDUCIARY DUTY OF DISCLOSURE IN CONNECTION WITH THE LLC'S OPERATION AND DISSOLUTION, ETC.**

In connection with the LLC's operation, dissolution and winding-up, the manager shall, promptly after becoming aware of any information that is objectively material to the business or internal affairs of the LLC, affirmatively disclose this information to the other members.

### **20.3 DISCLOSURES CONCERNING MANAGER RELATIONSHIPS AND INTERESTS**

The disclosures required by this Section 20 shall include:

- (a) The disclosure of any relationship that the manager may have or may come to have with any person that is likely to have a material adverse effect on the LLC's business or internal affairs; and
- (b) The disclosure of any direct or indirect interest that the manager may have or may come to have that is likely to have a material adverse effect on the LLC's business or internal affairs.

For purposes of this Section 20.3, relationships shall include family, social, business and professional relationships, and interests shall include economic interests.

### **20.4 NONDISCLOSURE AGREEMENTS**

A manager may condition any disclosure made by the manager under this Section 20 upon the other members' signing a reasonable nondisclosure agreement.

### **20.5 NO REQUIREMENT TO BREACH PRIVACY**

The manager shall not be required to disclose any information under this Section 20 that is confidential under any federal or state law concerning individual privacy.

### **20.6 MANAGER'S DUTY TO UPDATE DISCLOSURES AFTER SIGNING THIS AGREEMENT**

If, after the manager signs this Agreement, the manager discovers (a) that any disclosure under this Section 20 was incomplete or erroneous when made or has become materially incomplete or erroneous or (b) that the manager has failed to make any required disclosure under this Section 20, the manager shall promptly so advise the other members, shall correct the error or incompleteness and shall make the disclosure or representation in question.

## **Section 21 MANAGER'S DUTY TO COMPLY WITH THE IMPLIED CONTRACTUAL COVENANT OF GOOD FAITH AND FAIR DEALING**

- (a) The manager shall comply with the implied contractual covenant of good faith and fair dealing in accordance with the contract law of the State of [STATE].
- (b) The manager shall be deemed to have breached the implied contractual covenant of good faith and fair dealing if, without reasonable justification, the manager engages in conduct that defeats the reasonable expectations of the members under this Agreement with respect to issues not expressly addressed in the Agreement.

## **Section 22 MEMBERS' REPRESENTATIONS**

### **22.1 MEMBERS' REPRESENTATIONS**

Each member represents as follows:

- (a) Good Faith. In negotiating and entering into this Agreement, the member has acted in good faith.
- (b) Freedom to Enter into Agreement, Etc.
  - (1) The member is legally free to enter into this Agreement and to perform the member's obligations under it in accordance with its terms; and
  - (2) The member is not prevented from doing so by order of any court or other governmental authority of competent jurisdiction, by agreement with any person (including an employment agreement, noncompetition agreement or nondisclosure agreement) or by any other cause.
- (c) Access to Legal Advice, Etc. Before accepting the terms of this Agreement, the member has had every reasonable opportunity to consider these terms and to review them with the member's personal attorney.
- (d) Free Acceptance of Terms, Etc. The member has accepted the terms of this Agreement knowingly and freely.

### **22.2 REPRESENTATIONS BY ENTITY MEMBER [SUCH AS CORPORATION, LLC OR TRUST] [IF APPLICABLE]**

In addition to its representations under Section 22.1, [ENTITY NAME] represents as follows:

- (a) Valid Formation, Etc. It is a corporation [OR OTHER TYPE OF ENTITY] validly formed, duly organized and existing under the laws of the State of [STATE].
- (b) Power and Authority. It has full legal power and authority to enter into this Agreement and to perform its responsibilities and duties under the Agreement in compliance with its terms.



## **Section 23 LLC RECORD KEEPING**

### **23.1 LLC's DUTY TO COMPILE AND MAINTAIN RECORDS AND INFORMATION IN COMPLIANCE WITH THE LLC ACT**

The LLC shall compile and maintain at its principal place of business all records and information that the LLC Act requires it to compile and maintain.

### **23.2 LLC's DUTY TO COMPILE AND MAINTAIN BOOKS OF ACCOUNT AND OTHER RECORDS REQUIRED FOR THE SOUND MANAGEMENT OF THE LLC**

The LLC shall compile and maintain all books of account and other records that are necessary or appropriate for the sound management of the LLC's business and internal affairs.

### **23.3 LLC's DUTY TO COMPILE AND MAINTAIN CERTAIN RECORDS CONCERNING CONTRIBUTIONS**

The LLC shall compile and maintain records evidencing:

- (a) That its members have made to the LLC the contributions required of them under Section 3; and
- (b) The value of these contributions.

These records may take the form of cancelled checks, bills of assignment or any other appropriate form.

## **Section 24 LLC'S DISSOLUTION, WINDING-UP AND LIQUIDATION**

### **24.1 LLC's DISSOLUTION, WINDING-UP AND LIQUIDATION— DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

- (a) Dissolution. The dissolution of the LLC shall mean the cessation of its normal business activities and the beginning of the process of its winding-up and liquidation.
- (b) Winding-up. The winding-up of the LLC shall mean the process of concluding its existing business activities and preparing for its liquidation.
- (c) Liquidation. The liquidation of the LLC shall mean the sale or other disposition of its assets and the distribution of its assets (or of the proceeds of the sale or other disposition of its assets) to its creditors and to the members.

### **24.2 EVENTS CAUSING DISSOLUTION**

The LLC shall be dissolved on the earliest to occur of the following events:

- (a) Vote of the Members. The LLC shall be dissolved on the date of a two-thirds vote of the members to dissolve it.
- (b) Government Order. The LLC shall be dissolved by order of dissolution by a

court of competent jurisdiction or by the Secretary of State.

- (c) Arbitrator's Order. An arbitrator under Section 28 may issue an order dissolving the LLC if the arbitrator determines that there is a compelling need for the dissolution.

#### **24.3 EFFECTIVE DATE OF LLC'S DISSOLUTION**

The dissolution of the LLC by vote of the members shall be effective on the date specified in that vote or, if the vote does not specify a date, then on the date of completion of the vote. The dissolution of the LLC by order of a court or other governmental authority of competent jurisdiction or an arbitrator shall be effective on the date specified by the authority in question.

#### **24.4 DETERMINATION OF DATE FOR DELIVERY OF CERTIFICATE OF CANCELLATION [OR OTHER APPROPRIATE OFFICIAL FORM] AND FOR EFFECTIVE DATE OF CERTIFICATE**

The date on which the LLC shall deliver a certificate of cancellation of the LLC's Articles [OR OTHER APPROPRIATE OFFICIAL FORM] to the Secretary of State for filing and the effective date of this certificate shall be determined by the majority vote of the members upon the completion of the winding-up and liquidation of the LLC. Promptly after the members so vote, the manager shall cause the filing of the certificate of cancellation with the Secretary of State.

#### **24.5 CESSATION OF LLC'S LEGAL EXISTENCE**

Unless a court of competent jurisdiction or other governmental authority finally determines otherwise, the LLC shall cease to exist as a legal entity on the effective date of the certificate of cancellation.

#### **24.6 EXCLUSION OF A MEMBER FROM PARTICIPATION IN WINDING-UP PROCESS, ETC.**

An arbitrator under Section 28 may exclude a member from participating in the winding-up and liquidation of the LLC on the ground that, because of past wrongful conduct by the member, the member's participation would be likely to affect that process adversely.

#### **24.7 LLC'S WINDING-UP**

- (a) Manager Responsibility. Unless the members decide otherwise by majority vote of the members at the time of the winding-up, the manager shall be responsible for winding up the LLC.
- (b) Winding-up and Liquidation. After the LLC is dissolved, the person or persons responsible for winding it up shall as expeditiously as reasonably possible and on terms as favorable as reasonably possible to the LLC:
  - (1) Wind up its business and internal affairs; and
  - (2) Cause its liquidation.

During the wind-up period, the LLC shall accept no new business.

#### **24.8 LLC'S COMPLIANCE WITH STATE REQUIREMENTS CONCERNING LIQUIDATING DISTRIBUTIONS**

The LLC shall make no distribution to members or others in connection with its liquidation until it has complied with all applicable laws and regulations of all relevant jurisdictions (including tax laws and regulations) relating to its dissolution and liquidation.

#### **24.9 MANAGER'S DUTY TO DISPOSE OF AND TO BAR KNOWN AND UNKNOWN CLAIMS AGAINST LLC**

In connection with the LLC's liquidation, the manager shall take all reasonable measures under the laws of each relevant state to dispose of and to bar known and unknown claims against the LLC.

#### **24.10 MANAGER'S DUTY TO CONSULT WITH THE LLC'S PRINCIPAL TAX ADVISER AND PRINCIPAL LAWYER IN CONNECTION WITH THE LLC'S DISSOLUTION, ETC.**

Before the LLC's winding-up and liquidation, the manager and other persons responsible for these procedures shall use their reasonable best efforts to consult with the LLC's principal tax adviser and principal lawyer and shall structure and implement the liquidation in a manner that is as fair as reasonably possible to each member from a legal and tax viewpoint.

### **Section 25 TERM AND TERMINATION OF THIS AGREEMENT**

#### **25.1 TERM AND TERMINATION OF AGREEMENT**

Subject to Sections 25.2 and 25.3, the term of this Agreement shall begin on the Effective Date (as defined in Section 2.1) and shall terminate as follows:

- (a) Termination by Member Vote—in General. The Agreement shall terminate if all of the members vote to terminate it. Unless the members vote otherwise, the date of any termination under this Section 25(a)(1) shall be the date of the above vote.
- (b) Termination by Member Vote in Connection with Dissolution. The Agreement shall terminate if the members vote to dissolve the LLC. Unless the parties agree otherwise at the time of dissolution, the effective of termination of the Agreement under this Section 25(a)(2) shall be the date of termination of the legal existence of the LLC.
- (c) Termination by Judicial Authority, Etc. The Agreement shall terminate if the LLC is dissolved by decree of a duly authorized court or other governmental authority or by an arbitrator. The date of a termination of the Agreement under this Section 25(a)(3) shall be as determined by the authority in question.

#### **25.2 SURVIVAL OF ACCRUED RIGHTS, ETC.**

Any rights, responsibilities, duties and liabilities accrued by the parties under this Agreement before its termination shall continue in effect after its termination as reason and fairness may require.

### **25.3 PARTIES' RIGHT AFTER TERMINATION OF AGREEMENT TO DISPUTE RESOLUTION IN CERTAIN MATTERS RELATING TO LLC'S WINDING-UP, ETC.**

Notwithstanding the termination of this Agreement, any party may, after that termination, invoke the dispute resolution provisions of Sections 27 and 28 to determine and enforce rights, responsibilities and duties of the party relating to:

- (a) LLC matters, if any, arising before and during the LLC's winding-up but not resolved by the members before termination;
- (b) The LLC's liquidation; and
- (c) LLC matters arising after the termination of the LLC's legal existence.

## **Section 26 CLAIMS BY THE MEMBERS, ETC.**

### **26.1 WHO MAY MAKE A CLAIM; WAIVERS**

- (a) Claims by Members. By giving the other members a written notice of mediation under Section 27 or of arbitration under Section 28 and by otherwise complying with the dispute resolution provisions of this Agreement, a member (a "claimant") may make a claim as a direct claim in the claimant's own right against one or more other members or against the LLC with respect to any matter arising under or relating to this Agreement or relating to the business or internal affairs of the LLC.
- (b) Waiver. If, within \_\_ business days after the date on which a claimant makes a claim under Section 26.1(a), any other member fails to give notice to the claimant and to the other members that the other member is joining the claim or is making a similar or another claim, then, unless an arbitrator decides otherwise, the other member shall thereby waive:
  - (1) The right to participate in any negotiation, mediation or arbitration of the claimant's claim and to share in any relief resulting from that claim; and
  - (2) To bring a claim independently on the basis of the same or similar facts as those upon which the claimant's claim is based.
- (c) Derivative Actions. Unless an arbitrator decides otherwise, no claimant making a claim under this Agreement shall be required to comply with any rule specifically governing derivative actions.

### **26.2 LIMITATION OF FIDUCIARY AND OTHER DUTIES**

Each member and the manager shall owe fiduciary and other duties only as provided in this Agreement and shall be subject to personal liability only for breaches of the duties to which the member or manager is subject in the Agreement.

### **26.3 NO BREACH OF FIDUCIARY DUTY OF CARE OR LOYALTY IF THE MANAGER RELIES ON LLC RECORDS, ETC.**

The manager shall not be deemed to have breached the manager's fiduciary duty of care or loyalty under this Agreement if, with respect to the matter in question, the manager has acted in reasonable reliance on:

- (a) LLC records;
- (b) Information, opinions, reports or statements presented to the manager or to the LLC by another member or by any other person as to matters that, when presented, the manager reasonably believed to be within the other person's professional or expert competence; or
- (c) Any provision of this Agreement.

#### **26.4 PRESUMPTION OF COMPLIANCE OF MANAGER ACTIONS WITH THE MANAGER'S DUTY OF CARE**

- (a) Presumption of Compliance. If a claimant makes a claim that any conduct by a manager has breached the manager's fiduciary duty of care, the manager shall be deemed to have complied with this duty with respect to this conduct unless the claimant shows on the basis of a preponderance of the evidence:
  - (1) That before engaging in the conduct, the manager failed to obtain reasonably adequate information or to adequately consider that information; or
  - (2) That in engaging in the conduct, the manager acted in bad faith; or
  - (3) That with respect to the conduct, the manager had a conflict of interest.
- (b) Approval by Disinterested Members. For purposes of this Section 26.4, a manager shall be deemed not to have had a conflict of interest if the conduct in question was approved in advance by majority vote of the disinterested members.

#### **26.5 EXCULPATION OF MANAGER AND OTHERS**

- (a) Exculpation. The LLC shall not limit or eliminate the liability of the manager or other person for money damages or for other damages or penalties for any breach of the person's duties under this Agreement (including fiduciary duties) unless:
  - (1) The person requests the LLC to do so in writing in each case; and
  - (2) In each case, the LLC is authorized to do so by majority vote of the disinterested members.
- (b) Manager Removals, Etc. Nothing in this Section 26.5 shall be construed to bar the other members from removing a manager under Section 15.5 of this Agreement or from seeking injunctive relief against a manager or other person.
- (c) Breaches of the Implied Contractual Covenant of Good Faith and Fair Dealing. Nothing in this Section 26.5 shall be construed to permit the LLC to limit or eliminate the liability of the manager or other person for violating the implied contractual covenant of good faith and fair dealing.

## **26.6 FIDUCIARY DUTIES AND LIABILITIES, ETC., OF THE NON-MANAGER MEMBERS**

To the extent that a member who is not a manager has access to LLC records or information or participates in the management of the LLC, including participation in the decision of LLC management matters:

- (a) That member shall be subject to the fiduciary duties and liabilities imposed on the manager by this Agreement and shall be entitled to the defenses made available to the manager by the Agreement.
- (b) Any claim that the member has breached any such duty shall be subject to the requirements and restrictions imposed by this Section 26.
- (c) The member shall have all of the benefits accorded to the manager under this Section 26, including indemnifications and advancements of expenses.

## **26.7 INDEMNIFICATION OF MEMBERS, THE MANAGER AND OTHERS**

- (a) Indemnification. If a member, manager or other person incurs a liability in respect of a claim relating to the business or internal affairs of the LLC, then, if (i) the person requests indemnification of the liability in writing in each case; and (ii) the disinterested members approve it by majority vote, the LLC may indemnify the person for the liability to the extent permitted by the LLC Act and approved by the disinterested members.
- (b) Liability—Definition. For purposes of Section 26.7(a), a liability means an obligation to pay a judgment, settlement, penalty, fine or reasonable expense (including reasonable attorneys' fees) in respect of a claim described in Section 26.1(a).

## **26.8 ADVANCEMENT OF MEDIATION, ARBITRATION AND LITIGATION EXPENSES TO MEMBERS OR THE MANAGER**

If (i) any person makes a claim against a current or former member or manager in the member's or manager's capacity as a member or manager and (ii) the claim relates to actions or omissions by the member or manager while he or she was a member or manager, the LLC shall advance reasonable mediation, arbitration and litigation expenses, including reasonable attorneys' fees, to the member or manager for the defense of the claim if:

- (a) The member or manager requests the advancement in writing in each case;
- (b) The member or manager promises in writing to reimburse the LLC for the advancement to the extent that the member or manager does not prevail in the claim;
- (c) This writing specifies all material terms of the reimbursement; and
- (d) The members approve the advancement and the promise of reimbursement by majority vote of the disinterested members.

## **26.9 LLC'S DUTY TO PROVIDE LIABILITY INSURANCE FOR MEMBERS AND MANAGERS IN CERTAIN CIRCUMSTANCES**

Whether the LLC shall maintain an insurance policy to cover liabilities incurred by members as a result of claims against them in their capacity as members or managers shall be decided by the

majority vote of the members.

## **26.10 BURDEN OF PROOF; STANDARD OF PROOF**

Subject to Section 26.11, in any claim under or relating to this Agreement or relating to the LLC:

- (a) The claimant shall bear the burden of proving the claim.
- (b) The claim shall be deemed to have been proven if supported by a preponderance of the evidence.

## **26.11 SHIFTING OF BURDEN OF PROOF IN CERTAIN CASES INVOLVING CLAIMS OF BREACH OF FIDUCIARY DUTIES**

- (a) Claims of Breach of the Duty of Care. If, in connection with a claim that the manager has breached the manager's fiduciary duty of care, a claimant adequately pleads that the manager has engaged in any conduct described in Sections 26.4(a)(1) through (3), the burden of proof shall shift from the claimant to the manager and the manager shall bear the burden of proving that the manager complied with the manager's duty of care in the matter in question.
- (b) Claims of Breach of Duty of Loyalty. If a claimant adequately pleads that the manager has breached any fiduciary duty of loyalty imposed on the manager under Sections 18 through 20, the manager shall have the burden of proving that the manager did not commit this breach. However, if the manager adequately pleads that, by majority vote of the disinterested members, the manager's conduct was approved in advance or ratified, the burden of proof shall shift to the claimant to prove the breach.
- (c) Adequate Pleading—Definition. A pleading shall be deemed adequate for purposes of this Section 26.11 if the allegations that it contains are non-conclusory and credible.

## **Section 27 DISPUTE RESOLUTION—MANDATORY MEDIATION**

### **27.1 MANDATORY MEDIATION**

If any dispute arises among the members under or relating to this Agreement or relating to the LLC's business or internal affairs that the members cannot resolve voluntarily among themselves, they shall seek to resolve the dispute by mediation.

### **27.2 PROCEDURAL RULES**

Except as otherwise provided in this Section 27 or as decided otherwise by majority vote of the members at the time, any mediation under this Section 27 shall be governed by the Commercial Mediation Procedures of the American Arbitration Association (the "AAA") as in effect on the date of commencement of the mediation.

### **27.3 NOTICE OF MEDIATION; SELECTION OF MEDIATOR, ETC.**

- (a) Notice of Mediation. Any member may initiate a mediation under this Agreement by giving the other members a written notice of mediation. This

notice shall bear a current date and shall briefly state the matter or matters to be mediated.

- (b) Voluntary Selection of Mediator, Etc.; Commencement of Mediation. Unless the parties to a mediation under this Section 27 unanimously agree otherwise at the time, then, within 10 business days after all members have received a notice under Section 27.3(a), the members shall agree by majority vote upon the identity of the mediator, the site of the mediation and the method of administering the mediation. They shall commence mediation as promptly as reasonably possible after reaching agreement on these matters.
- (c) Referral of Mediation to AAA. If, within the above 10 business days, the members cannot agree on any of the matters identified in Section 27.3(b), the LLC shall promptly give a written notice of the mediation to the AAA and the AAA shall administer the mediation.

#### **27.4 MEDIATION EXPENSES**

Each member in any mediation under this Section 27 shall bear the member's mediation expenses, except that each member shall be liable for fees charged by the mediator to the LLC and any applicable AAA fees in proportion to the member's respective percentage interest in the income of the LLC.

#### **27.5 CONFIDENTIALITY**

- (a) Members' Duty of Confidentiality. The members shall maintain in confidence all information disclosed by each to the others and to the mediator in any mediation under this Section 27, and reasonably identified by the disclosing party as confidential.
- (b) Settlements, Etc. No settlement offer by any member during any mediation under this Section 27 shall be discoverable or binding in any other proceeding.
- (c) Mediator's Duty of Confidentiality. Before the commencement of any mediation under this Section 27, the members may require the mediator to sign an appropriate non-disclosure agreement.

#### **27.6 MEMBERS' DUTY TO PERFORM THEIR OBLIGATIONS DURING MEDIATION**

Unless the members decide otherwise by unanimous vote at the time, each member shall perform the member's obligations under the Agreement during any mediation under this section.

#### **27.7 ARBITRATION**

Unless the members decide otherwise by unanimous vote at the time, any member shall have the right to require the arbitration under Section 28 of any issue not resolved in mediation under this Section 27.

### **Section 28 DISPUTE RESOLUTION—MANDATORY ARBITRATION**

#### **28.1 MANDATORY ARBITRATION**



If any dispute arises among the members under or relating to this Agreement or relating to the LLC's business or internal affairs that the members cannot resolve voluntarily among themselves or by mediation under Section 27, then, unless the members decide otherwise by unanimous vote at the time, they shall resolve the dispute by arbitration under this Section 28.

## **28.2 NOTICE OF ARBITRATION; ARBITRATION RULES; COMMENCEMENT OF ARBITRATION**

- (a) Notice of Arbitration. Any member may initiate an arbitration under this Section 28 by giving a written notice of arbitration to the other members. The notice shall bear a current date and shall briefly state the matter or matters to be arbitrated.
- (b) Arbitration Rules. Except to the extent that the members decide otherwise by unanimous vote at the time of the arbitration, the rules governing any arbitration under this Section 28 shall be the AAA's Commercial Arbitration Rules. The identity of the arbitrator, the site of the arbitration, and the arbitration administrator shall be as agreed by the members.
- (c) Commencement of Arbitration. The members shall commence any arbitration under this Section 28 as promptly as reasonably possible after the other members receive a notice of arbitration under Section 28.2(a).

## **28.3 REFERRAL OF ARBITRATION TO AAA**

If, within 15 business days after any member has given a written notice of arbitration to the other members under Section 28.2(a), the members have not agreed by majority vote upon an arbitrator, an arbitration site or an arbitration administrator, then, unless the members decide otherwise by unanimous vote at the time:

- (a) Referral to AAA. A member shall refer the matter or matters listed in the notice required under Section 28.2(a) for administration by the office of the AAA located in the city of [CITY]; and
- (b) Selection of Arbitrator, Etc. The AAA shall select the arbitrator and the site of the arbitration in accordance with the Commercial Arbitration Rules and shall administer the arbitration.

## **28.4 ARBITRABLE MATTER— DEFINITION**

For purposes of this Section 28, arbitrable matters shall comprise the following types of matters:

- (a) Scope, Construction and Enforcement of This Section, Etc. Arbitrable matters shall include matters concerning the scope, construction and enforcement of this Section.
- (b) Matters Involving Material Interests of the LLC or the Members. Arbitrable matters shall include material matters that arise under or relate to this Agreement or to the internal affairs of the LLC.

## **28.5 MATTERS THAT THE MEMBERS MAY LITIGATE**

Notwithstanding any other provision of this Agreement, any member may bring suit in a court of competent jurisdiction:

- (a) To petition a court for injunctive relief with respect to a matter arising under or relating to the Agreement or relating to the LLC;
- (b) To obtain judicial enforcement of an order granted by an arbitrator under this Section 28; or
- (c) As otherwise permitted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the “Federal Arbitration Act”).

#### **28.6 ARBITRATOR’S RIGHT TO SUPPLEMENT AGREEMENT**

In connection with the resolution of an arbitration under this Agreement, an arbitrator shall not amend or delete any provision of this Agreement but may add new provisions to it to the extent necessary to address matters not addressed in the Agreement.

#### **28.7 ARBITRATOR’S DUTY TO SET FORTH AWARD IN WRITING, ETC.**

The arbitrator shall set forth in writing his or her award in any arbitration under this Section 28, but shall have no duty to explain in writing the facts underlying the award or the reasoning upon which the award is based.

#### **28.8 CONFIDENTIALITY**

Except as the members decide otherwise by unanimous vote at the time, the members shall maintain in confidence:

- (a) The fact that they are engaging or have engaged in arbitration under this Section 28 ;
- (b) All confidential information disclosed by each member to the others and to the arbitrator during the arbitration; and
- (c) Any arbitration award resulting from the arbitration.

#### **28.9 RULES GOVERNING ALLOCATION OF ARBITRATION EXPENSES AMONG THE MEMBERS**

- (a) General Rule. Except as provided in Sections 28.9(b) and (c), each member shall bear the member’s expenses, including attorneys’ fees, in any arbitration under this Section 28, except that each member shall be liable for any fees charged by the arbitrator or the AAA in proportion to the member’s respective percentage interest in the income of the LLC.
- (b) Unreasonable Claims and Arguments. If an arbitrator determines that a member has initiated an arbitration under this Section 28 without a reasonable basis for doing so or that any claim, argument or other action of a member in the arbitration is unreasonable, the arbitrator shall to that extent assess against that member the expenses incurred by the other members in connection with the arbitration, including reasonable attorneys’ fees and fees payable to the arbitrator.
- (c) Loser Pays. To the extent that an arbitrator determines that a member has failed to prevail in an arbitration under this Section 28, the arbitrator shall to that extent allocate to that member the costs of the arbitration, including reasonable attorneys’ fees and fees payable to the arbitrator.

## **28.10 GOVERNING LAW**

- (a) General Rule. In deciding any arbitration under this Section 28, the arbitrator shall apply the substantive law of the State of [STATE] (exclusive of its laws governing conflicts of law).
- (b) Federal Arbitration Act. However, matters relating to the enforceability of this Section 28 and to any award granted under this Section shall be governed by the Federal Arbitration Act.

## **28.11 MEMBERS' DUTY TO PERFORM THEIR OBLIGATIONS DURING ARBITRATION**

Except as ordered by an arbitrator under this Section 28 or as otherwise provided in this Agreement or as decided by unanimous vote of the members at the time, each member shall perform the member's obligations under the Agreement during any arbitration under this section.

## **28.12 INCLUSION OF CERTAIN FORMER PARTIES, ETC., AS PARTIES TO DISPUTE RESOLUTION**

An arbitrator under this Section 28 may permit or require former parties to this Agreement and current assignees of the LLC interests of the LLC to be parties to any arbitration under this Section 28 to the extent of their willingness to be parties to the arbitration.

## **28.13 PERMISSIBLE DEFENSES AND REMEDIES**

In any arbitration under this Section 28, the arbitrator shall have discretion to determine:

- (a) The extent to which a party may rely upon any specific common law legal or equitable defense; and
- (b) Whether to award any specific common law legal or equitable remedy.

## **28.14 PROHIBITION OF APPEAL; ENTRY OF AWARDS**

- (a) Except as permitted by the Federal Arbitration Act, no member shall appeal to any court any award by an arbitrator under this Section 28.
- (b) Any member may obtain an order from a federal district court under § 9 of the Federal Arbitration Act, 9 U.S.C. § 9, and other applicable law, or, to the extent permitted by law, from a court of first instance of the State of [STATE].

# **Section 29 GENERAL PROVISIONS**

## **29.1 ENTIRE AGREEMENT**

This Agreement contains the entire agreement among the parties concerning its subject matter, and it replaces all prior agreements among them, whether written or oral, concerning this subject matter.

## **29.2 AMENDMENT OF AGREEMENT AND ARTICLES**

- (a) Amendments of Agreement. Except as provided in Section 28.6 (relating to supplementation of the Agreement by an arbitrator), no amendment of this

Agreement shall be valid unless it is approved by the unanimous vote of the members, is in writing, and is signed by all of the parties.

- (b) Amendments of Articles. Except as otherwise provided in the LLC Act, no amendment of the Articles shall be valid unless it is approved by the unanimous vote of the members and is filed in compliance with the LLC Act.

### **29.3 INCORPORATION OF EXHIBITS**

All exhibits identified in this Agreement as exhibits to the Agreement are hereby incorporated into the Agreement and made integral parts of it.

### **29.4 RESOLUTION OF CONFLICTS BETWEEN AGREEMENT AND ARTICLES**

If there is any conflict between this Agreement and the Articles, then, in any dispute among the members, this Agreement shall prevail.

### **29.5 EFFECT OF LLC ACT**

Except as otherwise provided in this Agreement, the business and internal affairs of the LLC shall be governed by the LLC Act as in effect on the Effective Date (as defined in Section 2.1) and as amended thereafter from time to time.

### **29.6 GOVERNING LAW**

Subject to Section 28.10(b) (relating to the Federal Arbitration Act), this Agreement shall be governed by and construed in compliance with the domestic laws of the State of [STATE] without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of the State of [STATE] or of any other jurisdiction) that would cause the application of the laws of any jurisdiction except the State of [STATE].

### **29.7 EFFECT OF CHANGES OF LAW**

If, during the term of this Agreement, the rules of the LLC Act or other applicable law change in a manner that provides a material advantage or disadvantage to any member not contemplated by the parties when entering the Agreement, the members shall equitably amend the Agreement to minimize or eliminate any such advantage or disadvantage.

### **29.8 FORUM FOR LITIGATION; ACCEPTANCE OF PERSONAL JURISDICTION; AWARDING OF LITIGATION EXPENSES**

- (a) Jurisdiction Where Suit Must Be Filed. If any party to this Agreement sues another party to this Agreement in a suit permitted by this Agreement or by applicable law, the party bringing the suit shall do so in courts of competent jurisdiction only in the State of [STATE]. The parties hereby irrevocably submit to the personal jurisdiction of those courts in any such suit.
- (b) Litigation vs. Alternative Dispute Resolution. This Section 29.8 shall not be construed to impair any restriction on litigation set forth in Sections 27 and 28 of this Agreement (relating to dispute resolution).
- (c) Allocation of Litigation Expenses. The rules governing the allocation of costs,

litigation expenses and attorneys' fees among the parties in any litigation shall reflect as closely as possible the rules set forth in Section 28.9 (governing allocations of arbitration expenses).

- (d) Suit—Definition. For purposes of this Agreement, the term suit shall include an action at law or in equity.

## **29.9 NOTICES**

- (a) Requirement of Writing; Address. All notices required by this Agreement shall be in writing and shall be delivered to a party at the party's address as stated on the first page of this Agreement. A party may change this address upon reasonable notice to the other parties.
- (b) Method of Delivery. Notices shall be (i) delivered by hand; or (ii) sent by reputable overnight courier service; or (iii) sent by electronic facsimile transmission or e-mail (with a copy sent by first class mail, postage prepaid); or (iv) mailed by first class certified or registered mail, return receipt requested, postage prepaid.
- (c) Proof of Delivery. Notices provided in accordance with this Section 29.9 shall be deemed to have been delivered:
  - (1) If delivered by hand, upon delivery;
  - (2) If sent by electronic facsimile transmission or e-mail, upon the mailing of a copy of the notice by first-class mail;
  - (3) If sent by overnight courier service, 24 hours after deposit with that service; or
  - (4) If sent by certified or registered mail, return receipt requested, 48 hours after deposit in the mail.

## **29.10 EFFECT OF CAPTIONS**

All captions in this Agreement are for convenience only and shall be deemed irrelevant in construing any provision of the Agreement.

## **29.11 DEFINITION OF “DAY,” “INCLUDE,” ETC.**

As used in this Agreement:

- (a) Day. “Day” shall mean a calendar day.
- (b) Include. “Include” and similar terms shall denote partial definitions.
- (c) Person. “Person” shall mean a natural person or an entity as the context shall require.
- (d) State. Where the context permits or requires, “state” shall include the District of Columbia.

## **29.12 MEANING AND CONSTRUCTION OF NUMBER AND GENDER**

As the context shall require:

- (a) Singular and Plural. The use of the singular in this Agreement shall denote the plural and vice versa.
- (b) Gender. The use of any gender shall denote another gender.

## **29.13 DELAYS AND OMISSIONS IN EXERCISING RIGHTS, ETC; WAIVERS OF RIGHTS, ETC.**

- (a) Delays and Omissions. No delay or omission by a party in the exercise of any right, power or remedy accruing to the party as a result of any breach or default by another party under this Agreement:
  - (1) Shall impair any such right, power or remedy; or
  - (2) Shall be construed as a waiver of or acquiescence by the party in (i) any such breach or default or (ii) any similar breach or default occurring later.
- (b) Waivers. No waiver by a party of any single breach or default under this Agreement shall be construed as a waiver by the party of any other breach or default occurring before or after that waiver.

## **29.14 SEVERABILITY OF PROVISIONS**

Each provision of this Agreement (a “Provision”) shall be deemed severable. If (i) any Provision or (ii) the application of any Provision to any person or circumstance shall be held invalid or unenforceable by a court of any jurisdiction:

- (a) Affected Jurisdiction. The Provision shall be ineffective only in that jurisdiction.
- (b) Scope of Ineffectiveness. The Provision shall be ineffective only to the extent that it has been expressly held to be invalid or unenforceable in that jurisdiction.
- (c) Effect on Other Provisions and on Applicability of Provision Itself. The ineffectiveness of the Provision shall not invalidate any other provision of the Agreement or the application of the Provision itself to persons or circumstances other than those with respect to which it was held invalid or unenforceable in the jurisdiction in question.

## **29.15 PERMISSIBILITY AND VALIDITY OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts. Each of these counterparts when so executed shall be deemed to be an original of the Agreement and all such counterparts taken together shall constitute one and the same Agreement.

## **29.16 REQUIREMENT OF CERTAIN FURTHER ACTIONS BY THE PARTIES**

Each party, upon reasonable request by another party, shall do the following for the purpose of carrying out the intent of this Agreement:

- (a) The party shall furnish to the other party any information reasonably requested

by the other party.

- (b) The party shall sign any documents and do any other things that the other party reasonably requests.

#### **29.17 PARTIES' ACKNOWLEDGEMENT OF ADEQUACY OF CONSIDERATION**

Each party acknowledges and agrees that upon the effectiveness of this Agreement, the party will be in receipt of valid and adequate consideration for its undertakings under this Agreement.

#### **29.18 VALIDITY OF FACSIMILE SIGNATURES**

Facsimile copies of parties' signatures shall be held valid for all purposes under this Agreement.

#### **29.19 NO THIRD PARTY BENEFICIARIES**

The parties intend this Agreement to benefit only themselves and any persons that become their successors and assignees in accordance with the Agreement. The Agreement is expressly not intended for the benefit of any creditor of the LLC or of any creditor of a member or for the benefit of any other person who is not a party to the Agreement.

#### **29.20 JOINT REPRESENTATION BY ATTORNEY [IF APPLICABLE]**

The parties acknowledge that their interests under this Agreement are substantially aligned and that, accordingly, they have knowingly and freely permitted attorney [NAME OF LAWYER] to represent all of them jointly in the negotiation and drafting of the Agreement.

[THIS PAGE ENDS HERE. THE PARTIES' SIGNATURES ARE ON THE NEXT PAGE.]

SIGNATURES AND DATES

In witness of their acceptance of the terms and conditions of this LLC operating agreement, the parties, by themselves or by their duly authorized representatives, have duly signed and dated this Agreement as follows:

\_\_\_\_\_  
[NAME OF MANAGER] (in the capacity of a member and manager)      (Date)

\_\_\_\_\_  
[NAME OF MEMBER]      (Date)

\_\_\_\_\_  
[NAME OF MEMBER]      (Date)

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



EXHIBIT A

**ARTICLES OF ORGANIZATION**

[Attached]

EXHIBIT B

**MEMBER CONTRIBUTIONS**

**[DRAFTERS SHOULD ADD TO THIS EXHIBIT DEADLINES AND OTHER CONTRIBUTION TERMS AS APPROPRIATE.]**

- (a) Contributions. In exchange for their respective membership rights in the LLC, each member shall make the following contributions of cash, property and services to the LLC in accordance with the following terms and conditions:

[TO BE COMPLETED]

- (b) Proof of Contributions. Attached to this Exhibit B are documents proving that the members have made the above contributions.

## EXHIBIT C

### **DETERMINATION OF PURCHASE PRICE AND NON-PRICE TERMS OF REDEMPTIONS AND CROSS-PURCHASES UNDER SECTION 9 BY AGREEMENT OF THE PARTIES UPON OCCURRENCE OF EVENT OF DISSOCIATION**

#### **Section 1        DETERMINATION OF PRICE TERM**

The price of any transaction (a “buy-out transaction”) constituting a redemption or cross-purchase of a dissociated member’s membership rights under Section 9 of the Agreement shall be the fair market value of those rights as agreed upon by the parties to the transaction in accordance with the valuation principles set forth in Rev. Rul. 59-60, 1959-1 C.B. 237 on or reasonably promptly after the effective date of the event of dissociation triggering the transaction.

#### **Section 2        DETERMINATION OF NON-PRICE TERMS**

The parties to any buy-out transaction under Section 1 of this exhibit shall agree on the non-price terms of the transaction (including installment terms, interest terms, security terms and closing terms) on or reasonably promptly after the effective date of the event of dissociation triggering the transaction. These terms shall not unduly burden the LLC or the cross-purchasing member (as the case may be).

#### **Section 3        MINORITY DISCOUNTS, ETC.**

The price in any redemption or cross-purchase under Section 1 of this exhibit shall [SHALL NOT] reflect minority discounts, marketability discounts or other similar discounts.

#### **Section 4        REDUCTION OF BUY-OUT PRICE BY REASON OF MEMBER’S DISSOCIATION**

- (c) Reduction of buy-out price by reason of a member’s dissociation—in general.  
The price of any buy-out under Section 9 of the Agreement shall reflect any reduction in the value of the LLC resulting from the fact that the dissociated member is no longer a member.
- (d) Expulsion. In the case of a buy-out under Section 9 of the Agreement occurring after a member’s expulsion under Section 7 of the Agreement, the buy-out price shall be reduced not only under Section 4(a) but also to reflect any decrease in the LLC’s value caused by the actions or omissions of the expelled member that resulted in the expulsion.

#### **Section 5        FAILURE TO AGREE**

To the extent that the parties do not reach agreement on a price term or any non-price term under Section 1 or 2 of this exhibit, each such term shall be determined in mediation under Section 27 or, if necessary, in arbitration under Section 28 of the Agreement.

EXHIBIT D

**SPECIFIC FUNCTIONS OF THE MANAGER**

The specific functional responsibilities of the manager to the LLC shall be as follows:

[TO BE COMPLETED]

EXHIBIT E

**MANAGER'S COMPENSATION AND FRINGE BENEFITS**

[TO BE COMPLETED]

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