

**OPERATING AGREEMENT  
OF  
[NAME OF COMPANY]<sup>1</sup>**

A Manager-Managed Limited Liability Company<sup>2</sup>

This Operating Agreement (this “**Agreement**”) dated [DATE] (the “**Effective Date**”) is made and entered into by and among the members listed on Schedule 1 (as amended from time to time) (the “**Members**”) of [NAME OF COMPANY], a [STATE OF ORGANIZATION] limited liability company (the “**Company**”).

**SECTION 1**

**THE LIMITED LIABILITY COMPANY**

**1.1 Formation.** As of the Effective Date, the Members hereby form a limited liability company under the name [NAME OF COMPANY] pursuant to the [Limited Liability Company Act] of the State of [STATE OF ORGANIZATION] (the “**Act**”). The Members shall cause all documentation required for the formation of the Company to be filed with the appropriate agency within the State of [STATE OF ORGANIZATION] charged with processing and maintaining such documentation.

**1.2 Purpose.** The purpose of the Company is to [BROAD DESCRIPTION OF THE BUSINESS].

**1.3 Office.** The Company shall maintain its principal business office at the following address: [ADDRESS OF PRINCIPAL BUSINESS OFFICE].

**1.4 Registered Agent.** The Company shall maintain a registered agent. The Company's initial registered agent in the State of [STATE OF ORGANIZATION] is [NAME OF REGISTERED

**1 ABOUT THIS OPERATING AGREEMENT**

This Operating Agreement is intended for an **LLC electing to be taxed as a cooperative corporation under Subchapter T for federal tax purposes (also known as a nonexempt cooperative)**. Accordingly, this Agreement incorporates the three general factors from the *Puget Sound Plywood, Inc. v. Comm.* Case to be satisfied in order for an organization to be operated on a cooperative basis under Subchapter T: (1) subordination of capital with respect to both the realization of economic benefits therefrom and control over the operations of the company; (2) democratic control by members; and (3) allocation of profits proportionally based on patronage. The Operating Agreement should reflect to the greatest extent possible the concerns of the workers of New Frameworks with respect to the structure and treatment of capital, duties and powers of the members, and convenience. Use the process of developing the Operating Agreement as an opportunity for the group to define the details of who they are and what they aspire to become.

To be reviewed by tax counsel and local law counsel.

**DISCLAIMER:** This document is provided for informational purposes only and does not constitute legal advice.

<sup>2</sup> An LLC can either be Manager-managed or Member-managed. If an LLC is Manager-managed (as here), the power and authority of the company's management lies within its Board of Managers, which is similar to the Board of Directors of a Corporation. If an LLC is Member-managed, there is no Board of Managers, and the LLC is directly managed by its Members. An LLC may, but is not required to, appoint officers (see Section 8.1). Either type of management (Members or Board of Managers) can delegate power and authority to the company's officers. If the management does delegate authority, it will retain the responsibility to oversee the affairs and activities of the company.

**AGENT**], with its registered office at **[ADDRESS OF REGISTERED AGENT]**.

**1.5 Term.** The term of the Company shall commence on the Effective Date and shall continue in perpetuity unless sooner terminated pursuant to this Agreement.

## **SECTION 2**

### **MEMBERSHIP**

**2.1 Names and Addresses of Members.** The names and addresses of the Members are attached as Schedule 1. The Board shall use its best efforts to cause Schedule 1 to be true and correct, including by amending Schedule 1 at the earlier of the following: (i) the Regular Meeting or the Special Meeting of the Board that occurs immediately after receiving notice of any change in the names and addresses of the Members or (ii) within **[30]** days of receiving such notice.

**2.2 Ownership Interests and Percentage Ownership Interests.** A Member's ownership interest ("Ownership Interest") is the total of such Member's interests in the capital of the Company, together with all of the rights arising from such interests. The percentage ownership interest ("Percentage Ownership Interest") of any Member as of any date shall be calculated by (i) totaling the amounts allocated to such Member's Capital Account as of such date, then (ii) dividing such sum by the total amounts allocated as of such date to the Capital Accounts of all of the Members. Immediately following the making of the Initial Capital Contribution (as defined in Section 3.1), each Member shall own the initial Ownership and Percentage Ownership Interests in the Company listed next to such Member's name on Schedule 2. The Board shall determine and make distributions to each Member as set forth in Section 4.

**2.3 [Classification of]<sup>3</sup> Members.** Each Member shall have an Ownership Interest and a Percentage Ownership Interest in the amounts corresponding to such Member's name on Schedule 2. Each Member shall have the right to vote as a Member. Each Member shall have one vote regardless of Percentage Ownership Interest. Each Member shall have the right to serve on the Board.

**2.4 Membership Qualifications.<sup>4</sup>** In order for a person to become a Member, such person must: (a)

be a resident of **[PLACE]**;

(b) make the Initial Capital Contribution (as defined below);

(c) work **[ ]** hours or **[ ]** months for the Company, whichever period is longer;

(d) be voted in as a Member in accordance with Section 2.5;

(e) acknowledge receipt of a copy of this Agreement; and

(f) undergo such other requirements as set out in the policies of the Company, which shall include **[LIST POLICY DOCUMENT(S)]** (as amended from time to time).

**2.5 Admission of Additional Members.<sup>5</sup>** No additional members may be admitted to the Company

<sup>3</sup> The Operating Agreement may provide for different classes of members with different rights. 4

Adapt as needed.

5 Adapt as needed.

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through issuance by the Company of a new Ownership Interest in the Company without the prior unanimous written consent of the Members. The admission of any additional member shall be reviewed by the Board or a committee empowered by the Board.

**2.6 Termination of Ownership Interest.** A Member's Ownership Interest shall terminate upon the occurrence of any of the following:

**2.6.1 Voluntary Withdrawal.** A Member may resign from the Company, terminating such Member's Ownership Interest by filing with the [DESIGNATED OFFICER] of the Company a written notice of resignation. The resignation shall become effective, and the resigning Member's Ownership Interest shall terminate, immediately upon the filing of such resignation without any action on the part of the Company.

**2.6.2 Expulsion.**

- (a) A Member may for any lawful reason be expelled from the Company by a vote of [ ] percent ([ ]%) or greater of the Board or by a vote of [ ] percent ([ ]%) or greater of all of the Members at a duly called meeting at which a quorum is present.
- (b) After a vote to initiate termination, the Board shall give to the Member under expulsion order (i) written notice of the reasons for the proposed termination and (ii) an opportunity, within [10] days, to appeal the expulsion order orally or in writing. The Board shall give to such Member the opportunity for an oral hearing unless there is found compelling reason to accept a written appeal only. The Board shall give the notice provided under this Section 2.6.2 by any means reasonably calculated to provide actual notice, including by e-mail, except that if by mail, notice shall be given by first class or registered mail sent to the last address of the Member shown on the Company's records.
- (c) Any appeal shall be considered by the Board or a committee empowered by the Board. Unless the Board or the committee (as the case may be) votes to stop the termination, the expulsion will be effective [5] days following the meeting to hear the appeal or [15] days after the date of issuing the initial notice, whichever is later.
- (d) The Board may direct a Member under expulsion order to refrain from conducting business as a Member until the termination action is resolved on the condition that the Company pays the Member such Member's average weekly wage, calculated based on the [3] months preceding the vote to initiate termination, for the period beginning on the date on which the Board so directs such Member and ending on the date that is one day prior to the date on which the termination action is resolved. The Members may also direct the Member under expulsion order to stay off Company property.<sup>6</sup>

**2.6.3 Death.** Upon the death of any Member, the Ownership Interest of such Member shall immediately terminate without any action on the part of the Company.

## 2.7 Transfer of Ownership Interest.

**2.7.1 Transfers Generally Prohibited.** Except as provided in Section 2.7.1, no Member shall voluntarily or involuntarily transfer, sell, convey, encumber, pledge, assign, or otherwise dispose of (“**Transfer**”) an interest in the Company. Any attempted assignment or transfer

<sup>6</sup> Adapt as needed.

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prohibited by this Agreement shall be wholly void and shall confer no rights on the intended assignee or transferee.

**2.7.2 Permitted Transfers.** Notwithstanding anything to the contrary in this Agreement, a Transfer shall be permitted upon the unanimous written consent of the Members (such Transfer, a “**Permitted Transfer**”). Permitted Transfers are subject to the requirements set forth in this Section 2.7.

**2.7.3 Right of First Refusal.** A Permitted Transfer must be made as follows:

- (a) The Member desiring to transfer such Member’s Ownership Interest first must provide written notice (the “**Transfer Notice**”) to the Members, specifying the price and terms on which such Member is prepared to sell the Ownership Interest (the “**Offer**”).
- (b) For a period of [30] days after receipt of the Transfer Notice, the Members may acquire all, but not less than all, of the Ownership Interest at the price and under the terms specified in the Offer. If the Members desiring to acquire the Ownership Interest cannot agree among themselves on the allocation of the Ownership Interest among them, the allocation will be proportional to the interests of those Members desiring to acquire the Ownership Interest.
- (c) Closing of the sale of the Ownership Interest will occur as stated in the Offer; provided, however, that the closing will not be less than [45] days after expiration of the 30-day notice period.
- (d) If the Members fail or refuse to notify the transferring Member of their desire to acquire all of the Ownership Interest proposed to be transferred within the 30-day period following receipt of the Transfer Notice, then the Members will be deemed to have waived their right to acquire the Ownership Interest on the terms described in the Offer, and the transferring Member may sell and convey the Ownership Interest consistent with the Offer to [DESCRIBE ELIGIBLE TRANSFEREES; MAY PROVIDE FOR LIST OF TRANSFEREES PRE-APPROVED BY THE BOARD]; *provided*, however, that notwithstanding anything in this Section to the contrary, if any such sale to a third person would be at a price or on terms that are more favorable to the purchaser than stated in the Offer, then the transferring Member must reoffer the sale of the Ownership Interest to the remaining Members at that other price or other terms; *provided*, further, that if the sale to a third person is not closed within [6] months after the expiration of the 30-day period described above, then the provisions of this Section will again apply to the Ownership Interest proposed to be sold or conveyed.

**2.7.4 Substituted Parties.** Any transfer in which the transferee becomes a fully substituted

Member is not permitted unless (i) the transferor and assignee execute and deliver to the Company the documents and instruments of conveyance necessary or appropriate in the opinion of counsel to the Company to effect the transfer and to confirm that the permitted assignee agrees to be bound by the provisions of this Operating Agreement; and (ii) the transferor furnishes to the Company an opinion of counsel, satisfactory to the Company, that the transfer will not cause the Company to terminate for federal income tax purposes or that any termination is not adverse to the Company or the other Members.

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### **SECTION 3**

#### **CAPITAL ACCOUNTS**

**3.1 Initial Capital Contributions.** Each Member as of the Effective Date shall, concurrently with the execution of this Agreement by such Member, make an initial capital contribution to the Company in the amounts listed in Schedule 2 (the “**Initial Capital Contribution**”).

#### **3.2 Capital Accounts.**

**3.2.1** An internal capital account that represents the portion of the net book value of the corporation attributable to the cooperative (the “**Collective Account**”) shall be maintained. A separate capital account (“**Capital Account**”) shall be maintained for each Member’s Ownership Interest. The Members’ Capital Accounts and any calculations based on the Capital Accounts shall be adjusted appropriately to reflect any Transfer of an Ownership Interest, distributions, or additional capital contributions.

**3.2.2** Each Member’s Capital Account shall be increased by (i) the amount of any cash and the fair market value of any property contributed to the Company by such Member (net of any liability secured by such contributed property that the Company is considered to assume or take subject to) and (ii) the amount of Profits and Losses allocated to such Member in accordance with Section 4.1.

**3.2.3** Each Member’s Capital Account shall be reduced by (i) the amount of any cash and the fair market value of any property distributed to the Member by the Company (net of liabilities secured by such distributed property) that the Member is considered to assume or take subject to on account of their Ownership Interest) and (ii) the amount of Profits and Losses allocated to such Member in accordance with Section 4.1.

**3.2.4** Guaranteed payments (“**Guaranteed Payments**”) for salary, wages, fees, payments on loans, rents, and other payments as the Members may agree, may be made to any Member. Guaranteed Payments made to any Member shall be deemed not to be distributions on account of such Member’s Ownership Interest, and shall not be charged to such Member’s Capital Account.

**3.2.5** No Member shall be obligated to restore any negative balance in such Member’s Capital Account. No Member shall be compensated for any positive balance in such Member’s Capital Account except as otherwise expressly provided herein. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with

the provisions of Regulations Section 1.704-1(b)(2) and shall be interpreted and applied in a manner consistent with such Regulations.

### **3.3 Additional Capital Contributions.**

**3.3.1** If the Members determine that additional capital is required by the Company, the Members shall determine the amount of such additional capital, the anticipated time such additional capital will be required, and whether such additional capital shall be provided by the Members by way of additional Capital Contributions or by way of loans from Members. No Member shall be obligated, at any time, to guarantee or otherwise assume or become liable for any obligations of the Company or to make any additional Capital Contributions advances or loans to the Company, unless such obligations are specifically accepted and agreed to by such Member.

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**3.3.2** In the event that additional Ownership Interests are to be issued, the Members as of the date immediately preceding such issuance shall be provided written notice of this intent, and shall be offered in such notice the opportunity to make additional capital contributions in proportion to their respective Ownership Interests; *provided* that this right, if not exercised within [90] days after such notice is received, shall expire automatically, unless this period is extended by the Members. Any loans or additional capital contributions shall be voluntary.

**3.4 No Interest on Capital Contributions.** Members are not entitled to interest or other compensation for or on account of their capital contributions to the Company except to the extent, if any, expressly provided in this Agreement.

## **SECTION 4**

### **SURPLUS, ALLOCATIONS AND DISTRIBUTIONS<sup>7</sup>**

**4.1 Surplus and Profit Defined.** “**Surplus**” means the excess of revenues and gains over expenses and losses for a fiscal year attributable to Member labor. “**Profit**” means the excess of revenues and gains over expenses and losses for a fiscal year attributable to non-Member labor. Any Surplus or Profit shall be determined on a tax basis and shall be computed without regard to any patronage refunds, capital allocations, or income taxes.

### **4.2 Allocations and Distributions of Surplus.<sup>8</sup>**

(a) [Three percent (3%)] of each year’s combined Profit and Surplus (but not Losses) shall be credited to [a worker cooperative loan or development fund TBD].

(b) Any Profit shall be credited to the Collective Account.

(c) Any Surplus shall be distributed to the Collective Account as necessary to bring a year’s Collective Account distribution up to [50%] of the year’s combined Profit and Surplus. All other Surplus shall be distributed as patronage to Member’s Capital Accounts in direct proportion to [hours worked]<sup>9</sup> by the individual Members during the fiscal year.

(d) Any loss shall be distributed [50%] to Member Accounts and [50%] to the Collective Account.

- (e) If a loss is debited to an individual Member Account that represents Surplus previously credited to the Member in the form of a Non-qualified Written Notice of Allocation (as that term is defined under Subchapter T of the Internal Revenue Code), the Member will either be

7 Tax counsel to review with specific attention to the following issue:

**“Substantial Economic Effect” Requirement.** Federal tax law permits the members to agree on how the income of the entity will be allocated among them, but requires that this allocation reflect the economic reality of their business arrangement, as tested under complicated rules (i.e. the “substantial economic effect” test under Treasury regulations 1.704-1(b)). Generally, for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. The partner must bear the economic benefit, or burden, of the allocation.

<sup>8</sup> Local counsel to confirm that this complies with local law.

9 TBD whether a different measure of patronage is appropriate.

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directed, by the Board, to pay an assessment to cover the loss (resulting in a reduction in current tax liability) or the loss will be carried back or forward.

- (f) The distribution percentages referred to in this section can be changed for a coming Fiscal Year by the Members.

**4.3 Distributions Generally.** The Board shall determine and distribute Profits and Losses in accordance with the distribution percentages provided in this Agreement, annually or at more frequent intervals as it sees fit. The distribution percentages referred to in this Section can be changed for a coming Fiscal Year by the Board, subject to ratification by all of the Members. All such distributions shall be made only to the Members who, according to the books and records of the Company, are the holders of record on the actual date of distribution. The Board may base its determination to make a distribution of cash on a balance sheet, profit and loss statement, cash flow statement of the Company or other relevant information. Neither the Company nor the Members shall incur any liability for making distributions.

#### **4.4 Patronage Distributions.**

- (a) Patronage shall be distributed [50%] in cash and [50%] to each individual Member Account unless different proportions are approved by the Members within 8.5 months of the Fiscal Year's close, except that in no case will a Qualified Written Notice of Allocation exceed by more than a factor of [4] the required related cash distribution. Each Member shall receive a written notice of allocation reflecting distributions to such Member's account.
- (b) Patronage can be distributed by Qualified or Non-qualified Written Notices of Allocation or a combination of the two.

**4.5 Member's Consent to Declare Income for Tax Purposes.** Each Member, by becoming a Member and receiving a copy of this Operating Agreement, consents that the amount of any distributions with respect to such Member's Patronage (i) which are made in Qualified Written Notices of Allocation and (ii) for which such Qualified Written Notices of Allocation are received by such Member, will be taken into account by the Member at their stated dollar amounts in the manner

provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by the Member.

#### **4.6 Distributions upon Termination of Ownership Interests.**

**4.6.1 Termination of Ownership Interest.** Upon termination of a Member's Ownership Interest except in connection with the death of a Member (see Section 4.6.2), the amount in such Member's Capital Account (including the Initial Capital Contribution) will automatically be redeemed in exchange for debt. The Company shall repay the debt within 3 years of the termination of the Ownership Interest, with interest accruing at the discount rate (as set by the Federal Reserve Bank of Boston) plus 2% on the amount outstanding at the end of each Fiscal Year. The Company, in settling a Member's Capital Account, shall have the right to set off any and all indebtedness of the Member to the Company.

**4.6.2 Death of a Member.** Upon the death of a Member, the Member's estate or beneficiary or beneficiaries, as the case may be, shall be entitled to receive from the Company, in exchange for all of the deceased Member's Ownership Interest, the book value of the deceased Member's Ownership Interest, adjusted for profits and losses to the date of death. The Company, in settling a Member's Capital Account, shall have the right to set off any and all indebtedness of the Member to the Company. The Board may elect, by written notice that is provided to the deceased Member's estate or beneficiary or

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beneficiaries, within 30 days after the Member's death, to purchase the deceased Member's Ownership Interest in 4 equal installments, with the first installment due 60 days after the Member's date of death and the last installment due within 3 years of the termination of the Ownership Interest, with interest accruing at the discount rate (as set by the Federal Reserve Bank of Boston) plus 2% on the amount outstanding at the end of each Fiscal Year. Unless otherwise agreed unanimously by the Board, prior to the completion of such purchase, the Member's estate or beneficiaries shall have no right to become a Member or to participate in the management of the business and affairs of the Company as a Member or Manager, and shall only have the rights of an assignee and be entitled only to receive the share of profits and the return of capital to which the deceased Member would otherwise have been entitled. The Company, or the other Members, in its or their discretion, may purchase insurance on the lives of any of the Members, with the company or the purchasing Member named as the beneficiary, as the purchaser may decide, and use all or any of the proceeds from such insurance as a source of proceeds from which the deceased Member's Ownership Interest may be purchased by the Company.

**4.7 Dissolution Distributions.** Upon demutualization of the Company or liquidation, dissolution, or sale of the assets of the Company, any assets left after payment of all debts and Capital Account balances shall be distributed (i) fifty percent (50%) to [a worker cooperative loan or development fund TBD] and (ii) fifty percent (50%) to all persons who were Members, or to their heirs, in proportion to the Members' total distributions from the Company. No distribution need be made to any person who fails to acknowledge the receipt of notice of liquidation in a timely manner. Said notice shall be deemed sufficient if sent by certified mail, at least 30 days before distribution of any residual assets, to the person's last known business or residence address.

**4.8 Right to and Form of Distribution.** No Member has any right to any return of capital or to any other distribution except as expressly provided in this Agreement. No Member has any drawing account in the Company. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members except



on the dissolution and winding up of the Company.

**4.9 Compliance with Regulations.**<sup>10</sup> Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(d).

**4.10 Unclaimed Equity Interests.** [Any proprietary interest in the Company held by a Member that would otherwise escheat to the State of [STATE OF ORGANIZATION] as unclaimed personal property shall instead become the property of the Company if the Corporation gives at least 60 days prior notice of the proposed transfer to the affected Member by (1) first-class or second-class mail to the last address of the Member shown on the Company's records, and (2) by publication in a newspaper of general circulation in the county in which the Company has its principal office.]<sup>11</sup> No property or funds shall become the property of the Company under this Section if written notice objecting to the transfer is received by the Company from the affected Member prior to the date of the proposed transfer.

10 Tax counsel to review.

11 Local counsel to confirm.

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## **SECTION 5**

### **BOARD OF MANAGERS**

**5.1 Powers.** Except as required by law or this Agreement, the Board of Managers (the "**Board**") is vested with the power to manage the business and affairs of the Company and votes are cast as Managers rather than as Members. [The following acts require voting as Members, not as Managers:

(a) Acceptance as Members;

(b) Election of Managers;

(c) Any changes to the Operating Agreement.]<sup>12</sup>

**5.2 Qualifications.** The Board shall consist entirely of Members.

**5.3 Number of Managers.** The Board will consist of 5 Managers, except and until the total number of Members exceeds 14, in which case the Board will consist of 7 Managers. The Board shall not change the number of Managers except by amending this Agreement. Until the first meeting for electing the Managers occurs, the initial Board shall consist of the persons listed in the Articles of Organization as constituting the initial Board.

**5.4 Terms of Managers.** Managers shall serve terms of 3 years. A Manager may succeed himself for only 2 consecutive terms. After serving 2 consecutive terms, a Manager must vacate his position for at least 1 year before seeking reelection to another term.

**5.5 Election of Managers.** Elections for Managers filling expired terms shall be held at the last meeting of

the Members of the Fiscal Year. The candidate receiving the greatest number of votes at the election shall serve as a Manager for the upcoming term for such managership. If the number of candidates exceeds the number of managerships to be filled by more than 2, then a primary election will be held where Members are each given 2 votes (only for purposes of the primary election) and the winner will be determined through cumulative voting.<sup>13</sup> Any managership to be filled by reason of an increase in the number of Managers shall be filled at the next regular meeting of the Board of Managers or at a special meeting called for that purpose. When a reappointment or replacement is made, the reappointment or replacement shall be considered effective on the date that the prior term expired. Managers whose terms have expired may continue serving until they are either reappointed or until their successors are chosen.

**5.6 Staggered Terms.** There shall be staggered terms of office for Managers so that one-third (1/3) of the managerships shall be up for election each year (or if the number does not evenly divide by thirds, the board shall be divided as close to thirds as possible). The system for staggered terms of office shall be implemented as follows: At the meeting of the Board at which this Agreement is adopted there shall be a drawing in order to determine the initial terms of the Managers. After the drawing, 1 Manager shall have an initial term of 1 year, 2 Managers shall have a term of 2 years, and 1 Manager shall have a term of 3 years. The minutes of this board meeting shall show the

<sup>12</sup> Local counsel to confirm that this complies with Local law.

<sup>13</sup> Cumulative voting permits the voter to stack multiple votes on a single candidate, increasing the chances that the winner wins by a wider margin, and therefore more accurately reflects the voters' wishes. Following the primary vote eliminate the candidates with the lowest total votes until the number of candidates is equal to the number of open board seats plus 2.

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results of the drawing. Initial directors serving less than a full 3-year term as their initial term (*i.e.*, directors who draw a one-year term or two-year term), shall be considered to have served a full 3-year term for purposes of the limits on more than 2 successive terms.

**5.7 Resignation.** Any Manager may resign at any time by delivering written notice to the [DESIGNATED OFFICER]. Such resignation shall take effect upon receipt or, if later, at the time specified in the notice.

**5.8 Removal.** Any Manager may be removed without cause, at any time, by consensus minus 1 of the entire Board (excluding the Manager proposed for removal), at a Regular or Special Meeting called for that purpose. Any Manager under consideration of removal must first be notified about the consideration by written notice at least five days prior to the meeting at which the vote takes place.

**5.9 Vacancies; New Managerships.** Vacancies shall be filled as follows: (i) until the next regular board election, by temporary manager elected by majority vote of the remaining Managers, though less than a quorum. Vacancies shall be filled as soon as practical. At the next regular board election a new manager will be elected to fill the remainder of the vacating managers term.

**5.10 Compensation.** Managers shall not receive any salaries or other compensation for their services, but, by resolution of the Board, may be reimbursed for any actual expenses incurred in the performance of their duties for the Company, provided that a majority of disinterested Managers approve the reimbursement. Except as expressly provided in this Agreement, the Company shall not loan money or property to, or guarantee the obligation of, any Manager.

**5.11 Committees.** Committees shall be formed by the issuance of committee charters by action of the Board from time to time, and shall be empowered by the Board to take actions specified in the applicable committee charter without a vote.

## **SECTION 6**

### **BOARD MEETINGS**

**6.1 Decision-Making Process.** Matters will be discussed with a goal of seeking consensus. If it becomes apparent that consensus cannot be reached at the instant meeting, the facilitator will take a vote as to whether the issue must be decided at the instant meeting or can be tabled for future discussion and decision. If [50%] or greater of quorum indicate a need for decision at the instant meeting, voting will be held on proposals regarding the issue. The proposals can then be carried by [51%] or greater of quorum.

**6.2 Place of Board Meetings.** Regular and Special Meetings of the Board of Managers shall be held at [the principal business office of the Company or at any other place that the President may designate within the city limits of [CITY], [STATE OF ORGANIZATION]].

**6.3 Regular and Special Meetings.** Regular Meetings of the Board of Managers shall be held each month, or more frequently as deemed necessary by the Board of Managers. Special Meetings may be called by [the President or] any three Managers. An orientation meeting will be held each year for the new members of the Board of Managers.

#### **6.4 Notice of Board Meetings.**

**6.4.1 Regular Meetings.** Notice of the date, time, and place of Regular Meetings shall be given to each Board member by regular mail, telephone (including voice mail), facsimile, or e mail no less than [5] days' notice prior to the meeting. Notice of any subject matter requiring

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voting on the agenda shall be given to each Board member in the same manner no less than [2] days before the meeting.

**6.4.2 Special Meetings.** Notice of the date, time, and place of Special Meetings shall be given to each Board member using the same methods as for Regular Meetings, but with no less than 2 days' notice prior to the meeting, with the exception of Special Meetings held to amend the Articles of Organization or this Agreement, for which a [10]-day written notice by mail, facsimile or e-mail shall be required specifying the proposed amendment.

**6.5 Quorum at Meeting.**<sup>14</sup> Seventy-five percent (75%) of the total number of Managers shall constitute a quorum at a meeting. The Managers present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Managers to leave less than a quorum, *provided* that any action taken reflects consensus of, or when voting is called for, approval of, at least 51% of the Managers required to constitute a quorum.<sup>15</sup>

#### **6.6 Voting.**

(a) Each Manager is entitled to one vote on each matter submitted to a vote.

(b) Cumulative voting shall not be permitted except as expressly provided in this Agreement.

(c) Voting by proxy shall not be permitted.

**6.7 Action without a Meeting.** Any action required or permitted to be taken by the Managers may be taken without a meeting, if all Managers individually or collectively consent in writing to the action. The consents shall be filed with the minutes of the proceedings of the Managers. Action by written consent has the same force and effect as a unanimous vote of the Managers.

## **SECTION 7**

### **MEMBERSHIP MEETINGS**

**7.1 Decision-Making Process.** Matters will be discussed with a goal of seeking consensus. If it becomes apparent that consensus cannot be reached at the instant meeting, the facilitator will take a vote as to whether the issue must be decided at the instant meeting or can be tabled for future discussion and decision. If 75% or greater of quorum indicate a need for decision at the instant meeting, voting will be held on proposals regarding the issue. The proposals can then be carried by 75% or greater of quorum.

**7.2 Regular Membership Meetings.** The Members shall meet at least twice a year at times and places designated by the Board, and at least one of such meetings shall take place on January 2 or the next succeeding business day. If no meeting place is designated, the meetings shall take place at

<sup>14</sup> This Operating Agreement adopts the consensus-based model of decisionmaking. If action by a minority of members that go against the spirit of consensus-building are a concern (i.e. by establishing a quorum and acting on behalf of the Company), consider setting the quorum at a higher amount (but less than 80% to prevent holdouts by a minority of Members) and/or setting the percentages in the Manner of Acting provision at a higher amount.

<sup>15</sup> This provision permits participants to continue transacting business and making decisions at a meeting that starts with a quorum but loses it over the course of the meeting.

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the principal business office of the Company.

**7.3 Special Membership Meetings.** Special Meetings may be called at any time by 60% of the Members for any purpose.

**7.4 Notice of Membership Meetings.**<sup>16</sup> Written notice stating the place, day and hour of the meeting and the purpose or purposes for which a Membership Meeting is called shall be delivered [not less than 5 nor more than 60 business days] before the date of the meeting unless otherwise provided, either personally, by mail [or by e-mail], by or at the direction of the Members calling the meeting, to each Member. Notice of a meeting need not be given to any Member who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Member.

**7.5 Quorum at Meeting.**<sup>17</sup> [Fifty percent (50%)] of the total number of Members shall constitute a quorum at a meeting. The Members present at a duly called or held meeting at which a quorum is present

may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, *provided* that any action taken reflects consensus of, or when voting is called for, approval of, at least [75%] of the Members required to constitute a quorum.

#### **7.6 Voting.**

- (a) Each Member is entitled to one vote on each matter submitted to a vote.
- (b) The record date for determining the Members entitled to cast written ballots is 25 days before the date of the meeting or the day on which the first ballot is mailed or solicited.
- (c) Cumulative voting shall not be permitted for any purpose.
- (d) Voting by proxy shall not be permitted for any purpose.

**7.7 Action without a Meeting.** Any action required or permitted to be taken by the Members may be taken without a meeting, if all Members individually or collectively consent in writing to the action. The consents shall be filed with the minutes of the proceedings of the Members. Action by written consent has the same force and effect as a unanimous vote of the Members.

### **SECTION 8**

#### **OFFICERS AND AGENTS**

**8.1 Officers.** The Board may appoint officers who, to the extent provided by the Board, may have and may exercise all the powers and authority of the Members or Managers in the conduct of the

<sup>16</sup> Local counsel to confirm notice requirements under local law.

17 This Operating Agreement adopts the consensus-based model of decision-making. If action by a minority of members that go against the spirit of consensus-building are a concern (i.e. by establishing a quorum and acting on behalf of the Company), consider setting the quorum at a higher amount (but less than 80% to prevent holdouts by a minority of Members) and/or setting the percentages in the Manner of Acting provision at a higher amount.

Local counsel to confirm quorum requirements under local law.

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business and affairs of the Company. The officers may consist of a President, a Treasurer, a Secretary, or other officers or agents as may be elected or appointed by the Board. The Board may provide rules for the appointment, removal, supervision and compensation of such officers, the scope of their authority, and any other matters relevant to the positions. The officers shall act in the name of the Company and shall supervise its operation, within the scope of their authority, under the direction and management of the Board. Any action taken by a duly authorized officer, pursuant to authority granted by the Board in accordance with this Agreement, shall constitute the act of and serve to bind the Company.

**8.2 Agents.**<sup>18</sup> The Board may authorize any Member or Members of the Company, or other individuals or entities, whether or not a Member, to take action on behalf of the Company, as the Board deems appropriate. Any Member may lend money to and receive loans from the Company, act as a lessee, lessor, or surety of the Company, and transact any business with the Company that could be carried out by someone who is not a Member, and the Company may receive from or pay to

any Member remuneration for such actions, in the form of fees, rent, interest, or any form that the Board deems appropriate; *provided* that no Member may act as an employee or independent contractor or receive any remuneration for such actions in the form of wages or salaries.

## **SECTION 9**

### **INDEMNIFICATION AND INSURANCE**

**9.1 Indemnification.**<sup>19</sup> The Company shall indemnify, hold harmless and defend any Member, in such person's capacity as a Member, Manager, or Officer, from and against any loss, expense, damage or injury suffered or sustained by such Member by reason of any acts or omissions arising out of activities performed on behalf of or in furtherance of the interests of the Company, including but not limited to any judgment, award, settlement, reasonable attorneys' fees and other costs or expenses

incurred in connection with the defense of any actual or threatened action, proceeding or claim; *provided* that the acts or omissions were not performed or omitted fraudulently or as a result of gross negligence or willful misconduct by such Member. Reasonable expenses incurred by the indemnified Member in connection with any such proceeding relating to the foregoing matters may be paid or reimbursed by the Company in advance of the final disposition of such proceeding upon receipt by the Company of (i) written affirmation by the person requesting indemnification of such person's good faith belief that the standard of conduct necessary for indemnification by the Company has been met and (ii) a written undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person has not met such standard of conduct, which undertaking shall be an unlimited general obligation of the indemnified party but need not be secured.

**9.2 Insurance.** The Company shall have the power to purchase and maintain insurance on behalf of

<sup>18</sup> The Agents section gives the Board flexibility to use non-Members to act as Members, and vice versa, depending on the situation. So, for example, if a Member can offer a loan to the Company on better terms than any other lender, then the Company and that Member have the ability to enter into that transaction. That transaction (in this case, a loan) would be treated as any comparable transaction with a non-Member, and any payments would be made without regard to that Member's Ownership Interest (*i.e.*, they would be made as Guaranteed Payments).

<sup>19</sup> The Indemnification section essentially provides that if any Member gets sued (or threatened to get sued) because of an act done on behalf of the Company, the Company will pay for that Member's legal expenses except in cases where the Member's act involve fraud, gross negligence or willful misconduct. The Company also promises not to bring suit against that Member and to prepare for and defend that Member in any lawsuit.

any person who is or was a Member or an agent of the Company against any liability asserted against such person and incurred by such person (i) in any such capacity or (ii) arising out of such person's status as a Member or an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under Section 9.1 or under applicable law.

## **SECTION 10**

### **ACCOUNTING, RECORDS AND REPORTING**

**10.1 Method of Accounting.** The Company will use [METHOD OF ACCOUNTING] for financial reporting

and tax purposes.

**10.2 Fiscal Year.** The fiscal year (“**Fiscal Year**”) of the Company is the [calendar year].

**10.3 Accountings.** As soon as is reasonably practicable after the close of each Fiscal Year, the Board shall make or cause to be made a full and accurate accounting of the affairs of the Company as of the close of that Fiscal Year and shall prepare or cause to be prepared a balance sheet as of the end of such Fiscal Year, a profit and loss statement for that Fiscal Year and a statement of Members’ equity showing the respective Capital Accounts of the Members as of the close of such Fiscal Year and the distributions, if any, to Members during such Fiscal Year, and any other statements and information necessary for a complete and fair presentation of the financial condition of the Company, all of which the Board shall furnish to each Member. In addition, the Company shall furnish to each Member information regarding the Company necessary for such Member to complete such Member’s federal and state income tax returns. The Company shall also furnish a copy of the Company’s tax returns to any Member requesting the same. On such accounting being made, profits and losses during such Fiscal Year shall be ascertained and credited or debited, as the case may be, in the books of account of the Company to the respective Members as provided herein.

**10.4 Bank Accounts.** The Company shall maintain its funds in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be comingled in any fashion with the funds of any other person. Company funds will be invested or deposited with an institution, the accounts or deposits of which are insured or guaranteed by an agency of the United States government.

**10.5 Books and Records.** The Company shall maintain complete and accurate accounts in proper books of all transactions of or on behalf of the Company and shall enter or cause to be entered therein a full and accurate account of all transactions on behalf of the Company. The Company’s books and accounting records shall be kept in accordance with such accounting principles (which shall be consistently applied throughout each accounting period) as the Board may determine to be convenient and advisable. The Company shall maintain at its principal office all of the following:

(a) a current list of the full name and last known business or residence address of each Member in the Company set forth in alphabetical order, together with the Capital Account for each Member, including entries to such accounts for contributions and distributions;

(b) a full and accurate version of Schedule 2 to this Agreement, setting forth the Ownership Interest and Percentage Ownership Interest of each Member;

(c) a copy of the Articles of Organization and any and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

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(d) copies of the Company’s federal, state and local income tax or information returns and reports, if any, for the 6 most recent taxable years;

(e) a copy of this Agreement and any and all amendments hereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

- (f) copies of the financial statements of the Company, if any, for the 6 most recent Fiscal Years;
- (g) the Company's books and records as they relate to the internal affairs of the Company for at least the current and past 4 Fiscal Years;
- (h) true and full information regarding the status of the business and financial condition of the Company; and
- (i) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member.

**10.6 Inspection of Books and Records.** Each Member has the right, upon reasonable request for purposes reasonably related to the interest of the person as a Member or a Manager, to (a) inspect and copy during normal business hours any of the Company's records described in Section 10.1 and (b) obtain from the Company, promptly after their becoming available, a copy of the Company's federal, state and local income tax or information returns for each Fiscal Year.

**10.7 Filings.** The Board, at the Company's expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Board, at the Company's expense, shall also cause to be prepared and timely filed with appropriate federal and state regulatory and administrative bodies amendments to, or restatements of, the Articles of Organization and all reports required to be filed by the Company with those entities under the Act or other applicable laws, rules, and regulations. If the Company is required by the Act to execute or file any document and fails, after demand, to do so within a reasonable period of time or refuses to do so, any Member may prepare, execute and file that document with the [STATE OF ORGANIZATION] Secretary of State.

## **SECTION 11**

### **DISSOLUTION AND WINDING UP**

**11.1 Dissolution.** The Company will be dissolved upon the occurrence of any of the following events: (a) sale, transfer, or other disposition of all or substantially all of the property of the Company; (b) by agreement of all of the Members;

(c) by operation of law; or

(d) the death, incompetence, expulsion, or bankruptcy of a Member, or the occurrence of any event that terminates the continued Ownership Interest of a Member, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, within 120 days after the date of the event, elect to continue the business of the Company.

**11.2 Winding Up.** Upon the occurrence of an event specified in Section 11.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors. The Board shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the assets and liabilities of the Company,



shall cause such assets to be liquidated as promptly as is consistent with obtaining their fair value, and shall apply and distribute the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 3 and Section 4 of this Agreement, and the Members' Capital Accounts have been adjusted to reflect the allocation and all other transactions through the date of the distribution, in the following order:

- (a) to payment and discharge of the expenses of liquidation and of all the Company's debts and liabilities to persons or organizations other than Members;
- (b) to the payment and discharge of any Company debts and liabilities owed to Members;
- (c) to Members in the amount of their respective adjusted Member Account balances on the date of distribution; *provided*, however, that any then outstanding advances in default (with interest and costs of collection) first must be repaid from distributions otherwise allocable to the Defaulting Member pursuant to this Section; then
- (d) as described in Section 4.7 (Dissolution Distributions).

**11.3 Compliance with Regulations.**<sup>20</sup> Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(d).

## **SECTION 12**

### **DISPUTE RESOLUTION**

**12.1 Disputes among Members.** The Members agree that in the event of any dispute or disagreement solely between or among any of them arising out of, relating to or in connection with this Agreement or the Company or its organization, formation, business or management ("**Member Dispute**"), the Members shall use their best efforts to resolve any Member Dispute by good faith negotiation and mutual agreement. The Members shall meet at a mutually convenient time and place to attempt to resolve any such dispute. However, in the event that the Members are unable to resolve any Member Dispute, such parties shall first attempt to settle such dispute through a non-binding mediation proceeding. In the event any party to such mediation proceeding is not satisfied with the results thereof, then any unresolved disputes shall be finally settled in accordance with an arbitration proceeding. In no event shall the results of any mediation proceeding be admissible in any arbitration or judicial proceeding.

## **SECTION 13**

### **MISCELLANEOUS**

**13.1 Notices.** All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid, directed to

20 Tax counsel to review.

the addresses shown for each Member in Schedule 1 or to such other address as a Member may specify by notice given in conformance with these provisions to the other Members.

**13.2 Amendments.** All amendments to this Agreement shall be in writing and signed by two-thirds (2/3) of the Members to the agreement at the time of the amendment.

**13.3 Further Assurances.** Each Member shall provide such further information with respect to the Member as the Company may reasonably request, and shall execute other certificates, instruments and other documents as may be necessary and proper to implement, complete and perfect the transactions contemplated by this Agreement.

**13.4 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**13.5 Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous written or oral negotiations, correspondence, understandings and agreements between or among the parties, regarding the subject matter hereof.

**13.6 Binding Effect.** This Agreement shall bind and inure to the benefit of the parties and their respective successors.

**13.7 Parties in Interest.** Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any persons other than the Members and their respective successors nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

**13.8 Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.

**13.9 Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.

**13.10 Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of [STATE OF ORGANIZATION].

**13.11 Attorneys' Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts, including any appellate courts, in which the matter is tried, heard, or decided.

**13.12 Remedies Cumulative.** Remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Member is lawfully entitled.

**13.13 Jurisdiction and Venue; Equitable Remedies.** The Company and each Member hereby expressly agrees that if, under any circumstances, any dispute or controversy arising out of or relating to or in any way connected with this Agreement shall be the subject of any court action at law or in equity, such action shall be filed exclusively in the courts of the State of [STATE OF ORGANIZATION] or of the United States located in the county of [PREFERRED COUNTY FOR

**LITIGATING IN STATE OF ORGANIZATION**], as selected by the Member that is the plaintiff in the action, or that initiates the proceeding or arbitration. Each Member agrees not to commence any action, suit or other proceeding arising from, relating to, or in connection with this Agreement except in such a court and each Member irrevocably and unconditionally consents and submits to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action, and hereby grants jurisdiction to such courts and to any appellate courts having jurisdiction over appeals from such courts or review of such proceedings. Because the breach of the provisions of this Section would cause irreparable harm and significant injury to the Company and the other Members, which would be difficult to ascertain and which may not be compensable by damages alone, each Member agrees that the Company and the other Members will have the right to enforce the provisions of this Section by injunction, specific performance or other equitable relief in addition to any and all other remedies available to such party or parties without showing or proving any actual damage to such parties. Members will be entitled to recover all reasonable costs and expenses, including but not limited to all reasonable attorneys' fees, expert and consultants' fees, incurred in connection with the enforcement of this Section.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first written above.

**MEMBERS:**

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

**SCHEDULE 1**  
**NAMES AND ADDRESSES**

As of [DATE], the following is a list of Members of the Company:

Name	[Member Classification] <sup>21</sup>	Address

Authorized by Member(s) as of [DATE].

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

<sup>21</sup> If applicable.

**SCHEDULE 2**  
**INITIAL CAPITAL CONTRIBUTIONS**

The Members' total initial contribution to the Company capital Pursuant to Section 3 is \$ [REDACTED]. The description and each individual portion of this initial contribution are as follows:

<b>Name</b>	<b>Contribution (Ownership Interest) (\$)</b>	<b>Percentage Ownership Interest (%)</b>
<b>Total</b>		

Signed and agreed as of [DATE].

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

\_\_\_\_\_  
Printed/Typed Name Signature

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Printed/Typed Name Signature