

**[COMPANY]**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
**(a [STATE] limited liability company)**

Effective Date: **[DATE]**

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# Limited Liability Company Agreement

THIS LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”), is made effective as of [DATE] (the “Effective Date”), by and among the persons named as members in Schedule A (individually a “Member” and collectively the “Members”).

## *Recitals:*

[COMPANY] (the “Company”) (the “Company”) was formed on [DATE] (the “Formation Date”) pursuant to the laws of [STATE]. Each Member executing this Agreement desires to be a member of the Company. The purpose of this Agreement is to set out the respective rights, obligations, and duties of the Members regarding the Company and its business, management, and operations. Capitalized terms used in this Agreement shall, unless otherwise defined in this Agreement, have the meanings given those terms in Article 10.0. To the extent not inconsistent with the definitions set forth in this Agreement, the definitions of terms defined in the Act shall supplement the definitions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

## Article 1.0 Organization; Name; Purpose; Term; Registered Agent and Office; Confidentiality; Conflicts of Interest

### Section 1.1 Organization

The Managers shall file such certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited liability company in accordance with the laws of the State of [STATE] and any other jurisdiction in which the Company conducts business.

### Section 1.2 Name

The name of the Company shall be “[COMPANY]”. The Company may do business under that name and under any other name or names selected by the Managers.

### Section 1.3 Purpose

The primary purpose of the Company is to engage in the business of providing communications and public affairs consulting services. The Company may also engage in any other lawful activity for which a limited liability company may be formed under the laws of [STATE].

### Section 1.4 Term

The Company was formed on the Formation Date, which is the date of the filing of the Company’s Certificate of Formation (the “Certificate”) in the office of the Secretary of State. The Company shall continue until the Company is dissolved upon the occurrence of an event set forth in Section 7.1.

### Section 1.5 Registered Agent and Office

The address of the registered office of the Company and the name and address of its registered agent at said address is set forth in the Certificate. The Managers may from time to time change the registered agent of the Company or the location of its registered office. The Managers may from time to time establish one or more places of business of the Company, either within or without the State of [STATE], and may appoint agents for service of process in all jurisdictions in which the Company conducts business.

## Section 1.6 Confidentiality

(a) Except in furtherance of the Company's business, no Member or Manager shall disclose or use any Confidential Information. If a Person no longer has any interest as a Member or Manager of the Company, such Person shall surrender to the Company, or at the Company's request destroy (and certify in writing to the Company that such Person has destroyed), all material containing any Confidential Information which may be in such Person's possession.

(b) The obligations under this Section shall not apply to information:

(i) which becomes publicly available without breach of this Agreement or another agreement between the Company and any of the Members or Managers (in which case said obligations will only apply to such information until such public availability occurs); or

(ii) which a Person (A) already possessed without obligation of confidentiality prior to disclosure by the Company (however, the obligations under this Section shall apply to any such information in which such Person's right, title, and interest are or have been assigned or otherwise transferred to the Company), (B) develops independently (in which case said obligations will only apply to such information until such independent development is made), or (C) rightfully receives without obligation of confidentiality from a third party (in which case said obligations will only apply to such information until such rightful receipt occurs).

## Section 1.7 Conflicts of Interest

Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members, Managers, and their affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms. Notwithstanding the foregoing, no Manager who is a Member shall vote in the capacity as a Manager on any matter regarding the purchase by Company of such Member's Units pursuant to the Restriction Agreement (as defined in Section 6.1), unless such Manager obtains the unanimous approval of the Members.

## Article 2.0 Units; Members; Meetings; Voting

### Section 2.1 Units.

(a) Ownership interests in the Company shall be represented by units of ownership (the "Units").

(b) The number of Units held by each Member, and such Member's Percentage Interest, shall be set forth opposite such Member's name on Schedule A. Any change in Units (and, therefore, Percentage Interests) that occurs upon the admission of a new Member, the dissociation of a Member, or any other event affecting the Units held by a Member or that are otherwise issued and outstanding shall be reflected in an amendment to Schedule A.

(d) Except as otherwise set forth in this Agreement, or a separate agreement between a Member or other Person and the Company, no Member shall have any preemptive, preferential, or other right with respect to the issuance or sale of any Units or any warrants, subscriptions, options, or other rights with respect thereto.

### Section 2.2 Members.

(a) The name, mailing address, and number of Units owned by each Member shall be set forth in Schedule A.

(b) Additional Persons may join this Agreement, and may become Members of the Company, all as may be approved unanimously from time to time by the Managers, as set forth in Section 2.5. At the time a new Member joins this Agreement, such Member and the Company shall execute and deliver a Signature Page Addendum.

(c) Upon any change in the information contained in Schedule A (including the addition of a new Member) the Managers shall prepare or cause to be prepared a replacement Schedule A to reflect such change.

(d) The Managers may, but shall not be required to, issue to a Member a certificate, information statement, or such other document to acknowledge the Units owned by such Member. No such certificate, statement, or document shall be an official record of the Company and, in the event of a discrepancy between the information contained in any such certificate, statement, or document and the information contained in the Company's records, the information contained in the Company's records shall be controlling.

(e) Each Member shall provide the Company with such Member's taxpayer identification number and such additional information as the Company may from time to time reasonably request.

## Section 2.3 Member Meetings; Voting

### *2.3.1 Authority; Call; Purposes; Location*

(a) Unless otherwise required by the Act, the Certificate, or this Agreement, the Members shall have the authority to vote upon only those matters upon which the Managers do not have the authority to vote pursuant to this Agreement.

(b) A meeting of the Members (i) may be called by the Managers, and (ii) shall be called by the Managers if required to do so in accordance with the Act (including Section 304-C:24, VIII).

(c) Business transacted at any meeting of the Members shall be limited to the purposes stated in the notice and such other matters as may properly come before the meeting.

(d) All Member meetings shall be held at the Company's principal place of business or at any other place designated by the Managers.

### *2.3.2 Notice*

(a) With respect to any meeting of the Members, the Managers shall notify the Members of the date, time, and place of such meeting no fewer than five (5) nor more than sixty (60) days before the meeting date. Such notifications may be transmitted electronically.

(b) If any such meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, and place is announced at the meeting before adjournment.

(c) A Member may waive notice of a meeting (or any notice required by the Act, the Certificate, or this Agreement) before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Member entitled to the notice, and be delivered to the Company for inclusion in the minutes or filing with the company records.

(d) A Member's attendance at a meeting (i) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (ii) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

### 2.3.3 Quorum

Except as otherwise set forth in the Act, the Certificate, or this Agreement, the presence in person or by proxy at a Member meeting of Members holding a majority of the then issued and outstanding Units constitutes a quorum. Members may participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

### 2.3.4 Voting

(a) Each Member entitled to vote at a Member meeting may vote in person or by proxy. A Member entitled to vote upon a matter at a Member meeting at which a quorum is present may vote by proxy executed in writing by the Member or by the Member's duly authorized attorney-in-fact. Such proxy shall be filed with the Managers or other person authorized to tabulate votes before or at the time of the meeting.

(b) Except as otherwise set forth in the Act or the Certificate, each Unit is entitled to one (1) vote on each matter voted on at a meeting of the Members. If a quorum exists, action on any matter is approved if the votes cast by those Members entitled to vote favoring the action exceed the votes cast opposing the action, unless the Act, the Certificate, or this Agreement requires a greater number of affirmative votes. Once a Unit is represented for any purpose at a meeting, such Unit is deemed present for quorum purposes for the remainder of the meeting. If at any time during which [PARTNER 1] is a Member and the number of votes cast favoring an action requiring majority approval are same as the number of votes cast opposing such action, then [PARTNER 1] shall cast the deciding vote.

(c) In lieu of holding a Member meeting, the Members may vote or otherwise take action by a written instrument signed by Members who hold the number of Units that would be required for the Members to so vote or take such action under this Agreement at a meeting at which all Members were present and voting.

(d) Except as otherwise set forth in this Agreement, all references in this Agreement to approvals and other actions to be taken by the Members shall mean that such approval or action has been authorized either (i) at a lawfully held meeting of the Members at which a quorum was present, or (ii) in writing pursuant to subsection (c).

## Section 2.4 Liability of Members

No Member shall have any personal liability for any debt, obligation, loss, or liability of the Company. Each Member's liability for any debt, obligation, loss, or liability of the Company shall be limited to the amount of such Member's Capital Contribution(s).

## Section 2.5 Member Loans

(a) No Member shall be required to lend any funds to the Company or to pay any contributions, assessments, or payments to the Company except such Member's initial Capital Contribution under this Agreement (if any), even if the failure to do so would result in a default of any of the Company's obligations or the loss or termination of all or any part of the Company's assets or business.

(b) Any loan made by a Member shall, unless otherwise agreed by the lending Member, be repaid prior to any distribution to any Member of any Distributable Cash.

## Section 2.6 Limitation on Authority of Members

No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member. Any Member who takes any action or binds the Company in violation of this Section shall be solely responsible for any liability, damage, loss, cost, or expense

incurred by the Company as a result of such unauthorized action and shall indemnify and hold the Company harmless with respect thereto.

## Section 2.7 Services to the Company

No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Managers, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

## Article 3.0 Management

### Section 3.1 Managers; Qualifications

(a) The management of the Company shall be vested in the Managers. As of the Effective Date, there shall be two (2) Managers, the names and addresses of which are set forth on Schedule A. The number of Managers of the Company shall thereafter be established by the unanimous vote of the Members, but shall not be fewer than one (1); provided that no reduction in the number of Managers shall have the effect of removal of a Manager (unless such Manager is otherwise removed in accordance with the provisions of this Agreement).

(b) Promptly upon any change in the information contained in Schedule A for any Manager, including any change in the number of Managers or the identity of any Manager (whether by addition, removal, replacement, or otherwise), the Managers shall prepare or cause to be prepared a replacement Schedule A to reflect such change.

(c) Managers need not be Members or residents of the State of [STATE], unless so required by the Act or the Certificate.

### Section 3.2 Powers; Duties

(a) Except as otherwise set forth in the Act, the Certificate (including a statement in the Certificate pertaining to whether management of the Company is vested in the Managers), or this Agreement (including subject to the restriction set forth in Section 3.3), all powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managers. Without limiting the generality of the foregoing, the Managers shall have the following powers:

(i) to acquire property from any person as the Managers may determine;

(ii) to purchase liability and other insurance to protect the Company's property and business;

(iii) to invest any Company funds (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(iv) to execute on behalf of the Company all instruments and documents (including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage, or disposition of the Company's property or assets, assignments, bills of sale, leases, partnership agreements, and operating or limited liability company agreements of other limited liability companies) necessary or desirable, in the opinion of the Managers, to the conduct of the business of the Company;

(v) to employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;

- (vi) to appoint (and remove, with or without cause) officers of the Company to, under the direction of the Managers, perform such duties and possess such powers as the Managers shall determine;
- (vii) to sell all or any portion of the Company's assets (subject to the provisions of Section 3.3 with respect to the sale of all or substantially all of such assets);
- (viii) to take actions on behalf of the Company pursuant to the Restriction Agreement;
- (ix) to enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such forms as the Managers may approve;
- (x) to execute and file such other instruments, documents, and certificates which may from time to time be required by the laws of the State of [STATE] or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue, and defend the valid existence of the Company;
- (xi) to adopt from time to time equity incentive plans which provide for the issuance of profits interests, restricted Units, or other forms of equity-based incentive compensation, or other compensation plans for Managers, officers, employees, consultants and agents of the Company as the Managers may determine, and to make awards in accordance with such plan(s);
- (xii) to authorize distributions of Distributable Cash;
- (xiii) to initiate, defend, and settle any litigation or other proceedings brought by or against, or otherwise involving, the Company;
- (xiv) to cause the Company to be a party to a merger or conversion of the Company, or a sale or other disposition of assets of the Company, or sale or other disposition of Percentage Interests, or other transaction pursuant to which a person or persons acquire all or substantially all of the assets of, or Percentage Interests in, the Company in a single or series of related transactions; and
- (xv) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(b) Without limiting the generality of the provisions of subsection (a), if the Company requires funds to carry out its purposes, conduct its business, or meet its obligations, or to make any expenditure authorized by this Agreement, the Company may borrow such funds from any Member, the Managers, and/or any third party lender, and on such terms and conditions, as may be approved by the Managers. Any such loan may be collateralized by such assets of the Company and bear interest at such rate as the Managers may approve.

(c) The Managers shall devote such time to the business and affairs of the Company as is necessary to carry out the duties of the Managers set forth in this Agreement.

(d) If at any time the Certificate provides that the management of the Company shall not be vested in the Managers, then during such period, the powers granted to the Managers under this Agreement shall be exercised by the Members.

### Section 3.3 Actions Requiring the Unanimous Approval of Managers

Notwithstanding anything to the contrary in this Agreement the following actions shall require the unanimous approval of the Managers:

- (a) the conducting any business on behalf of the Company in any jurisdiction which does not recognize limited liability companies;

- (b) the sale or other transfer of all or substantially all of the assets of the Company;
- (c) the merger or consolidation of the Company with or into any other business entity;
- (d) the purchase of all or substantially all of the assets of another entity;
- (e) the amendment of any provision(s) of this Agreement;
- (f) the distribution of any Distributable Cash to any Member, or allocation of any Tax Items, other than in accordance with the provisions of Article 5.0 of this Agreement;
- (g) the payment of compensation (as a Manager or otherwise) to any Member;
- (h) the authorization of a Manager or Member to do any act on behalf of the Company that contravenes this Agreement, including any provision that expressly limits the purpose, business or affairs of the Company or the conduct of the Company;
- (i) any change in the tax status of the Company;
- (j) Company's consent to the termination of the Member Cross-Purchase and Restriction Agreement by and among Company and certain Members, dated as of the date of this Agreement;
- (k) the admission of a member, or the issuance of any Units; or
- (l) to adopt from time to time equity incentive plans which provide for the issuance of profits interests, restricted Units, or other forms of equity-based incentive compensation, or other compensation plans for Managers, officers, employees, consultants and agents of the Company.

#### Section 3.4 Election

Unless otherwise provided in the Certificate, the Managers shall be elected by a plurality of the votes cast by the Members entitled to vote in the election at a meeting at which a quorum is present.

#### Section 3.5 Term

Each Manager shall hold office until such Manager dies, resigns, or is removed.

#### Section 3.6 Resignation

A Manager may resign at any time as a Manager or from a Manager committee by delivering written notice thereof to the Company. A resignation is effective upon delivery of the notice unless the notice specifies a later effective date. The acceptance of a resignation is not necessary to make it effective.

#### Section 3.7 Removal

A Manager may be removed by the Members at a meeting called for the purpose of removing the Manager. The removal may be with or without cause.

#### Section 3.8 Vacancies

Unless the Certificate provides otherwise, if a Manager vacancy occurs, including a vacancy resulting from an increase in the number of Managers, the Members may fill the vacancy. A vacancy that will occur at a specific

later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs, but the new Manager may not take office until the vacancy occurs.

## Section 3.9 Manager Meetings

### 3.9.1 *Applicability*

The provisions of this Section shall apply in the event that there is more than one Manager.

### 3.9.2 *Call; Purposes; Location*

- (a) Regular Manager meetings may be held at such times as may be determined by the Managers. Any Manager may call a special Manager meeting at any time.
- (b) Business transacted at any regular or special Manager meeting may be for any purpose.
- (c) All Manager meetings shall be held at the Company's principal place of business or at any other place designated by the Managers.

### 3.9.3 *Notice of Manager Meetings*

- (a) Notice of a regular Manager meeting is not required.
- (b) With respect to any special Manager meeting, the Manager calling the meeting shall notify the other Managers of the date, time, and place of such meeting no fewer than two (2) nor more than thirty (30) days before the meeting date. The notice need not state the purpose of the meeting. If any special Manager meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, and place is announced at the meeting before adjournment. A Manager may waive notice of a special Manager meeting (or any other notice required by the Act, the Certificate, or this Agreement) before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Manager entitled to the notice, and be delivered to the Company for inclusion in the minutes or filing with the company records. A Manager's attendance at a special Manager meeting waives objection to lack of notice or defective notice of the meeting, unless the Manager at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

### 3.9.4 *Quorum*

Except as otherwise set forth in the Act, the Certificate, or this Agreement, the presence in person or by proxy of a majority of the Managers constitutes a quorum. Managers may participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all Managers participating may simultaneously hear each other during the meeting. A Manager participating in a meeting by this means is deemed to be present in person at the meeting.

## Section 3.10 Voting

- (a) At each Manager meeting at which a quorum is present, each Manager may vote by proxy executed in writing by the Manager or by the Manager's duly authorized attorney-in-fact. Such proxy shall be filed with the Manager or other person authorized to tabulate votes before or at the time of the meeting.
- (b) Except as otherwise set forth in the Act, the Certificate or subsection (c) below, each Manager is entitled to one (1) vote on each matter voted on at a Manager meeting. Each Manager may vote in person or by proxy. If a quorum exists, action on any matter is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Act, the Certificate, or this Agreement requires a greater number of affirmative votes. Once a Manager is represented for any purpose at a Manager meeting, such Manager is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

(c) If at any time during which [PARTNER 1] is a Manager and the number of votes cast favoring an action requiring majority approval are same as the number of votes cast opposing such action, then [PARTNER 1] shall cast the deciding vote.

(d) In lieu of holding a meeting, the Managers may vote or otherwise take action by email or a written instrument signed by a majority of the Managers.

(e) Except as otherwise set forth in this Agreement (including in Section 3.3), all references in this Agreement to approvals and other actions to be taken by the Managers shall mean that such approval or action has been authorized either (i) at a lawfully held meeting of the Managers at which a quorum was present, or (ii) in writing pursuant to subsection (d).

### Section 3.11 Compensation of Managers

Unless the Act or the Certificate provides otherwise, and subject to the provisions of Section 3.3, the Managers may authorize the payment to a Manager of (a) his or her expenses, if any, of attendance at any Manager meeting, and (b) a stated salary as Manager or a fixed sum for attendance at any Manager meeting or both. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor.

### Section 3.12 Manager Committees

Unless the Act or the Certificate provides otherwise, the Managers may establish one or more committees and appoint Managers to serve on them. Each committee must have two or more Managers, each of whom shall serve at the pleasure of the Managers. The provisions of the Act, the Certificate, and this Agreement which govern meetings, actions without meetings, notices and waivers of notice, and quorum and voting requirements of the Managers, shall also apply to Manager committees and their members. Unless limited by the Act or the Certificate, each Manager committee may exercise those aspects of the authority of the Managers which the Managers confers upon such committee in the resolution establishing the committee; provided, that a committee may not take any action proscribed by the Act or the Certificate.

### Section 3.13 Liability and Indemnification

(a) No Manager shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the Manager within the scope of the authority conferred on the Managers by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

(b) The Company shall indemnify each Manager for any act performed by such Manager within the scope of the authority conferred on the Managers by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

### Section 3.14 Power of Attorney

#### 3.14.1 Grant of Power

Each Member constitutes and appoints each Manager as the Member's true and lawful attorney-in-fact, and in the Member's name, place, and stead, to make, execute, acknowledge, deliver, and file:

(a) all documents (including amendments to the Certificate) which a Manager deems appropriate to reflect any duly authorized amendment, change, or modification of this Agreement;

(b) any and all other certificates or instruments required to be filed by the Company under the laws of the State of [STATE] or of any other state or jurisdiction, including, without limitation, any certificate or

instrument necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of [STATE];

- (c) one or more fictitious or tradename certificates; and
- (d) all documents which may be required to dissolve and terminate the Company and to cancel the Certificate.

#### 3.14.2 Irrevocability

- (a) The foregoing power of attorney is irrevocable, is deemed to be coupled with an interest, and, to the fullest extent permitted by applicable law, shall not be affected by the subsequent disability or incompetence of a Member and shall survive the death of a Member.
- (b) Such power of attorney shall also survive a Transfer of Units. In particular, if the transferee is admitted as a substitute Member, this power of attorney shall survive the delivery of the assignment for the purpose of enabling a Manager to make, execute, acknowledge, deliver, and file any documents needed to effect the substitution.
- (c) Each Member shall be bound by any representations made by a Manager acting in good faith pursuant to this power of attorney. Each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of any Manager taken in good faith under this power of attorney.

## Article 4.0 Capital

### Section 4.1 Capital Contributions

- (a) Each Member which purchased Units from the Company has contributed, as of the Effective Date, an initial Capital Contribution for the initial Units purchased by such Member. Upon the subsequent sale of Units by the Company, each Member purchasing such Units shall pay to the Company such Capital Contribution as may be required by the Company.
- (b) After a Member contributes such Member's initial Capital Contribution (if any), such Member shall not be required to contribute any additional capital to the Company.

### Section 4.2 No Interest on Capital Contributions

No Member shall be paid interest on such Member's Capital Contributions.

### Section 4.3 Return of Capital Contributions

Except as otherwise provided in this Agreement, no Member shall have the right to receive any return of such Member's Capital Contributions. If a Member is entitled to receive a return of a Capital Contribution under this Agreement, such Member shall not have the right to receive anything but cash in return of such Member's Capital Contribution.

### Section 4.4 Capital Accounts

A separate Capital Account shall be maintained for each Member. Except as otherwise required by the Code or applicable Treasury Regulations, no Member shall have any liability to restore any negative balance in such Member's Capital Account.

## Article 5.0 Allocations and Distributions

### Section 5.1 Allocations

#### 5.1.1 General Allocations

For each taxable year of the Company, all Tax Items shall be allocated pro rata among the Members in proportion to their Percentage Interests.

#### 5.1.2 Regulatory Allocations

(a) **Qualified Income Offset.** No Member shall be allocated Loss or deductions if the allocation causes the Member to have an Adjusted Capital Account Deficit. If a Member receives an allocation of Loss or deduction (or item thereof), or any distribution, which causes the Member to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Member, before any other allocation is made of Company items for that taxable year, in the amount and in proportions required to eliminate the excess as quickly as possible. This Section is intended to comply with, and shall be interpreted consistently with, the “qualified income offset” provisions of the Treasury Regulations promulgated under Code Section 704(b).

(b) **Minimum Gain Chargeback.** Except as set forth in Treasury Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Member, prior to any other allocation pursuant to this Article 5.0, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Member’s share of the net decrease of Minimum Gain, computed in accordance with Treasury Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section shall be made (a) first from gain recognized from the disposition of Company assets subject to Non-Recourse Liabilities, to the extent of the Minimum Gain attributable to those assets, and (b) thereafter from a pro rata portion of the Company’s other items of income and gain for the taxable year. It is the intent that any allocation pursuant to this Section shall constitute a “minimum gain chargeback” under Treasury Regulation Section 1.704-2(f).

(c) **Contributed Property and Book-ups.** In accordance with Code Section 704(c) and the Treasury Regulations thereunder, as well as Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, Loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Treasury Regulations thereunder.

(d) **Code Section 754 Adjustment.** To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(e) **Non-Recourse Deductions.** Non-Recourse Deductions for a taxable year or other period shall be allocated among the Members in proportion to their Percentage Interests.

(f) **Member Loan Non-Recourse Deductions.** Any Member Loan Non-Recourse Deduction for any taxable year or other period shall be specially allocated to the Member who bears the risk of loss with respect to the loan to which the Member Loan Non-Recourse Deduction is attributable in accordance with Treasury Regulation Section 1.704-2(b).

(g) **Guaranteed Payments.** To the extent any compensation paid to any Member by the Company is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), then (i) the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and (ii) the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

(h) **Unrealized Receivables and Substantially Appreciated Inventory.** If a Member's right to share in the Company's Profit and Loss and the right to receive distributions is reduced for any reason (provided the reduction does not result in a complete termination of the Member's ownership of Units), the Member's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Member, be specially allocated among the Members in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Managers.

(i) **Capital Account Adjustments upon Transfer of Units.** If any Units are Transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Units. If the book value of Company property is adjusted pursuant to subsection (c), the Capital Account of each Member shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Treasury Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Treasury Regulation.

(j) **Withholding.** All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to affected Members for all purposes under this Agreement.

## Section 5.2 Distributions

### 5.2.1 Tax Distributions

(a) Unless otherwise prohibited by law and subject to subsection (c) below, for each tax year the Company shall distribute to each Member, within one hundred (100) days following the end of such tax year (or such longer period as determined by the Members to be necessary for a legitimate business purpose, including the calculation of the Company's taxable income), an amount equal to the sum of:

(i) the amount of the combined federal, state, and local income tax liability of such Member, if any, for the portion of the Company's taxable income (including items separately stated and passed through to such Member) for such tax year, including tax credits, that is allocated to such Member; and

(ii) the amount of the combined federal, state, and local income tax liability of such Member, if any, for the portion of the distribution paid with respect to clause (i) above.

(b) Such tax liability shall be calculated assuming that each Member will be taxable at the highest marginal federal, state, and local tax rates then applicable to individuals who are residents of the city and state of the Company's principal place of business. A Member's right to receive a distribution under subsection (a) may be waived by such Member.

(c) The amounts to be paid to a Member in accordance with this Section shall be reduced by the amount of Distributable Cash paid to such Member during the tax year for which the payment contemplated in subsection (a) above relates.

#### *5.2.2 Distribution of Distributable Cash*

(a) Distributable Cash shall be distributed at such times and in such amounts as the Managers may from time to time approve. There is no requirement that the Managers authorize the distribution of Distributable Cash at any time. The payment of Distributable Cash is subject to the provisions of Section 2.5(b) regarding the repayment of Member loans.

(b) If authorized for distribution, Distributable Cash (other than Distributable Cash arising from the net proceeds of the liquidation of the Company) shall be distributed as follows:

(i) first, to all Members with positive Capital Account balances in proportion to their respective positive Capital Account balances, until the positive Capital Account balance of each Member has been reduced to zero;

(ii) second, to the Members in amounts determined by the Managers; and

(iii) third, to the Members in proportion to their respective Percentage Interests.

(c) If authorized for distribution, Distributable Cash arising from the net proceeds of the liquidation of the Company shall be distributed as follows:

(i) first, to creditors of the Company (including any Members or Managers who are creditors of the Company);

(ii) second, to all Members with positive Capital Account balances in proportion to their respective positive Capital Account balances, until the positive Capital Account balance of each Member has been reduced to zero; and

(iii) third, to the Members in proportion to their respective Percentage Interests.

#### *Section 5.3 General Allocation Rules*

(a) If any assets of the Company are distributed in kind to the Members, those assets shall be valued on the basis of their fair market value as determined in good faith by the Managers, and any Member entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Members so entitled. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be properly allocated, and credited or charged, to the Capital Accounts of the Members prior to the distribution of the assets in liquidation.

(b) All Tax Items shall be allocated, and all distributions shall be made, to the Persons shown on the records of the Company to have been Members as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, if there is a Transfer during the taxable year, all Tax Items for such taxable year shall be allocated between the original Member and the successor on the basis of the number of days each was a Member during the taxable year.

## Section 5.4 Tax-Compliance Amendments

The Managers are hereby authorized, upon the advice of the Company's tax counsel (including the Company's certified public accountant), to amend this Article 5.0 to comply with the Code and the Treasury Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to a Member without the Member's prior written consent.

## Article 6.0 Transfer Restrictions

### Section 6.1 General Restrictions

The Members and the Units shall all be subject to the Transfer restrictions and the other terms and conditions of a Member Cross-Purchase and Restriction Agreement by and among all of the Members and dated as of or near even date herewith (the "Restriction Agreement"), as such Restriction Agreement may be amended, updated, or superseded from time to time. The Restriction Agreement is hereby incorporated herein by reference and deemed to be a part of this Agreement, and no Member may Transfer any Units except in compliance with the terms and conditions of the Restriction Agreement.

### Section 6.2 Withdrawal

Except with the written approval of the Managers, a Member may not voluntarily withdraw from the Company prior to the dissolution and winding up of the Company, except as otherwise provided in the Restriction Agreement. Any such unapproved, attempted withdrawal shall be invalid, null and void, and of no force or effect.

## Article 7.0 Dissolution, Liquidation, and Termination of the Company

### Section 7.1 Events of Dissolution

The Company shall be dissolved upon the occurrence of any of the following events:

- (a) at any time upon the written agreement of the Members holding a majority of the Units then issued, outstanding, and held by the Members;
- (b) if applicable, the date set forth in the Certificate on which the existence of the Company ends; or
- (c) any other event giving rise to the dissolution of the Company under the Act or the Certificate.

### Section 7.2 Procedure for Winding Up and Dissolution

Upon dissolution of the Company, the Managers shall wind up the Company's affairs, and liquidate the property and assets of the Company, in such manner as the Managers deem appropriate. On the winding up and liquidation of the Company, all cash and other remaining assets of the Company shall be distributed in accordance with the provisions of Section 5.2.2 and Section 5.3(a).

### Section 7.3 Filing of Articles of Dissolution

Upon dissolution of the Company, the Managers promptly shall file or caused to be filed Articles of Dissolution with the Secretary of State. If there is no Manager, then the Articles of Dissolution shall be filed by the remaining Members; if there are no remaining Members, the Articles of Dissolution shall be filed by the last Person to be a Member; if there is neither a Manager, remaining Members, or a Person who last was a Member, the Articles of Dissolution shall be filed by the Legal Representative of the Person who last was a Member.

## Article 8.0 General Provisions

### Section 8.1 Bank Accounts

All funds of the Company shall be deposited in an account or accounts opened in the Company's name at one or more banks or other financial institutions. The Managers shall determine the banks or other institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

### Section 8.2 Annual Accounting Period

The annual accounting period and taxable year of the Company shall be the calendar year.

### Section 8.3 Reports

Within one hundred (100) days after the end of each taxable year of the Company, the Managers shall send to each Person that was a Member at any time during the taxable year then ended, the tax information concerning the Company which is necessary for preparing the Member's income tax return for that year.

### Section 8.4 Tax Matters Partner

The Managers shall from time to time select a Member or Manager to be the Company's tax matters partner ("Tax Matters Partner"). The initial Tax Matters Partner shall be [PARTNER 1]. The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities that may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

### Section 8.5 Tax Elections

At the direction of the Managers, the Tax Matters Partner shall make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Section 754 of the Code. The decision to make or not make an election shall be at the sole and absolute discretion of the Managers.

### Section 8.6 Title to Company Property

(a) Except as otherwise set forth in subsection (b), all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

(b) The Managers, for any legitimate business purpose of the Company, may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Managers, for any legitimate business purpose of the Company, may cause title to be acquired and held in any of their names, in the name of any Manager, or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company and all of such property shall be treated as Company property.

## Article 9.0 Miscellaneous

### Section 9.1 Assurances

Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as may be required to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of property by the Company.

### Section 9.2 Notifications

Any written notice, request, demand, consent, approval, or other communication under this Agreement shall be either (a) personally delivered, (b) sent by U.S. certified or registered mail, return receipt requested, postage prepaid, (c) sent by Federal Express or other reputable common carrier guaranteeing next business day delivery, or (d) sent by confirmed telecopier transmission. Any such notice shall be deemed given and effective upon receipt or refusal of receipt thereof by the party to whom it is sent. Any notice to be given hereunder by the Company shall be given by the Managers. A notice to a Member or Manager must be addressed using such Member's or Manager's last known address or telecopy number as maintained on the records of the Company. A notice to the Company must use the Company's principal office or telecopy number. Any party may designate, by written notice to the Company in accordance with this Section, a substitute address or telecopy number for notices; thereafter, notices are to be directed to that substitute address.

### Section 9.3 Specific Performance

The parties recognize that irreparable injury may result from a breach of any provision of this Agreement and that money damages may not be adequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party to this Agreement who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to seek one or more preliminary or permanent orders (a) restraining and enjoining any act which would constitute a breach, and/or (b) compelling the performance of any obligation which, if not performed, would constitute a breach.

### Section 9.4 Complete Agreement

This Agreement constitutes the complete and exclusive agreement between the Members and supersedes all prior written and oral representations, warranties, statements, and agreements, with respect to the subject matter hereof.

### Section 9.5 Amendments

(a) Subject to the provisions of subsections (b) and (c), amendments may be made to this Agreement from time to time by the Members.

(b) No Member's Percentage Interest or allocation of any Tax Item may be reduced without the written approval of that Member; provided that the foregoing shall not apply to such reductions as may result from the addition of one or more new Members and/or the issuance of one or more additional Units.

Notwithstanding the foregoing, the Managers may amend appropriate provisions of this Agreement if the Company is advised at any time by its tax advisor that the allocation of any Tax Item provided for in this Agreement is unlikely to be respected for Federal income tax purposes, either because of the promulgation and adoption of Treasury Regulations under Code Section 704, other developments under applicable law, or otherwise. In making any such amendment, the Managers shall use their best efforts and good faith to minimize any change in the economic and tax arrangements among the Members.

(c) No amendment of this Agreement that imposes additional restrictions on the Transfer of a Member's Units shall be binding on the Units owned by such Member as of the date of such amendment unless such Member approves such restrictions in writing.

#### Section 9.6 Applicable Law

All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by and construed in accordance with the laws of the State of [STATE], excluding its conflict of laws principles.

#### Section 9.7 Headings

The headings in this Agreement are used as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

#### Section 9.8 Binding Provisions

This Agreement is binding upon and for the benefit of the parties hereto and their respective heirs, Legal Representatives, successors, and permitted assigns.

#### Section 9.9 Dispute Resolution; Exclusive Jurisdiction and Venue

(a) Any controversy or claim arising out of or relating to this Agreement, or any breach or default under this Agreement, shall, with respect to all actions at law pertaining to such controversy, claim, breach, or default (excepting herefrom any action for equitable relief with respect thereto), be settled by arbitration in [CITY], before a single arbitrator in accordance with the then-prevailing Rules of Commercial Arbitration of the American Arbitration Association. The arbitrator shall not contravene or vary in any respect any of the terms or provisions of this Agreement. The award of the arbitrator shall be final and binding upon the parties hereto, and judgment upon such award may be entered in any court having jurisdiction thereof. The cost of the arbitration proceeding shall be paid equally by the parties thereto; provided, that the arbitrator shall be entitled to award attorneys' fees and the cost of the arbitration proceeding to the prevailing party.

(b) Subject to the provisions of subsection (a) above governing arbitration, any suit for equitable relief under this Agreement may only be brought in a United States District Court located in the State of [STATE] or in the County Superior Court of the State of [STATE]. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

#### Section 9.10 Terms

Common nouns and pronouns used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the context requires.

#### Section 9.11 Severability

Each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If any term, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, then (a) such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements, and (b) the remainder of this Agreement, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

## Section 9.12 Counterparts

This Agreement may be executed in two or more counterpart copies, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

## Article 10.0 Defined Terms

As used in this Agreement, the following terms shall have the following meanings:

### Section 10.1 Act

“Act” shall have the meaning given such term in the Recitals.

### Section 10.2 Adjusted Capital Account Deficit

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in the Member’s Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

- (a) the deficit shall be decreased by the amounts which the Member is deemed obligated to restore pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c); and
- (b) the deficit shall be increased by the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5), and (6).

### Section 10.3 Agreement

“Agreement” means this Limited Liability Company Agreement, as amended from time to time.

### Section 10.4 Bankruptcy

“Bankruptcy” of a Member means the occurrence of any of the following events:

- (a) the Member makes an assignment for the benefit of creditors;
- (b) the Member files a voluntary petition in bankruptcy;
- (c) the Member is adjudged a bankrupt or insolvent, or has entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (e) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member’s properties;
- (f) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in subsections (a) through (e); or
- (g) (i) if, within one hundred twenty (120) days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, (ii) if, within ninety (90) days after the appointment without the Member’s consent or acquiescence of a trustee, receiver, or liquidator

of the Member or of all or any substantial part of the Member's properties, the appointment is not vacated or stayed, or (iii) if, within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

#### Section 10.5 Capital Account

"Capital Account" means the account to be maintained by the Company for each Member in accordance with the following provisions:

(a) a Member's Capital Account shall be credited with the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), the Member's distributive share of Profit, and any item in the nature of income or gain specially allocated to the Member pursuant to the provisions of Article 5.0 (other than Section 5.1.2(c)); and

(b) a Member's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article 5.0 (other than Section 5.1.2(c)).

#### Section 10.6 Capital Contribution

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Treasury Regulation Section 1.704-(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

#### Section 10.7 Certificate

"Certificate" means the Certificate of Formation creating the Company, as amended from time to time in accordance with the Act.

#### Section 10.8 Code

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

#### Section 10.9 Company

"Company" means the limited liability company formed pursuant to the Certificate and operated pursuant to this Agreement, as each may be amended from time to time.

#### Section 10.10 Confidential Information

"Confidential Information" means non-public information of the Company or information provided in confidence to the Company by a third party. Confidential Information includes, without limitation, (a) know-how, trade secrets, inventions, discoveries, ideas, methods, and processes, (b) customer, prospects, reseller and supplier lists and information, (c) pricing information, (d) information regarding the terms of any prospective purchaser of the Company's Units or assets (including, but not limited to, the existence or content of discussions or negotiations with such prospective purchaser), and (e) information about research, development, engineering, financial, marketing, and sales plans, and activities.

#### Section 10.11 Distributable Cash

"Distributable Cash" means, with respect to any fiscal period, the excess of all cash receipts of the Company from any source whatsoever (including, without limitation, normal operations, sales of assets, proceeds of

borrowings, Capital Contributions of the Members, proceeds from a capital transaction, and any and all other sources) over the sum of the following amounts:

- (a) cash disbursements for customary operating expenses;
- (b) payments of interest, principal, premiums, points, and other costs of borrowing under any indebtedness of the Company (including, without limitation, any mortgages, security interests, or other liens encumbering any of the Company's property or assets);
- (c) payments made to purchase capital assets, and for capital construction, rehabilitation, acquisitions, alterations, and improvements;
- (d) payments made to the Members in accordance with Section 5.2.1; and
- (e) amounts set aside as reserves for working capital, contingent liabilities, replacements, or for any of the expenditures described in subsections (a), (b), or (c) which are deemed by the Managers to be necessary to meet the current and anticipated future needs of the Company.

#### Section 10.12 Effective Date

"Effective Date" shall have the meaning given such term at the beginning of this Agreement.

#### Section 10.13 Legal Representative

"Legal Representative" means (a) with respect to any Member who has died or become incompetent, a duly appointed executor, administrator, guardian, conservator, personal representative, or other legal representative appointed as a result of the Member's death or incompetence, or (b) with respect to any Member who is subject to any Bankruptcy proceeding, the Person who is authorized by applicable law to act on behalf of the Member during the pendency of such proceeding.

#### Section 10.14 Loss

"Loss" shall have the meaning given such term below in the definition of "Profit" and "Loss".

#### Section 10.15 Manager

"Manager" means a Person designated as a Manager of the Company in accordance with the provisions of this Agreement. If at any time there is only one Manager, all references in this Agreement to "the Managers" shall mean and refer to such Manager.

#### Section 10.16 Member

"Member" means a holder of one or more Units of the Company. If at any time there is only one Member, then all references in this Agreement to "the Members" shall mean and refer to such Member.

#### Section 10.17 Member Loan Non-Recourse Deduction

"Member Loan Non-Recourse Deduction" means any Company deduction attributable to a loan made or guaranteed by a Member within the meaning of Treasury Regulation Section 1.704-2(i) that would be a Non-Recourse Deduction if it was not so attributable to a loan made or guaranteed by such Member.

## Section 10.18 Minimum Gain

“Minimum Gain” has the meaning set forth in Treasury Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Member in a manner consistent with the Treasury Regulations under Code Section 704(b).

## Section 10.19 Non-Recourse Deduction

“Non-Recourse Deduction” has the meaning set forth in Treasury Regulation Section 1.704-2(b)(1). The amount of Non-Recourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Treasury Regulation Section 1.704-2(c).

## Section 10.20 Percentage Interest

“Percentage Interest” means, with respect to a particular Member, the percentage determined by dividing (a) the total number of Units owned by such Member, by (b) the total number of Units then issued and outstanding.

## Section 10.21 Person

“Person” means and includes an individual, corporation, partnership (whether general or limited), association, limited liability company, trust, estate, or other entity.

## Section 10.22 Profit and Loss

“Profit” and “Loss” means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

- (a) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing Profit or Loss;
- (b) any tax-exempt income of the Company, not otherwise taken into account in computing taxable income, shall be included in computing Profit or Loss;
- (c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing taxable income, shall be subtracted from taxable income or loss;
- (d) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;
- (e) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and
- (f) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 5.1.2 shall not be taken into account in computing Profit or Loss.

## Section 10.23 Secretary of State

“Secretary of State” means the Secretary of State of the State of [STATE].

#### Section 10.24 Signature Page Addendum

“Signature Page Addendum” means an addendum to be signed by a new Member and the Company, substantially in the form attached hereto.

#### Section 10.25 Tax Item

“Tax Item” means Profit, Loss, and any other item of income, gain, loss, deduction, or credit of the Company.

#### Section 10.26 Transfer

“Transfer” (and any grammatical variation thereof) means any sale, exchange, issuance, redemption, assignment, distribution, encumbrance, hypothecation, gift, pledge, grant of a security interest in, attachment or other lien upon, or other transfer, disposition, or alienation in any way (whether voluntarily, involuntarily, or by operation of law) of any Unit or any interest as a Member (including, but not limited to, any assignment or distribution resulting from death, incompetence, Bankruptcy, liquidation, dissolution, or court order or stipulation pursuant to a divorce or other proceeding).

#### Section 10.27 Treasury Regulations

“Treasury Regulations” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

#### Section 10.28 Unit

“Unit” shall have the meaning given such term in Section 2.1.

**IN WITNESS WHEREOF, this Agreement has been executed by the undersigned, all as of the Effective Date.**

MEMBER(S):

\_\_\_\_\_  
[NAME], Individually

\_\_\_\_\_  
[NAME], Individually

being all of the Members as of the Effective Date

# RECORD OF AMENDMENTS

## SIGNATURE PAGE ADDENDUM TO [COMPANY] LIMITED LIABILITY COMPANY AGREEMENT

Effective as of \_\_\_\_\_, \_\_\_\_\_ the undersigned (the "Purchaser"), by executing this Signature Page Addendum, hereby adopts and agrees to be bound by all of the terms, conditions, representations, warranties, and covenants in the [COMPANY] Limited Liability Company Agreement dated [DATE], as amended (the "Agreement"), and acknowledges receipt of a copy of the Agreement. Capitalized terms used in this Signature Page Addendum shall, unless otherwise defined herein, have the meanings given those terms in the Agreement.

The Purchaser hereby subscribes for the purchase of the following number of Units for the following purchase price:

<u>Purchaser's Name &amp; Address</u>	<u>Number of Units</u>	<u>Purchase Price</u>

IN WITNESS WHEREOF, the Purchaser has executed this Signature Page Addendum, all as of the date set forth above.

PURCHASER:

\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

Name: \_\_\_\_\_  
(please type or print)

The Company hereby accepts the Purchaser's foregoing subscription and also accepts the Purchaser as a Member, all as of the date set forth above.

COMPANY: [COMPANY]

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Witness Signature

Name: \_\_\_\_\_  
(please type or print)

# SCHEDULE A

TO  
[COMPANY]  
LIMITED LIABILITY COMPANY AGREEMENT

**Dated:** Effective Date

**Manager(s):**

[PARTNER 1 NAME & ADDRESS]

[PARTNER 2 NAME & ADDRESS]

**Member(s):**

Name & Address	Units	Percentage Interest
[PARTNER 1 NAME & ADDRESS]	50	50%
[PARTNER 2 NAME & ADDRESS]	50	50%