Alaska Entity #10083243

State of Alaska
Department of Commerce, Community, and Economic Development
Corporations, Business, and Professional Licensing

Certificate of Organization

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

BRO BRO BUDZ, LLC.

IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective April 26, 2018.

Mike Navarre
Commissioner

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OPERATING AGREEMENT
BRO BRO BUDZ, LLC.

This Operating Agreement is made and entered into effective as of the 4th DAY OF September, 2018, by and between the Class "A" Members and Class "B" Members of BRO BRO BUDZ, LLC.

RECITALS

A. Bro Bro Budz, LLC, a limited liability company (the "Company"), was formed effective April 25, 2108, for the purposes of transacting any or all lawful business for which a limited liability company may be organized under the laws of the State of Alaska.

B. Alexander J. Lowenstein is the only members of this LLC to date.

C. The Company shall be managed by its manager.

ARTICLE I
ORGANIZATIONAL MATTERS

1.1 **Formation.** The Company has been formed as a limited liability company pursuant to the provisions of the Act (as hereinafter defined). The rights and obligations of the Members and the affairs of the Company shall be governed-first by the Mandatory Provisions of the Act; second, by the Company's Articles of Organization; third, by this Agreement; and fourth, by the Optional Provisions of the Act. In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence.

1.2 **Name.** The name of the Company shall be "Bro Bro Budz, LLC."

1.3 **Principal Office.** The initial principal office of the Company shall be located at 2717 N. Birch Harbor Road Houston, AK. 99623. The corporate mailing address is PO Box 879163 Wasilla, AK. 99687. The Company may change its principal office from time to time by action of the Members. The name and address of the Company's registered agent is Alexander J. Lowenstein at PO Box 879163 Wasilla, AK. 99623. The Company may change its registered agent and/or the address of its registered office from time to time by action of the Members. The Company may also maintain offices at such other places or places as the Member(s) deem advisable.

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1.4 **Term.** The Company shall commence upon the filing for record of the Company's Articles of Incorporation with the Office of the Secretary of State of Alaska, and shall continue indefinitely, unless sooner terminated as herein provided.

ARTICLE II
DEFINITIONS

2.1 **Definitions.** A capitalized term used in this Agreement and not otherwise defined herein shall have the meaning, if any, assigned to the capitalized term in this Article II.

2.1.1 **Act.** The term "Act" means the Alaska Limited Liability Company Act, AS 10.50, as amended from time to time and any successor statute.

2.1.2 **Additional Capital Contributions.** The term "Additional Capital Contributions" has the meaning assigned to that term in Section 3.2.

2.1.3 **Adjusted Capital Account.** The term "Adjusted Capital Account" means, with respect to any Member at any time, such Member's Capital Account at such time (i) increased by the sum of (a) the amount of such Member's share of partnership minimum gain (as defined in Regulations Section 1.704 2(g)(1); (b) the amount of such Member's share of the minimum gain attributable to a partner nonrecourse debt; (c) the amount of the deficit balance in such Member's Capital Account while such Member is obligated to restore, if any; and (ii) decreased by reasonably-expected adjustments, allocations, and distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5) and (6).

2.1.4 **Affiliate.** The term "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. As used in this Section 2.1.4, the term "control" means either (a) the possession, directly or indirectly, of the power to direct or to cause the direction of the management of the affairs of a Person or the conduct of the business of a Person; or (b) the holding of a direct or indirect equity or voting interest of fifty percent or more in the Person.

2.1.5 **Articles.** The term "Articles" means the Articles of Organization of Bro Bro Budz, LLC, filed with the Alaska

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the Alaska Division of Corporations on April 25, 2018, as amended from time to time.

2.1.6 **Assignee.** The term "Assignee" means a Person to whom a Membership Interest has been assigned or transferred in accordance with this Agreement, but who has not become a Substitute Member.

2.1.7 **Capital Account.** The term "Capital Account" means the account established on the books of the Company pursuant to Section 3.3.

2.1.8 **Capital Contribution.** The term "Capital Contribution" means the sum of (a) the total amount of cash; and (b) the grand total agreed fair market value of property contributed to the Company by a Member (or the predecessor holder of any Membership Interest of that Member) (net of any liabilities secured by any contributed property that the Company is considered to assume or take subject to Code Section 752).

2.1.9 **Cash Available for Distribution.** The term "Cash Available for Distribution" means, with respect to any Company Fiscal Period (and with respect to individual Transactions, to the extent provided on a Transaction Schedule), all cash receipts of the Company during such Fiscal Period (other than contributions to Company capital or the proceeds of indebtedness used or to be used in the operation of the Company's business), less (a) all Company cash disbursements during such Fiscal Period as the Manager shall in its sole discretion decide are necessary for the conduct of the Company's business; and (b) such reserves established by the Manager in its sole discretion during such Fiscal Period for improvements, replacements, or repairs to Company properties or for anticipated Company expenses or debt repayments. Cash Available for Distribution shall also include any other Company funds, including, without limitation, any amounts previously set aside as reserves by the Manager, no longer deemed by the Manager necessary for the conduct of the Company's business.

2.1.10 **Code.** The term "Code" means the Internal Revenue Code of 1986.

2.1.11 **Class "A" Members.** The term "Class 'A' Members" means Alexander Lowenstein and such other Persons as may be admitted as Class "A" Members of the Company from time to time.

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2.1.10 **Code.** The term "Code" means the Internal Revenue Code of 1986.

2.1.11 **Class "A" Members.** The term "Class 'A' Members" means Brian L. Simpson, Nellie C. Scott, Morgan H. Evans, Shawn C. Evans, David C. Lanning, Sandra M. Lanning and Robert G. Parr and such other Persons as may be admitted as Class "A" Members of the Company from time to time.

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2.1.12 **Class "B" Members.** The term "Class 'B' Members" means such other Persons as may be admitted as Class "B" Members of the Company from time to time. There are no "Class 'B' Members" at this time.

2.1.13 **Company Property.** The term "Company Property" means all property owned, leased, or acquired by the Company from time to time.

2.1.14 **Deadlock.** The term "Deadlock" has the meaning assigned to that term in Section 10.8.

2.1.15 **Disqualified Member.** The term "Disqualified Member" has the meaning assigned to that term in Section 12.1.

2.1.16 **Event of Dissolution.** The term "Event of Dissolution" has the meaning assigned to that term in Section 12.2.

2.1.17 **Fiscal Period.** The term "Fiscal Period" has the meaning assigned to that term in Section 8.3.

2.1.18 **Initial Capital Contributions.** The term "Initial Capital Contributions" has the meaning assigned to that term in Section 3.1.

2.1.19 **Interest.** The term "Interest" or "Membership Interest" shall mean, when used with reference to any person, the entire ownership interest of such person in income, gains, losses, deductions, tax credits, distributions, and Company assets, and all other rights and obligations of such person under the terms and provisions of this Agreement and the Act.

2.1.20 **Manager.** The term "Manager" means the person to be elected, or any substitute, replacement, or permitted transferee hereunder.

2.1.21 **Mandatory Provisions of the Act.** The term "Mandatory Provisions of the Act" means provisions of the Act that may not be waived by the Members.

2.1.22 **Member.** The term "Member" means a Person with a Membership Interest in the Company. It includes both an Original Member (both Class "A" Members and Class "B" Members) and Substitute Member, but does not include an Assignee.

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2.1.23 **Minimum Distribution.** The term "Minimum Distribution" means an amount equal to the amount of Profit allocated to such Member pursuant to Sections 4.2, 4.3, and 4.4 for such Fiscal Period multiplied by the combined maximum individual federal income tax rates.

2.1.24 **Opinion of Counsel.** The term "Opinion of Counsel" means a written opinion of the counsel serving as regular counsel to the Company.

2.1.25 **Optional Provisions of the Act.** The term "Optional Provisions of the Act" means the provisions of the Act that may be waived by the Members.

2.1.26 **Original Member.** The term "Original Member" means each original member(s) Bro Bro Budz, LLC.

2.1.27 **Percentage Interest.** The term "Percentage Interest" means, as to any Member, such Member's interest in the Profits and Losses of the Company, as set forth in exhibit "A" hereto, and subsequently adjusted pursuant to the terms of this Agreement.

2.1.28 **Person.** The term "Person" means a natural person, partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, domestic or foreign corporation, trust, estate, association, and other business entity.

2.1.29 **Profit and Loss.** The term "Profit" and the term "Loss" means an amount equal to the taxable income of the Company or the taxable loss of the Company (including any capital loss) for each taxable year, determined in accordance with Code Section 703(a) as reflected on the tax return prepared by the regular outside accounting firm engaged by the Company. For purposes of the determination in accordance with Code Section 703(a), all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in a taxable income or taxable loss, with the following adjustments:

(a) Any income of the Company described in Code Section 705(a)(1)(B) or treated as Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account shall be subtracted from taxable income or added to such taxable loss, as the case may be;

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(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account shall be subtracted from taxable income or added to such taxable loss, as the case may be;

(c) In the event the value at which any Company asset is reflected in Capital Accounts is adjusted pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset;

(d) Gain or loss resulting from any disposition of an asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the value at which the asset disposed of its property reflected in the Capital Accounts of the Members pursuant to Regulations Section 1.704-1(b)(2)(iv);

(e) In lieu of depreciation, amortization, and other cost recovery deduction taken into account in computing taxable income or loss, there shall be taken into account depreciation, cost recovery, or amortization computed in accordance with Regulations Section 1.704-1(b)(2)(iv)(g)(3).

2.1.30 **Selling Member.** The term "Selling Member" has the meaning assigned to that term in Section 10.1.

2.1.31 **Substitute Member.** The term "Substitute Member" means an Assignee of a Membership Interest who is admitted as a Member pursuant to Article XII in place of a Member.

2.1.32 **Tax Matters Partner.** The term "Tax Matters Partner" means the Person designated pursuant to Section 9.2.

2.1.33 **Transaction.** The term "Transaction" means any transaction facilitated by the Company on behalf of any third parties designated as a separate Transaction by the Members for purposes of this Operating Agreement.

2.1.34 **Transaction Capital Account.** The term "Transaction Capital Account" means the account established on the books of the Company pursuant to Section 3.3.2.

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2.1.35 **Transaction Schedule.** The term "Transaction Schedule" means the separate specific Transaction Schedule. Except as otherwise provided in writing by the Members, each Transaction Schedule will be subject to, incorporates, and includes all of the terms of this Agreement.

2.1.36 **Withdrawing Member.** The term "Withdrawing Member" means a Member who withdraws from the Company pursuant to Section 6.6.1.

ARTICLE III
CAPITAL CONTRIBUTIONS

3.1 **Initial Capital Contributions.** Each Original Member has contributed to the Company such sums as are set forth on exhibit "A" hereto in immediately available funds ("Initial Capital Contribution").

3.2 **Additional Capital Contributions.**

3.2.1 **Mandatory Contributions.** Each Member shall make the additional capital contributions referenced on exhibit "A" as and when required pursuant to the terms set forth on exhibit "A".

3.2.2 **Timing of Additional Contributions.** Each Member shall have the option to continue to the Company, at such times as are determined by the Manager upon at least thirty days' prior written notice to the Members, such Member's proportionate share of any Capital Contributions, as may be called by the Manager from time to time ("Additional Capital Contributions"). For purposes of Section 3.2, a Member's proportionate share of Additional Capital Contributions at any time shall be equal to such Member's Percentage Interest at the time such Additional Capital Contribution is called by the Manager.

3.2.3 **Adjustments to Members' Capital Accounts and Percentage Interest.** Capital may be called in the form of additional equity to be made as Additional Capital Contributions in such amounts as may be determined by the Manager from time to time. No Members shall be required to make Additional Capital Contributions. If a Member makes an Additional Capital Contribution, its Capital Account shall be increased in the manner provided by Section 3.3 and, when any Additional Capital Contribution is made, all Members' Percentage Interests shall be predetermined as follows: Each Member's Percentage Interest

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shall at any time be equal to the percentage equivalent of a fraction, the numerator of which is the aggregate amount of all Capital Contributions made by all Members through such date.

3.3 **Maintenance.** The Company shall maintain a Capital Account for each Member. The Capital Account of each Member shall be credited with the Initial Capital Contributions made by the Member, which amount shall be (a) increased by an Additional Capital Contribution made by the Member and any Profit allocated to Member pursuant to Sections 4.2 and 4.4; and (b) decreased by the amount of cash and the fair market value of any Company Property distributed to the Member pursuant to Section 4.4 and Losses allocated to the Member pursuant to Sections 4.3 and 4.4.

The Capital Account of a Member shall be debited for any distribution made to the Member in the year in which the distribution is made.

3.3.1 **Transaction Capital Accounts.** The Company shall maintain a separate Capital Account for each Member with respect to each Transaction set forth on a separate schedule attached to this Operating Agreement. The Transaction Capital Accounts of each Member for each specific Transaction will be aggregated for purposes of determining that Member's Capital Account and Distributions of Cash Available for Distribution set forth in Article IV for any Company Fiscal Year.

3.3.2 **Non-Cash Capital Contributions.** All Capital Contributions shall be in the form of cash, unless the Members approve the Company's acceptance of Capital Contributions in a form other than cash. If a Member makes, and the Company accepts, a Capital Contribution in a form other than cash, the Capital Account of the Member shall be increased by the fair market value of the Capital Contribution, as determined by a method adopted by the Manager.

3.3.3 **Compliance with Treasury Regulations.** Capital Accounts shall be maintained in accordance with Treasury Regulation Section 1.704-1(b) and shall be interpreted in a manner consistent with Treasury Regulation Section 1.704-1(b).

3.3.4 **Assignment.** Upon the Transfer of all or any part of a Member's Interest as permitted by this Agreement, the Capital Account of the transferor, or the portion thereof that is attributable to the transferred Interest, shall carry over to the transferee, as prescribed in Treasury Regulation Section 1.704-1(b)(2)(iv).

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3.3.5 **Revaluation.** At such times as may be required or permitted by Code Section 704 and any regulations thereunder, the Capital Accounts shall be revalued and adjusted to reflect the then fair market value of Company Property. The Capital Accounts shall be maintained in compliance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation shall be made consistently with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and, to the extent not consistent therewith, provisions of Section 4.2 on the allocation of Profit.

3.4 **Interest.** The Capital Accounts shall not bear interest.

3.5 **Loans.** Except as otherwise provided by this Agreement, a Member or any Affiliate of a Member may make a loan to the Company in the event that the Manager has determined to borrow from the Members. A loan by a Member to the Company is not to be considered a Capital Contribution.

3.6 **No Deficit Restoration Obligation.** Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

ARTICLE IV
ALLOCATIONS AND DISTRIBUTIONS

4.1 **Distribution of Cash Available for Distribution.** Except as provided in Section 12.5, the Company will distribute all of the Cash Available for Distribution, or property and securities (other than distributions on liquidation of the Company) as and when determined by the Manager, to the Members in the following order:

4.1.1 First, a Minimum Distribution to each Member with respect to and for each Fiscal Year of the Company during which the Company allocates net Profits to the Members. There can be no assurance, however, that such a distribution will be made, or if made, will fully satisfy a Member's tax liabilities attributable to allocations of taxable income hereunder. If the Company does not have sufficient cash, securities, or other property to make a Minimum Distribution to all Members, the Company will make such distribution of cash, securities, or other property to the Members pro rata in proportion to their respective Minimum Distribution due under this Section 4.1.1. Any Minimum Distribution received by a Member shall be credited against and reduce the amount of distributions that such Member

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is otherwise entitled to receive under Sections 4.1.2 and 4.1.3 below.

4.1.2 Second, to the Members pro rata in accordance with their actual Capital Contributions made at equal times during the existence of the Company (otherwise first in time, first in right), until the Members have received distributions equal to their Capital Contributions to the Company.

4.1.3 Thereafter, to all of the Members pro rata in accordance with their Percentage Interests.

The Members agree that, except to the extent set forth on a Transaction Schedule, the Manager may distribute property in-kind to one or more Members as the Manager determines in its sole discretion. The Members further agree that distributions under Sections 4.1.2 and 4.1.3 will be made on Transaction-by-Transaction basis to the extent set forth on a separate specific Transaction Schedule for each such Transaction. Distributions to each Member with respect to specific Transactions will be aggregated for purposes of determining total distributions for any Company Fiscal Year.

4.2 **Allocation of Profits.** After giving effect to the special allocations set forth in Section 4.4 hereof, Profit for any Company Fiscal Year shall be allocated to the Members in accordance with their Percentage Interests.

4.3 **Allocation of Losses.** After giving effect to the special allocations set forth in Section 4.4 hereof, Losses for any Company Fiscal Year shall be allocated to the Members in accordance with their Percentage Interests.

4.4 **Special Allocations.**

4.4.1 Transaction Allocations. The Members intend to utilize the Company for a number of separate and distinct Transactions, as provided in Section 5.6.2 and otherwise in this Agreement. The Members may make special allocations of Profits and Losses from time to time as determined by the Members with respect to specific Transactions pursuant to the terms set forth on a separate and specific Transaction Schedule attached to this Agreement. Allocations to each Member with respect to specific Transaction will be aggregated for purposes of allocating Profits and Losses for any Company Fiscal Year.

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4.4.2 **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in Company minimum gain [as defined in Regulations Section 1.704-2(d)(2)], items of income and gain shall be allocated to all Members in accordance with Regulations Section 1.704-2(f), and such allocations are intended to comply with the minimum gain chargeback requirements of Regulations Section 1.704-2 and shall be interpreted consistently therewith.

4.4.3 **Section 704(c) Allocation.** Solely for federal, state, and local income tax purposes and not for book or Capital Account purposes, depreciation, amortization, gain, or loss with respect to property that is properly reflected on the Company's books value that differs from its adjusted basis for federal income tax purposes shall be allocated in accordance with the principles and requirements of Code Section 704(c) and the Regulations promulgated thereunder, and in accordance with the requirements of the relevant provisions of the Regulations issued under Code Section 704(b). For Capital Account purposes, depreciation, amortization, gain, loss with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for tax purposes shall be determined in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv)(g).

4.4.4 **Risk of Loss Allocation.** Any item of Member nonrecourse deduction [as defined in Regulation Section 1.704-2(i)(2)] with respect to a Member nonrecourse debt [as defined in Regulation Section 1.704-2(b)(4)] shall be allocated to the Member or Members who bear the economic risk of loss for such Member nonrecourse debt in accordance with Regulations Section 1.704-2(i)(1).

4.4.5 **Allocation of Excess Nonrecourse Liabilities.** For the purpose of determining each Member's share of Company nonrecourse liabilities pursuant to Regulations Section 1.752-3(a)(3), and solely for such purpose, each Member's interest in Company profits is hereby specified to be such Member's Company Interest.

4.4.6 **Unexpected Allocations and Distributions.** No allocation may be made to a Member to the extent such allocation causes or increases a deficit balance in such Member's Adjusted Capital Account. Notwithstanding any other provisions of this Agreement except Sections 4.4.2 and 4.4.4 hereof, in the event that a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)

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(d)(4), (5), or (6) which results in such Member having negative Adjusted Capital Account balance (as determined above), then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, such negative balance in such Member's Adjusted Capital Account as quickly as possible. This provision is intended to satisfy the "qualified income offset" items of the Code.

4.4.7 **Unreimbursed Business Expenses of Members.** From time to time, a Member will require incurring certain expenses related to the trade or business of the Company for which the Company will not reimburse that Member. These expenses included, but are not limited to: (a) use of the Member's personal automobile for Company business; (b) meals and entertainment of persons who are clients or prospective clients of the Company; (c) professional organization dues, licenses, publications, etc. for the Member related to the Company's business; (d) use of a Member's personal computer (including software purchased for business purposes) or other office equipment on behalf of the Company; (e) conventions; or (f) charitable contributions.

Any Member, who has incurred unreimbursed expenditures which that Member has determined are appropriately documented and deductible as expenses related to the trade or business of the Company, shall notify the Treasurer of the Company of the total amount of these expenditures that the Member intends to deduct on their individual return.

The unreimbursed business expenses paid from the personal funds of a Member will be treated, for purposes of this Operating Agreement, as contribution to the capital of the Company with a corresponding allocation of the Company's deductions back to the capital of the contributing Member. It is the responsibility of the Member to maintain records to support any such expenditure.

4.5 **Capital Accounts of Transferred Company Interest.** Upon the transfer of all or any part of a Company Interest as permitted by this Operating Agreement, the Capital Account (or portion thereof) of transferor that is attributable to the transferred interest (or portion thereof) shall carry over to the transferee, as prescribed by Regulations Section 1.704-1(b)(2)(iv)(1).

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4.6 **Transfers During Taxable Year.** All income, gain, loss, and deductions allocable pursuant to Sections 4.2, 4.3, and 4.4 hereof for a Fiscal Year with respect to any Interest which may have been transferred during such year shall be allocated between the transferor and transferee based upon the number of days that each was recognized by the Company as the owner of such Interest, without regard to the results of Company operations during the particular days of such fiscal year and without regard to which cash distributions were made to the transferor or transferee, provided, however, that all income, gain, loss, and deductions so allocated as the result of a capital transaction shall be allocated to the recognized owner of the Interest for the day on which the capital transaction giving rise to such gain occurred.

4.7 **Time of Allocation.** The allocations set forth above shall be made as of the end of each Fiscal Year.

4.8 **Right to Use Alternative Method of Calculations.** Notwithstanding anything else in this Article IV, the Company shall have the right to use a different method of allocating Company income and loss if it is advised by the Company accountant or tax counsel that the method of allocation provided herein violates the Code of Regulations. The Manager shall notify each Member of any change in the method of allocating Company income or loss in accordance with this paragraph promptly after the occurrence thereof.

4.9 **Adjustment of Capital Accounts.** After all allocations for taxable year are made, Capital Accounts shall be adjusted by the Company to the extent necessary to comply with applicable laws, regulations, and administrative pronouncements. The tax allocation provisions of this Operating Agreement are intended to produce final Capital Account balances that are at levels ("Target Final Balances"), which permit liquidating distributions that are made in accordance with such final Capital Account balances to be equal to the distributions that would occur under Section 4.1. To the extent that the tax allocation provisions of this Agreement would not produce the Target Final Balances, the Members agree to take such actions as are necessary to amend such tax allocation provisions to produce such Target Account Balances. Notwithstanding the other provisions of this Operating Agreement, allocations of income, gain, loss, and deduction (including items of gross income, gain, loss, and deduction) shall be made prospectively as necessary to produce such Target Final Balances (and, to the extent such prospective allocations would not effect such

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result, the prior tax returns of the Company shall be amended to reallocate items of gross, gain, loss, and deductions to produce such Target Final Balances).

4.10 **Change in Economic Arrangement.** Notwithstanding any other provision of this Operating Agreement, if the Percentage Interest of any Member is adjusted at any time pursuant to the terms of this Operating Agreement, the Member whose Percentage interest is increased pursuant to such adjustment shall have the right to amend this Operating Agreement to take into account the revised economic arrangement of the Members, but only to the extent required to satisfy the tax allocation rules of Code Section 704 and the Regulations thereunder based on the opinion of legal counsel selected by such Member.

4.11 **Tax Credits.** All tax credits for federal or state income tax purposes shall be allocated in the same manner as Losses, except as otherwise provided by the Code or Treasury Regulations.

ARTICLE V
MANAGEMENT AND OPERATION

5.1 **Manager.**

5.1.1 **Manager; Power and Authority.** Except as otherwise expressly set forth herein, the management and control of the Company and its business shall be vested exclusively in the Manager and the Manager shall have all the rights, powers, and authority generally conferred under the Act or other applicable law, on behalf and in the name of the Company, to carry out any and all of the objects and purposes of the Company and to perform all acts and enter into, perform, negotiate, and execute any and all leases, documents, contracts, and agreements on behalf of the Company that the Manager, exercising sole discretion, deems necessary or desirable (including, without limitation, any mortgage, promissory note, or other documents evidencing or securing any loan benefiting the Company or Transaction). Except as otherwise expressly set forth herein, the consent or authorization of any Member shall not be required for any lease, document, contract, agreement, mortgage, or promissory note to be valid and binding obligation of the Company.

5.1.2 **Specific Authority.** Without limiting the generality of Subsection 5.1.1 and subject to the terms of Subsection 5.1.3, all Members agree that the Manager shall

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exercising sole discretion, have the following rights and powers, except to the extent such rights and powers may be limited by other provisions of this Agreement:

(a) The making of any expenditure incurred in connection with the business of the Company;

(b) The use of the assets of the Company in connection with the business of the Company;

(c) The negotiation, execution, and performance of any contracts, conveyances, or other instruments;

(d) The distribution of Company cash other than as required pursuant to any other provision of this Agreement;

(e) The selection and dismissal of employees and outside attorneys, accountants, consultants, and contractors, and the determination of their compensation and other terms of employment or hiring;

(f) The maintenance of insurance for the benefit of the Company and the Members;

(g) The control of any matters affecting the rights and obligations of the Company, including the conduct of litigation and incurring of legal expense and the settlement of claims and litigations;

(h) The indemnification of any person against liabilities and contingencies to the extent permitted by law;

(i) The making or revoking of the elections referred to in Code Section 754 or any similar provision enacted in lieu thereof, or any corresponding provision of state tax laws (and each Member will, upon request of the Manager, supply the information necessary to properly give effect to such elections);

(j) The filing of such amendments to the Articles as may be required or as Manager may deem necessary from time to time;

(k) The filing on behalf of the Company of all required local, state, and federal tax returns and other documents relating to the Company.

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5.1.3 **Limitations on Manager's Authority.** The following actions ("Major Decisions") shall require the approval of at least a majority in interest (unless otherwise provided in this Agreement) of all the Members:

(a) Any amendment to this Agreement, which would (i) adversely affect the limited liability of the Members under the Act or under applicable law; or (ii) cause the Company to cease to be treated as partnership for federal or state income tax purposes;

(b) The merger or consolidation of the Company with any other entity;

(c) Any act in contravention of this Agreement;

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

(e) Possess Company property;

(f) Make any loan to any Member;

(g) Commingle the Company's funds with those of any other Person;

(h) The acquisition, by purchase, lease, or otherwise, or sale of any real property;

(i) The giving, granting, or entering into any options or sale contracts, mortgages, liens, other encumbrances, or pledges on or with respect to the Property, other than any easement, license, or right-of-way for purposes of acquiring services for the Property desirable in the conduct of the business of the Company;

(j) Except for making borrowings from Members obtaining, accepting, increasing, modifying, refinancing, consolidating, or extending any loan or loan commitment;

(k) Admission of any new Members;

(l) Except as set forth in Section 5.8 below, entering into any agreement with any Member or affiliate of any

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Member or amending or terminating any such agreement that has previously been approved.

Any deadlock with respect to a Major Decision shall be resolved as provided in Article X hereof.

5.1.4 **Appointment of Manager.** This LLC will be managed by a manager to be elected by its members. See provisions set forth below as to "manager."

5.1.5 **Removal of Manager.** Any Class "A" Member or Class "B" Member shall have the right to remove the Manager, if (a) it has been finally determined by a court of competent jurisdiction, either at law or equity, that Manager has violated its fiduciary responsibilities to the Members and such violation shall cause a material adverse effect upon the Company; or (b) it has been finally determined by a court of competent jurisdiction, either at law or equity, that Manager has willfully or recklessly breached any material provision of this Agreement and such breach shall have caused or may reasonably be anticipated to cause a material adverse effect upon the Company.

5.1.6 **Substitute Manager.** After the removal of the Manager in accordance with Section 5.1.5, or after the resignation or death of the Manager, a majority of the Members shall select a substitute Manager. Such Substitute Manager shall, upon execution of all necessary agreements, have all the rights and obligations of the Manager under this Agreement.

5.1.7 **Dealings with Members and Affiliates.** Subject to any restrictions contained elsewhere in this Agreement, the Manager may, for, in the name and on behalf of, the Company, enter into agreement or contracts, including employment of any Member or Affiliate (in an independent capacity as distinguished from his or its capacity, if any, as a Member) to undertake and carry out the business of the Company as an independent contractor; and the Manager may obligate the Company to pay compensation for and on account of any such services, provided, however, that such compensation and services shall be on terms no less favorable to the Company than if such compensation and services were paid to and/or performed by Persons who were not Members or Affiliates.

5.2 **Tax Matters Member.**

5.2.1 **Description of Tax Matters Member.** The Manager, so long as it is a Member, is designated the "tax matters partner"

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("Tax Matters Member") as provided in Code Section 6231(a)(7) and corresponding provisions of applicable state law. This designation is effectively only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state laws, and under this Agreement.

5.2.2 **Indemnification of Tax Matters Member.** The Company shall indemnify and reimburse the Tax Matters Member for all reasonable expenses, including legal and accounting fees, claims, liabilities, losses, and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. The payment of all such expenses shall be made before any distributions are made to the Members hereunder, and before any discretionary reserves are set aside by the Manager. The taking of any action and incurring of any expense by the Tax Matters Member in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Member, and the provisions hereof limiting the liability of and providing indemnification for the Manager shall be fully applicable to the Tax Matters Member in his capacity as such.

5.3 **Exculpation of Manager.** Neither the Manager, its Affiliates, nor any officer, director, member, partner, principal, shareholder, employee, agent, accountant, or attorney of the Manager or its Affiliate (each of the foregoing, other than Manager, a "Related Party"), shall be liable, responsible, or accountable, whether directly or indirectly, in contract, tort, or otherwise, to the Company to any other Member or any Affiliate thereof for any losses, claims, damages, liabilities, or expenses (collectively, "Damages") asserted against, suffered, or incurred by any of them rising out of, relating to, or in connection with any action taken or omitted by the Manager or any Related Party in good faith and in manner reasonably believed by the Manager or such Related Party to be in or not opposed to the best interests of the Company, including, without limitation, in connection with (a) the management or conduct of the business of the Company or any other Person in which the Company has or had made an investment (debt or equity) or otherwise has or had an interest; and (b) the management and conduct of the business and affairs of the Manager, provided, however, that such action or omission did not constitute gross misconduct or gross negligence or a material breach of the Manager's obligations under this Agreement.

5.4 **Indemnification of Manager.** The Company shall indemnify the Manager as provided in Article VII below.

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5.5 **Reimbursement of Costs.** The Manager shall be entitled to receive from the Company out-of-Company funds available therefore reimbursement of reasonable out-of-pocket expenses expended by the Manager in the performance of its duties hereunder.

5.6 **Other Activities.**

5.6.1 **Concurrent Activities.** Any Member, and any Affiliate, or Related Party thereof, may engage in or possess an interest in other business ventures of any nature or description, independently or with others, whether such ventures are competitive with the Company or otherwise, and the pursuit of such ventures shall not be wrongful or improper, and neither the Company nor any Member shall have any virtue of this Agreement in or to any of such ventures, or in or to the income, gains, losses, or deductions derived or to be derived therefrom.

5.6.2 **No Obligation to Offer: Specific Transactions.** None of the Manager, any Related Party, or any Member shall be obligated to offer or present any particular investment or business opportunity to the Company, even where such opportunity is of character which, if presented to the Company, could be taken and exploited by the Company, but rather the Manager, Related Parties, and the Members shall have the right to take for their own account or to recommend to others any such particular investment or business opportunity. Notwithstanding anything to the contrary herein, the Manager or any Member may present any such opportunity to the Company as a Transaction for the Company to pursue or participate as an investor, broker, advisor, consultant, or otherwise. In such event, if the economic interests of the Members (the Manager, if applicable) vary from the allocations of Profit and Loss set forth herein, the Members (and Manager if applicable) will execute a separate Transaction Schedule for each such Transaction to the extent necessary to modify the rights of the parties therein.

5.6.3 **Time Commitment.** The Manager and its principals will devote so much of their time to the business of the Company as, in their sole discretion, will be required for the proper performance of their duties under this Agreement, and it is expressly understood and agreed that the Manager and its principals shall not be required to devote their entire time to the business of the Company.

ARTICLE VI

MEMBERS

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6.1 **Rights of Members.** In addition to the other rights to which Members are entitled pursuant to the Act or the Articles, the Members shall have the right to vote on the matters, which are required by this Agreement to be approved by the Members.

6.2 **Restrictions on Powers.** Except as set forth in this Operating Agreement, no individual Member, agent, or employee has the power or authority to act on behalf of or to bind the Company or any other Member, to pledge the Company's credit, or to render the Company liable pecuniary for any purposes. A Member shall not take any action, which would change the Company to a general partnership, change the limited liability of a Member, or affect the status of the Company for federal income tax purposes.

Notwithstanding, the Manager may authorize any Member to execute one or more agreements, or to take any other action specifically authorized by the Manager, on behalf of the Company. All such authorizations must be in writing, signed by the Manager.

6.3 **Member's Other Rights.** A Member shall also have the following rights in addition to all other right under the Act as set forth in this Operating Agreement:

6.3.1 **Right to Inspect and Copy Certain Company Records.** Each Member may inspect and copy, during ordinary business hours, at the reasonable request and expense of such Member, any of the Company records required to be kept at the Company's principal place of business pursuant to Section 8.1 of this Agreement.

6.3.2 **Right to Obtain Information Regarding Financial Condition.** A Member shall have the right from time to time, upon reasonable demand, to obtain true and full information regarding the state of the business and financial condition of the Company.

6.3.3 **Right to an Accounting.** A Member shall have the right to have an accounting of the affairs of the Company whenever circumstances render it just and reasonable, but no more often than semi-annually.

6.3.4 **Potential Acquisition of the Company.** If at any time any Member or one of the Members is approached by any person or entity which desires to (a) acquire all the equity

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interests of the Company; (b) merge or consolidate with the company; or (c) acquire substantially all of the assets of the Company (a "Sale Transaction"), each Member shall promptly be informed of all material facts related thereto. The Company shall not enter into a definitive agreement providing for a Sale Transaction, or a letter of intent, or other document which precludes the Company (either temporarily or permanently) from accepting an offer from a Member to enter into a Sale Transaction until such time as the definitive agreement, letter of intent, or other document has been made available at the principal office of the Company after notice to each Member, either by telephone, facsimile, or other means of delivery reasonably expected to reach such Member within twenty-four hours, and forty-eight hours have passed since notice of the proposed definitive agreement, letter of intent, or other document has been given to all Members.

6.4 **Meetings.**

6.4.1 **Regular Meetings.** Regular Meetings of the Members shall be held on such dates, at such times, and at such places as may be established by, and publicized among, the Members. Not less than thirty days', not more than sixty days' notice of a regular meeting shall be given to each Member. Notice shall specify the place, day, and hour of the meeting and shall include an agenda of the matters to be considered at such meeting.

6.4.2 **Special Meetings.** A special meeting may be called for any purpose or purposes by any Member or Members holding at least ten percent of the Percentage Interests and shall be held on such date, at such time, and at such place as may be established by the Member or the Members, as the case may be, calling the special meeting. Not less than seven days', not more than fifteen days' notice of any special meeting shall be given to each Member. Notice shall specify the place, day, and hour of the meeting and shall include an agenda of the matters to be considered at such meeting.

6.4.3 **Emergency Meetings.** An emergency meeting may be called for any purpose or purposes by any Member or Members holding at least ten percent of the Percentage Interests and shall be held on such date, at such time, and at such place as may be established by the Member or the Members, as the case may be, calling the emergency meeting. Twenty-four hours' notice of any emergency meeting shall be given to each Member. The

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