**OPERATING AGREEMENT OF**
**BARROW'S RETAIL, LLC**
**DBA BUDS BELOW ZERO**
**an Alaska limited liability company**

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this "Agreement") is entered into to be effective as of December, 19 2019 (the "Effective Date"), by and among Barrow's Retail, LLC dba Buds Below Zero, LLC (the "Company"), an Alaska limited liability company, and the undersigned Members (each a "Member" and together the "Members") and Manager of Company.

## Section I - Formation; Name and Office; Purpose

1.1. *Formation*. Pursuant to the Alaska Revised Limited Liability Company Act, A.S. Sections 10.50.010 through 10.50.995, as amended (the "Act"), the parties have formed an Alaska limited liability company effective upon the filing of the Articles of Organization of this Company (the "Articles") with the State of Alaska Department of Commerce, Community, and Economic Development. The parties have executed this Agreement to serve as the "Operating Agreement" of the Company, as that term is defined in A.S. section 10.50.095, and, subject to any applicable restrictions set forth in the Act, the business and affairs of the Company, and the relationships of the parties to one another, shall be operated in accordance with and governed by the terms and conditions set forth in this Agreement. By executing this Agreement, the Members certify that those executing this Agreement constitute all of the Members of the Company at the time of its formation. The parties agree to execute all amendments of the Articles, and do all filing, publication, and other acts as may be appropriate from time to time hereafter to comply with the requirements of the Act.

1.2. *Name and Known Place of Business*. The Company shall be conducted under the name of BARROW'S RETAIL, LLC dba BUDS BELOW ZERO and the known place of business of the Company shall be at 4326 Nathaniel Olemaun Jr. Boulevard, Itqiagvik, Alaska 99723.

1.3. *Purpose*. The purpose and business of this Company shall be: (a) to operate a commercial marijuana establishment ("Company"); and (b) any other lawful purpose as may be determined by the Members. The Company shall have the power to do any and all acts and things necessary, appropriate, or incidental in furtherance of such purpose as authorized by the Marijuana Control Board of Alaska (the "MCBA"), as promulgated under AS 17.38 *et seq*., and 3 AAC 306.015 *et seq.*, as they may be amended, expanded or modified from time to time (collectively, the "AK Marijuana Governance"), the terms and provisions of which are incorporated herein by this reference. If any provision of this Agreement is or later becomes in violation of AK Marijuana Governance or if the federal government takes any position inconsistent with those positions regarding the enforcement of federal law on marijuana in Alaska then it shall, without any further action of the Members, be automatically amended to the minimum extent necessary to comply with such AK Marijuana Governance and such new federal government position.

1.4 *Treatment as a Partnership*. It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a partnership for federal income tax purposes, but that the Company shall not be operated or treated as a partnership for purposes of the federal Bankruptcy Code. It is the intent for the membership that taxation may be done in a manner consistent with guidance from tax professional adviser, which may be different than treatment as a partnership.

## Section II - Definitions

Unless otherwise defined in this Agreement, the following terms set forth in this Agreement shall have the meanings set forth in this Section II:



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*"Act"* means the Alaska Revised Limited Liability Company Act, A.S. Sections 10.50.010 through 10.50.995, as amended from time to time (or any corresponding provisions of succeeding law).

*"Affiliate"* means, with respect to any Member, any Person: (i) who is a member of the Member's or Member's Family; (ii) which owns more than ten percent (10%) of the voting or economic interests in the Member; (iii) in which the Member owns more than ten percent (10%) of the voting or economic interests; or (iv) in which more than ten percent (10%) of the voting or economic interests are owned by a Person who has a relationship with the Member described in clause (i), (ii), or (iii) above.

*"Capital Contribution"* means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704- 1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities secured by the contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code. Capital contributions are to be repaid prior to any issuances of dividends or profit draws from members. Note that the 14% managing member fee is not subject to this restriction and commences immediately upon operation.

*"Cash Flow"* means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall be increased by the reduction of any reserve previously established.

"*Cause*" in context of a Member's expulsion for Cause under this Agreement, means, without limiting at common law the generality of such word, that such Member: (i) has been has been convicted of a disqualifying crime identified in AS 17.38.200(i) and/or 3AAC306.010(d); (ii) has committed an act of fraud or dishonesty with respect to the Company or the business operations thereof; (iii) has engaged in misconduct that seriously injures the Company's or its subsidiaries' good will and is injurious to the Company; (iv) has willfully and persistently committed a material breach of this Agreement; (v) has engaged conduct constituting larceny, fraud, or theft; (vi) has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company; or (vii) in the case of any Member, or any Person holding a "direct or indirect financial interest," in such Member, such Person or Member becomes disqualified from participating in an Alaska recreational marijuana business in any capacity, or takes any action that is in violation of any Alaska statute or regulation that would result in the revocation or termination of the Company's Licenses on an ongoing basis, including without limitation, revocation, rejection, suspension, denial, or cancellation, as finally determined by the MCBA, or other Alaska court or administrative agency with proper jurisdiction and authority on the issue. Such determination of Cause must be made in good faith by the Manager and be approved by the Members by Major Decision Special Majority, excluding the vote and Interest of the Member being expelled for Cause.

*"Event of Withdrawal"* means those events and circumstances listed in Section 10.50.220 and 10.50.225 of the Act provided, however, that following an Event of Withdrawal described in Section 10.50.220 and 10.50.225(4) of the Act the Member shall remain a Member until it ceases to exist as a legal entity.

*"Family"* means a Person's spouse, lineal ancestor, or descendant by birth or adoption, sibling, and trust for the benefit of such Person or any of the foregoing.

*"Fiscal Year" or "Annual Period"* means the fiscal year of the Company, as determined under Section V.



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*"Interest"* means a Member's share of the Profits and Losses (and specially allocated items of income, gain, and deduction) of, and the right to receive distributions from, the Company.

*"Involuntary Transfer"* shall include, without limitation, any Transfer of a Member's Interest pursuant to any order of any court relating to any petition for divorce, legal separation, marital dissolution, or annulment, or any guardianship, conservatorship, or other protective proceeding.

"*Landlord*" means that certain individual or entity which is the "landlord" or "lessor.

"*Licenses*" means collectively the marijuana establishment(s) operating under the trade name Buds Below Zero.

"*Manager*" shall have the meaning set forth under Section V.

"*Major Decision*". For purposes of this Agreement, "Major Decision" means a decision by the Company to:

(i) admit one or more additional or substitute Members;

(ii) transfer all or substantially all of the assets of the Company;

(iii) merge or convert the Company into any other entity;

(iv) dissolve the Company;

(v) cause the Company to seek protection from creditors under federal or state bankruptcy or insolvency laws;

(vi) take any action, excluding regulatory compliance filings, operating plan change submission so MCBA known as MJ15 or Premises Diagram Changes know as MJ15;

(vii) take any material action,

(viii) purchase, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in or with any real property, wherever situated;

(ix) sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer and otherwise dispose of all or any part of any Company asset other than in the ordinary course;

(x) make guarantees, incur liabilities, borrow money, issue notes or secure any of the obligations of the Company by mortgage or pledge of any assets of the Company;

(xi) approve any transaction involving an actual or potential conflict of interest between a Member or a Manager and the Company, including the approval of any Member Loan, with the exception of the defined Start-Up Loan, which has already been approved by the members;

(xii) make any capital expenditure in any single transaction in excess of Fifty Thousand Dollars ($50,000), except in cases of emergency (as determined by the Manager in good faith) where



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immediate action is needed to maintain or resume business operations in the ordinary course, or reoccurring payments in excess of Ten Thousand Dollars ($10,000), per month;

(xiii) make any capital call or require any additional Capital Contribution; or

(xiv) vote any shares or interests in other entities in which Company holds an interest;

(xv) approval of the Annual Operating Budget, as defined under Section VI, below.

(xvi) make any amendment to this Operating Agreement.

The Members agree that Major Decisions can only be made by a Major Decision Special Majority vote.

*"Major Decision Special Majority"* shall mean consent of sixty-six (66%) percent of the Members' Percentage Interest. For the avoidance of doubt, if a Major Decision does not receive approval by a Major Decision Special Majority vote, the Major Decision shall not be approved, and no Member of the Company shall have the ability or authority to take action with respect to such Major Decision on behalf of the Company. If a Member is also a Landlord (as defined above), such Member shall have no right to vote on any matter coming before the Members concerning the such matters.

"*Majority of the Members*" means a vote of the Members holding not less than 51% of the Percentage Interests held by all Members.

*"Member"* means each Person signing this Agreement as a member and any Person who subsequently is admitted as a member of the Company in accordance with Section VI of this Agreement and agrees in writing to be bound to the terms and conditions of this Agreement.

"*Member Loan*" means a loan made by a Member to the Company for the benefit of the Company.

*"Percentage Interest"* means, as to a Member, the percentage set forth after the Member's name on **Exhibit A**, as amended from time to time.

*"Person"* means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

*"Property"* means all real and personal property (including cash) acquired by the Company, and any improvements thereto.

*"Transfer"* means, when used as a noun, any voluntary or involuntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily or involuntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

## Section III - Capital Contributions

3.1. *Capital Contributions*.

3.1.1. *Initial Capital Contributions*. Upon the execution of this Agreement, the Members have or shall make contributions to the capital of the Company as set forth in **Exhibit A** attached hereto and by this reference made a part hereof.



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3.1.2. *Additional Capital Contributions*. No Member shall be required to contribute any additional capital to the Company without a unanimous consent, and no Member shall have any personal liability for any obligation of the Company.

3.2. *Withdrawal or Return of Capital Contributions*. Except as specifically provided in this Agreement, no Member shall have the right to withdraw or reduce the Capital Contributions he or she makes to the Company. Upon dissolution of the Company or liquidation of his or her interest in the Company, each Member shall look solely to the assets of the Company for return of his or her Capital Contributions and, if the Company's property remaining after the payment or discharge of the debts, obligations, and liabilities of the Company is insufficient to return the Capital contributions of each Member, no Member shall have any recourse against the Company or any Member except for gross negligence, malfeasance, bad faith, or fraud.

3.3. *Form of Return of Capital*. Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash except as may be specifically provided herein.

3.4. *In the Event of Member Loans*. The members understand that there will be initial legal fees, licensing fees, and other expenses that are above and beyond the initial capital described in Section 3.5 of this Agreement. Upon signing of this Agreement, all members agree that Member Rural Retail Management, LLC shall loan the company the necessary and required funds for the initial licensing fees, permit fees, legal fees, and professional design fees that are necessary (collectively referred to as the "Start-Up Loan") to secure Active and Operating Status from the Alaska Marijuana Control Board. Said Start-Up Loan shall not exceed $50,000.00 unless otherwise agreed to by a Major Decision Special Majority. The Start-Up Loan shall bear simple interest rate of 5.0%. The Start-Up Loan shall be repaid in full out of available funds of the Company before any distribution may be made to any Member. Besides the Start-Up Loan described in this Section 3.4, any other future Member Loans shall be made pursuant to this Agreement, shall be by a Major Decision Special Majority shall bear interest at the prime rate of interest as reported by *the Wall Street Journal - Western Edition*, shall be unsecured, and shall be repaid in full out of available funds of the Company before any distribution may be made to any Member. If more than one Member has made a Member Loan, repayment shall be made to each Member in proportion to the amount of principal each has advanced.

3.5. *Initial Capital Contributions of the Members.* All Members shall make Contributions to the Company in the form and amount to constitute adequate initial operating capital. Member Rural Retail Management, LLC shall contribute a value equal to $50,000 in retail inventory, and a $24,000 cash contribution has already be made (and shall be deemed the initial capital contribution) from Member Robert Kaleak. Capital contributions are to be repaid prior to any issuances of dividends or profit draws from members. However the 14% management fee to the Managing Member shall not be subject to this restriction as it is a managing fee for managing the company and shall commence once Company is operational.

## Section IV - Distributions

4.1. *Distributions*. Except as otherwise provided in this Agreement, distributions shall be made to the Members at such times and in such amounts as determined by the Manager. Distributions will be made to Members *pro rata*, in proportion to their Percentage Interests, after management fees, member and non-member loan payments, and capital contributions have been repaid.



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4.2. *General*.

4.2.1. *Form of Distribution*. In connection with any distribution, no Member shall have the right to receive Property other than cash except as may be specifically provided herein. 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, 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. Unless the Members otherwise agree by a vote of the Majority of the Members, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager.

4.2.2. *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 the affected Members for all purposes under this Agreement.

4.2.3. *Varying Interests; Distributions in Respect to Transferred Interests*. If any Interest is Transferred in compliance with the provisions of this Agreement, all distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making distributions, and allocating Profits, Losses, and other items of income, gain, loss, and deduction pursuant to **Exhibit B** hereof, the Company shall recognize the Transfer not later than the end of the calendar month during which it is given notice of such, provided that if the Company does not receive a notice stating the date such Interest was Transferred and such other information as it may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Interest. Neither the Company nor any Member shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not any Member or the Company has knowledge of any Transfer of ownership of Interest.

## Section V - Management

5.1. *Management.* Subject to the rights under the Act or the provisions of this Agreement to approve certain actions, the business and affairs of the Company shall be managed exclusively by its Manager. The exact number of Managers of the Company shall be one (1) person or entity until amended in accordance with this Agreement. The Members shall vote and select a Manager that will direct, manage, and control the business of the Company to the best of their ability and, subject only to those restrictions set forth in the Act or this Agreement, shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things which the Manager deem appropriate to accomplish the business and objectives of the Company, other than those decisions requiring a Major Decision Special Majority or a vote of the Members as required by the Act. Manager(s) shall be elected and removed by a vote of the Majority of the Members, and an election or removal of Manager may be held at any time, by call of the majority percentage ownership, by providing proper written notice at least 14 days prior to election or removal. Any vacancy occurring in the position of Manager (whether caused by resignation, death, or otherwise) may be filled by the vote of the Majority of the Members. Each Member agrees not to incur any liability on behalf of the other Members or otherwise enter into any transaction or do anything which will subject the other Members to any liability, except in all instances as contemplated hereby. The members agree and have elected, but the signing of this Agreement, member Rural Retail Management, LLC to act as manager for the Company.

5.2. *Certain Management Powers of the Manager*. Without limiting the generality of Section 5.1, and subject to all Major Decisions, the Manager shall have power and authority on behalf of the



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Company:

5.2.1. To manage the day-to-day business operations of the Company in accordance with this Agreement, the rules and regulations promulgated by the MCBA, and the AK Marijuana Guidance;

5.2.2. In the ordinary course of business, to acquire property from and sell property to any person as the Manager may determine;

5.2.3. Use credit facilities and borrow money for the Company from banks, other lending institutions, the Interest Holders, or Affiliates of the Interest Holders, on such terms as approved by the Manager, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt or other obligation shall be contracted or liability incurred by or on behalf of the Company by the Member;

5.2.4. To purchase liability and other insurance to protect the Company's property and business;

5.2.5. Except for any Major Decision, 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, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Manager, to accomplish the purposes of the Company;

5.2.6. To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and compensate them from Company funds;

5.2.7. Except for any Major Decision, 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 Manger may approve;

5.2.8. To do and perform all other acts as may be necessary or appropriate to accomplish the purposes of the Company; and

5.2.9. To take such other actions as do not expressly require the consent of any Members under this Agreement.

A Manager may act by a duly authorized attorney-in-fact. Unless authorized to do so by this Agreement, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.3. *Duties of the Manager*. The Manager shall have all duties as set forth in the Act, including, without limitation, those duties set forth under AS § 10.50.135, as amended. Subject to AS § 10.50.140, a Manager shall not be required to manage the Company as the Manager's sole and exclusive function and the Manager may engage in other business and investment activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, solely by virtue of this Agreement or its relationship to a Member or the Company, to share or participate in any such other investments or activities of the Members or to the income or proceeds derived therefrom. Manager shall not have any obligation to disclose any such other investments or activities to the Members unless it actually or potentially adversely affects the business or property of the Company.



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5.4. *Compensation and Expenses*. The Company may enter into management or employment contracts with one or more Member or Members or Persons Affiliated with the Member as approved by a Major Decision Special Majority. Upon execution of this agreement, Rural Retail Management, LLC shall become the Manager of the Company. The Manager shall be compensated at a rate of fourteen (14%) of the Company's Gross Income. Payments to the Manager shall be made by the Company on a monthly basis, beginning on February 1, 2020, and continuing in perpetuity, unless or until otherwise agreed pursuant to a Major Decision Special Majority.

5.5. *Books and Records*. At the expense of the Company, the Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with the Act and sound accounting practices and kept at the Company's known place of business and such other location or locations as the Manager shall from time to time determine. At a minimum the Company shall keep at its known place of business the following records:

5.5.1. A current list of the full name and last known business, residence, or mailing address of each Member;

5.5.2. A copy of the initial Articles and all amendments thereto and restatements thereof;

5.5.3. Copies of the Company's federal, state, and local income tax returns and reports, if *any*, for the three most recent fiscal years;

5.5.4. Copies of this Agreement and all amendments hereto or restatements hereof, including any prior operating agreements no longer in effect;

5.5.5. Copies of any documents relating to a Member's obligation to contribute cash, property, or services to the Company;

5.5.6. Copies of any financial statements of the Company for the three (3) most recent fiscal years; and

5.5.7. Copies of minutes of all meetings of the Members and all written consents obtained from Members for actions taken by Members without a meeting.

5.6. *Financial Accounting/Member Access to Books and Records*. In addition to the Annual Operating Budget, the Manager shall prepare and make available a financial accounting of the Company no less than once every sixty (60) days. Within three (3) calendar days following written notice, which may be submitted in writing, via facsimile or electronic mail, each Member shall have the right, during normal business hours, to inspect and copy, at the Member's expense, the Company's books and records.

5.7. *Reports*. Within seventy-five (75) days after the end of each Fiscal Year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the Fiscal Year a complete accounting of the affairs of the Company for the Fiscal Year then ended. In addition, within seventy-five (75) days after the end of each Fiscal Year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the Fiscal Year, the tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year. At the request of any Member, and at the Member's expense, the Members shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.



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5.8. *Title to Company Property*.

5.8.1. Except as provided in Section 5.8.2, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

5.8.2. Ten (10) days after giving notice, the Manager 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 Manager may cause title to be acquired and held any one Member's name 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 that property shall be treated as Company property. The notice to be given to the Members under this section shall identify the asset or assets to be titled outside of the Company name, the Person in whom legal title is intended to vest, and the reason for the proposed transaction. If any Member provides written notice of an objection to the transaction before the expiration of the ten (10) day period, the transaction shall not be consummated except upon approval of a Majority of the Members.

## Section VI - Members

6.1. *Members.* The names and addresses of the Members, their initial Capital Contributions, and Percentage Interest, are set forth on **Exhibit A**, as amended from time to time. No Person shall become a Member unless and until they: (a) execute this Agreement (or a counterpart signature page to the Agreement); (b) tender to the Company the consideration for their Percentage Interest; (c) are approved as a Member by a Major Decision Special Majority; and (d) are approved as a Member of the Company by the MCBA in accordance with all AK Marijuana Governance, as applicable.

6.2. *Meetings*. Unless otherwise prescribed by the Act, meetings of the Members may be called, for any purpose or purposes, by a Majority of the Members.

6.3. *Place of Meetings*. Whoever calls the meeting may designate any place, either within or outside the State of Alaska, as the place of meeting for any meeting of the Members.

6.4. *Notice of Meetings*. Except as provided in this Agreement, written notice stating the date, time, and place of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, electronic mail, facsimile, or overnight or next-day delivery services by or at the direction of the person or persons calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) days after being deposited in the United States mail, postage prepaid, addressed to the Member at his or her address as it appears on the books of the Company. If transmitted by way of electronic mail or facsimile, such notice shall be deemed to be delivered on the date of such electronic mail or facsimile transmission to the electronic mail address or fax number, if any, for the respective Member which has been supplied by such Member to the Company and identified as such Member's electronic mail address or facsimile number. If transmitted by overnight or next-day delivery, such notice shall be deemed to be delivered on the next business day after deposit with the delivery service addressed to the Member at his or her address as it appears on the books of the Company. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken, unless the adjournment is for more than thirty (30) days. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting.

6.5. *Meeting of All Members*. If all of the Members shall meet at any time and place, including



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by conference telephone call, either within or outside of the State of Alaska, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice.

6.6. *Record Date*. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, the date on which notice of the meeting is mailed shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless notice of the adjourned meeting is required to be given pursuant to Section 6.3.

6.7. *Quorum*. A Majority of the Members, represented in person or by proxy, shall constitute a quorum at any meeting of Members. Business may be conducted once a quorum is present.

6.8. *Voting Rights of Members*. Members shall be entitled to vote on any matter submitted to a vote. If all of an Interest is transferred to an assignee who does not become a Member, the Member from whom the Interest is transferred shall no longer be entitled to vote. No withdrawn Member shall be entitled to vote nor shall such Member's Interest be considered outstanding for any purpose pertaining to meetings or voting.

6.9. *Manner of Acting*. Unless otherwise provided in the Act, the Articles, or this Agreement, the affirmative vote of a Majority of the Members at a meeting at which a quorum is present shall be the act of the Members.

6.10. *Proxies*. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of its exercise. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

6.11. *Action by Members without a Meeting*. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, circulated to all the Members with an explanation of the background and reasons for the proposed action, signed by that percentage or number of the Members required to take or approve the action. Any such written consent shall be delivered to the Members of the Company for inclusion in the minutes or for filing with the Company records. Action taken by written consent under this Section shall be effective on the date the required percentage or number of the Members have signed and delivered the consent to all Members, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the written consent is circulated to the Members.

6.12. *Telephonic Communication*. Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person, except where the Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

6.13. *Waiver of Notice*. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

6.14. *Budget*. The Manager shall, within ninety (90) days of the complete execution of this



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Agreement, and on or before December 15 in each calendar year thereafter, deliver to the Members for approval by a Major Decision Special Majority, an estimated annual operating budget for the Company for the next calendar year (the "Annual Operating Budget") which shall set forth an estimate, on a monthly basis, of Company revenue and expenses, together with an explanation of anticipated changes to any charges, rates, expenses and positions, non-wage cost increases, the proposed methodology and formula employed by the Manager, and all other factors differing from the then-current calendar year. The Annual Operating Budget shall be accompanied by a narrative description of operating objectives and assumptions. If the Members do not approve of an Annual Operating Budget in total, it shall do so, to the extent practicable, on a line item basis. The Manager and the Members shall cooperate to resolve disputed items, provided if a part of, or the total, Annual Operating Budget is not approved by the Members by a Major Decision Special Majority within thirty (30) days of the Manager's transmission of such Annual Operating Budget to the Members, the Manager shall operate under the expired Annual Operating Budget, on a line-item basis, until a new Annual Operating Budget is approved. The Manager shall obtain the prior written approval of a Major Decision Special Majority for any Company expenditure which will, or is reasonably expected to, result in a material variation to the Annual Operating Budget for the applicable calendar year or is materially outside the scope of any item set forth on the Annual Operating Budget.

## Section VII - Transfers and Withdrawals

7.1. *Transfers.* Except as otherwise provided in this Section VII no Member may, voluntarily or involuntarily, Transfer all, or any portion of, a Member's Interest without the prior written consent of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion. In addition, such Transfer must receive the express written approval of the MCBA, or other Alaska court or administrative agency with proper jurisdiction and authority on the issue, after filing any and all necessary forms for such transfer in compliance with AK Marijuana Governance. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The Transfer of any Interest in violation of the prohibitions contained in this Section VII shall be deemed invalid, null, and void, and of no force or effect. Any Person to whom any Interest is attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive allocations or distributions from the Company, or have any other membership rights in or with respect to the Interest.

7.2. *Deemed Transfer*. In addition to the foregoing, each of the following shall be deemed a "Transfer" and shall be subject to Section 7.1:

7.2.1. *Involuntary Transfer*. Any Involuntary Transfer;

7.2.2. *Bankruptcy and Related Events*. Filing of a voluntary petition in bankruptcy or involuntary petition in bankruptcy by an Member pursuant to Chapters 7, 11 or 13 of the U.S. Bankruptcy Code, unless such a petition is denied or dismissed within thirty (30) days after filing in the case of a voluntary petition or within ninety (90) days after filing in the case of an involuntary petition; the entry of an order of relief in bankruptcy of an Member; the assignment by an Member of all or a portion of their Interests for the benefit of creditors; the appointment of a receiver or trustee for an Member's property; or the attachment of an Interest which is not released within thirty (30) days;

7.2.3 *Attachment and Security Interest*. Any portion of an Interest of a Member becomes subject to any attachment, levy, execution or other judicial seizure, or any lien, encumbrance or security interest;



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7.2.4. *Voluntary Withdrawal*. A Member voluntarily withdraws by giving all Members thirty (30) days' prior written notice, and a Majority of the remaining Members approves such voluntary withdrawal;

7.2.5. *Involuntary Withdrawal*. An Event of Withdrawal occurs, as defined in this Agreement;

7.2.6. *Death*. Upon the transfer of any portion of an Interest in the Company as a result of death, whether to any heir, devisee, beneficiary, third-party, person, trust or estate;

7.2.7. *Breach of Lease*. Any Member who is also a Landlord materially breaches the terms of any lease, as determined by the remaining Members of the Company in good faith; or

7.2.8. *Expulsion*. Any Member is expelled from the Company for Cause.

7.3. *Transfer*. Upon the Transfer or deemed Transfer of any portion of an Interest under Section 7.2, the holder of such Interest shall become an "assignee". in accordance with this Agreement and the Act, with no voting rights, notice rights, rights to information, or other rights as a Member of any kind.

7.4. *Option of Company*. Upon the Transfer or deemed Transfer of any portion of an Interest under Section 7.2:

7.4.1. *Perpetual Option*. The Company shall automatically have the perpetual option to purchase and redeem all or any portion of the Interest in the manner as provided for in Section 7.4. In the event the Company exercises its option to purchase the Interest pursuant to Section 7.4.2, the Company shall, within ninety (90) days, distribute to the Member whose Interest is being purchased (the "Transferring Holder"), or such holder's estate, the net taxable income allocable to such Transferring Holder's Interest for the portion of the taxable year prior to the transfer date, if any.

7.4.2. *Exercise of Option; Notice*. In the event the Company wishes to exercise its option pursuant to Section 7.4.1, the Company shall deliver to the Transferring Holder written notification ("Notice"), by email to the Transferring Holder's email address, certified mail, or personal delivery, of its intention to so exercise its option to purchase and redeem the Transferring Holder's Interest. The value of such Transferring Holder's Interest shall be determined in accordance with Section 7.4.3 and **Exhibit C**, and shall be distributed in accordance with Section 7.4.4.

7.4.3. *Valuation of Interest*.

7.4.3.1. *Purchase of Transferring Holder's Interest*. Unless otherwise agreed between the Company and the Transferring Holder, for purposes of determining the purchase price to be paid for a Transferring Holder's Interest, it is hereby agreed that a Transferring Holder's Interest shall be purchased and redeemed for an amount equal to the Purchase Price, as defined below, based on the Transferring Holder's Percentage Interest in the Company, subject to standard discounts for lack of marketability and lack of control, if applicable. Upon delivery of the Subordinated Promissory Note (as defined below) to the Transferring Holder, the Transferring Holder's Interest shall have been redeemed by the Company pursuant hereto, without any further action by the Transferring Holder, the Company or any other Member.

7.4.4 *Purchase Price*. The Purchase Price of a Transferring Holder's Interest shall be as follows:



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7.4.4.1. Where the redemption of a Transferring Holder's Interest is due to a Transfer event described in Section 7.2.1 through 7.2.6, then the Purchase Price shall be either: (a) the fair market value of the Company as mutually agreed upon by the Company and the Transferring Holder (or such Transferring Holder's representative) in good faith, multiplied by the Transferring Holder's Percentage Interest, subject to standard discounts for lack of marketability and lack of control, if applicable; or (b) if no agreement can be reached, the fair market value of the Company (as determined by an Appraiser, selected pursuant to **Exhibit C**), multiplied by the Transferring Holder's Percentage Interest, subject to standard discounts for lack of marketability and lack of control, if applicable; or

7.4.4.2. Where the redemption of a Transferring Holder's Interest is due to a Transferring Holder's Transfer event under Section 7.2.7 or 7.2.8, then the Purchase Price shall be the fair market value of the Transferring Holder's Percentage Interest as determined in accordance with the provisions of Section 7.4.4.1, above, less fifty percent (50%) of such fair market value; provided, however, that such amount shall then be less (and off set by) the aggregate amount of damages, liabilities, losses or other expenses incurred by the Company due to such Transferring Holder's actions constituting Cause or such Transferring Holder's breach, as applicable, and including fees and legal expenses incurred in the purchase of such Transferring Holder's Interest.

7.5. *Terms of Payment*. Unless otherwise mutually agreed in writing by the Company and the Transferring Holder, after the Purchase Price has been established in accordance with Section 7.4.3, as applicable, the Company shall pay the Purchase Price, together with the principal amount of any loan outstanding to the Transferring Holder, or such Transferring Holder's estate, whose interest is being purchased, as follows: the value of the Transferring Holder's Interest shall be paid with a minimum of twenty percent (20%) down within thirty (30) days of the date the Purchase Price is established in accordance with Section 7.4.3, and the balance of eighty percent (80%) shall be made payable pursuant to an unsecured Subordinated Promissory Note, made by the Company in favor of the Transferring Holder, payable over sixty (60) months, beginning the first day of the first month following the down payment. In no event shall there by any prepayment penalty in the event the Company wishes to pay the amount due hereunder prior to the expiration of the term of the Subordinated Promissory Note. In each instance, interest shall be computed and paid on the balance owing at the prime rate charged by the Company's banking institution. The promissory notes described herein shall be expressly subordinated to all senior debt, pre-existing or hereafter existing debt to financial institutions or lessors in connection with commercial loans, credit arrangements, equipment financings, leases or similar transactions. If the Company is sold (whether via change in control or otherwise) or liquidated following the purchase of a Transferring Holder's Interest, the installment obligation shall be immediately due and owing.

7.6. *Transferee Not a Member*. The attempted Transfer or assignment of a Member's Interest shall not result in any transferee or assignee becoming a Member of the Company, unless the transferee or assignee is admitted as a Member pursuant to this Agreement, and the transferee or assignee shall only be entitled to receive, to the extent transferred, the share of distributions, including distributions representing the return of contributions, and the allocation of Profits and Losses (and other items of income, gain, or deduction), to which the Member would have otherwise been entitled with respect to the Member's Interest. The transferee or assignee shall have no rights as a Member or any other right to participate in the management of the business and affairs of the Company or any right to become a Member unless admitted by a Major Decision Special Majority.

7.7. *Substitute Members*. Notwithstanding any provision of this Agreement to the contrary, an assignee of a Member may only be admitted as a substitute Member upon the written consent of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion.



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7.8. *Additional Members*. The Company shall not issue additional Interests after the date of formation of the Company without the written consent or approval of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion.

7.9. *Expenses*. Expenses of the Company or of any Member occasioned by transfers of Interests shall be reimbursed to the Company or Member, as the case may be, by the transferee.

**Section VIII - Dissolution and Termination**

8.1. *Dissolution*.

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

8.1.1.1. Upon the written consent of a Major Decision Special Majority;

8.1.1.2. Upon the entry of a decree of dissolution under Section 10.50.405 of the Act or an administrative dissolution under Section 10.50.408 of the Act;

8.1.1.3. Upon the sale or other disposition of all or substantially all of the Company's assets and receipt by the Company of the proceeds therefrom; or

8.1.1.4. Upon the occurrence of an Event of Withdrawal of the last remaining Member unless within ninety (90) days all assignees of Interests in the Company consent in writing to admit at least one member to continue the business of the company.

8.2. *Continuation.* An Event of Withdrawal with respect to a Member shall not cause dissolution, and the Company shall automatically continue following such an Event of Withdrawal.

8.3. *Distributions and Other Matters*. The Company shall not terminate until its affairs have been wound up and its assets distributed as provided herein. Promptly upon the dissolution of the Company, the Members shall cause to be executed and filed a Notice of Winding Up with the Alaska Department of Commerce, Community, and Economic Development, and will liquidate the assets of the Company and apply and distribute the proceeds of such liquidation, or distribute the Company's assets in kind, as follows and in the following order:

8.3.1. *Ordinary Debts*. To payment of the debts and liabilities of the Company, including debts owed to Members, in the order of priority provided by law; provided that the Company shall first pay, to the extent permitted by law, liabilities with respect to which any Member is or may be personally liable;

8.3.2. *Reserves and Distributions*. To the setting up of such reserves as the Members may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company business;

8.3.3. *Remainder*. The balance of the proceeds shall be distributed to the Members in accordance with the positive balance in their Capital Accounts, determined as though all of the Company assets were sold for cash at their fair market value as of the date of distribution. Any such distributions shall be made in accordance with the timing requirements of Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2).



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8.4. *Deficit Capital Accounts*. Notwithstanding anything to the contrary in this Agreement, if any Member's Capital Account has a deficit balance (taking into account all contributions, distributions, and allocations for the year in which a liquidation occurs), the Member shall not be obligated to make any contribution to the capital of the Company and the negative balance of such Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other person for any purpose whatsoever.

8.5. *Rights of Members—Distributions of Property*. Except as otherwise provided in this Agreement, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company. No Member shall have priority over any other Member for the return of his or her Capital Contributions, distributions, or allocations.

8.6. *Articles of Termination*. When all the assets of the Company have been distributed as provided herein, the Members shall cause to be executed and filed Articles of Termination as required by the Act.

## Section IX - Other Interests of a Member

Any Member may engage in or possess interests in other business ventures of every nature and description, independently or with others. Neither the Company nor any Member shall have any right to any independent ventures of any other Member or to the income or profits derived therefrom. The fact that an Member, a member of his or her Family, or an Affiliate is employed by, or owns, or is otherwise directly or indirectly interested in or connected with, any person, firm, or corporation employed or retained by the Company to render or perform services, including without limitation, management, contracting, mortgage placement, financing, brokerage, or other services, or from whom the Company may buy property or merchandise, borrow money, arrange financing, or place securities, or may lease real property to or from the Company, shall not prohibit the Company from entering into contracts with or employing that person, firm, or corporation or otherwise dealing with him or it, and neither the Company nor any of the Members as such shall have any rights in or to any income or Profits derived therefrom.

## Section X - Indemnity

10.1. *Indemnity Rights*. The Company shall indemnify, defend and hold harmless each Member who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of his or her actions as an Member or by reason of his or her acts while serving at the request of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, and against judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, provided that the acts of such Member were not committed with gross negligence or willful misconduct, and, with respect to any criminal action or proceeding, such Member had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest or its equivalent, shall not, in and of itself, create a presumption that the Member acted with gross negligence or willful misconduct, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.2. *Notice and Defense*. Any Member who is or may be entitled to indemnification shall give timely written notice to the Company, the Members that a claim has been or is about to be made against him or her, shall permit the Company to defend him or her through legal counsel of its own choosing, and



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shall cooperate with the Company in defending against the claim. The Member shall have the sole power and authority to determine the terms and conditions of any settlement of the claim.

10.3. *Other Sources*. The indemnification provided for herein shall apply only in the event, and to the extent that, the person is not entitled to indemnification, or other payment, from any other source (including insurance), and the Company's indemnity obligations hereunder shall be in excess of any indemnification or other payment provided by such other source.

10.4. *Survival.* The indemnification provided for herein shall continue as to a person who has ceased to be a Member and shall inure to the benefit of the heirs, executors, and administrators of such person.

**Section XI - Miscellaneous**

11.1. *Notices*. Any notice, demand, offer, or other communication which any person is required or may desire to give to any other person shall be delivered in person or by United States mail, electronic mail, facsimile, or overnight or next-day delivery service. If mailed, such notice shall be deemed to be delivered two (2) days after being deposited in the United States mail, postage prepaid, addressed to the person at his or her address as it appears on the books of the Company. If transmitted by way of electronic mail or facsimile, such notice shall be deemed to be delivered on the date of such electronic mail or facsimile transmission to the electronic mail address or facsimile number, if any, for the person which has been supplied by such person and identified as such person's electronic mail address or facsimile number. If transmitted by overnight or next-day delivery, such notice shall be deemed to be delivered on the next business day after deposit with the delivery service addressed to the person at his or her address as it appears on the books of the Company.

11.2. *Bank Accounts*. All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Manager shall determine the institution or 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.

11.3. *Severability*. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances, or to any other extent, will not be impaired.

11.4. *Governing Law; Parties in Interest; Attorneys' Fees*. This Agreement will be governed by and construed according to the laws of the State of Alaska without regard to conflicts of law principles and will bind and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties. Unless otherwise agreed, if any litigation or other dispute resolution proceeding is commenced between parties to this Agreement to enforce or determine the rights or responsibilities of such parties, the prevailing party or parties in any such proceeding will be entitled to receive, in addition to such other relief as may be granted, its reasonable attorneys' fees, expenses and costs incurred preparing for and participating in such proceeding.

11.5. *Execution in Counterparts*. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

11.6. *Titles and Captions*. All article, section, or paragraph titles or captions contained in this



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Agreement are for convenience only and are not deemed part of the context thereof.

11.7. *Pronouns and Plurals*. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

11.8. *Waiver; Waiver of Action for Partition*. No right or obligation under this Agreement will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance in any other instance, in any other respect, or at any other time. Each of the Members irrevocably waives any right that he or she may have to maintain any action for partition with respect to any of the Company Property.

11.9. *Entire Agreement*. This Agreement and all Exhibits attached hereto collectively contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof.

Estoppel Certificate. Each Member shall, within ten (10) days after written request by any Member or the Members, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof.

## Section XII – Arbitration

If the parties are unable to resolve any dispute arising out of this Agreement either during or after its term informally, including the question as to whether any particular matter is arbitrable, the parties agree to submit the matter to binding arbitration. In the event the parties have not agreed upon an arbitrator within twenty (20) days after either party has demanded arbitration, either party may file a demand for arbitration with an Alaska regional office of the American Arbitration Association ("AAA") and a single arbitrator shall be appointed in accordance with the then existing Commercial Arbitration Rules of the AAA. At all times during arbitration, the arbitrator shall consider that the purpose of arbitration is to provide for the efficient and inexpensive resolution of disputes, and the arbitrator shall limit discovery whenever appropriate to insure that this purpose is pre-served. The dispute between the parties shall be submitted for determination within sixty (60) days after the arbitrator has been selected. The decision of the arbitrator shall be rendered within thirty (30) days after the conclusion of the arbitration hearing. The decision of the arbitrator shall be in writing and shall specify the factual and legal basis for the decision. Upon stipulation of the parties, or upon a showing of good cause by either party, the arbitrator may lengthen or shorten the time periods set forth herein for conducting the hearing or for rendering a decision. The decision of the arbitrator shall be final and binding upon the parties. Judgment to enforce the decision of the arbitrator, whether for legal or equitable relief, may be entered in any court having jurisdiction thereof, and the parties hereto expressly and irrevocably consent to the jurisdiction of the Alaska Courts for such purpose. The arbitrator shall conduct all proceedings pursuant to the then existing Commercial Arbitration Rules of the AAA, to the extent such rules are not inconsistent with the provisions of this Article III. The AAA Uniform Rules of Procedure shall not apply to any arbitration proceeding relating to the subject matter or terms of the documents. In the event a dispute is submitted to arbitration pursuant to this Section, the prevailing party shall be entitled to the payment of its reasonable attorneys' fees and costs, as determined by the arbitrator. Each of the parties shall keep all disputes and arbitration proceedings strictly confidential, except for disclosures of information required by applicable law or regulation.



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**Section XIII – Representation -**

The parties all acknowledge that the JDW, LLC ("Firm" and/or "Counsel"), prepared this Agreement in conjunction with Members personal counsels. In the event the Company desires to engage the Firm to represent the Company and its subsidiaries in the near future, all members agree and have been advised of the following:

The Firm represents Kalla Peacock, personally and not any other person or entity noted in this agreement, including but not limited to Jason Evans, Rural Retail Management, LLC, or Barrow's Retail, LLC dba Buds Below Zero, (Members / Managers), in their respective individual capacities, as if the Firm did represent the other persons/entities listed that may create conflicts of interest that would need to be waived by all applicable parties;

The Members hereby are advised by the Firm that conflicts may exist among the Company, the subsidiaries, and/or Members' and/or Managers individual interests;

The Members hereby are advised by Counsel to seek the advice of independent counsel;

The Members are afforded and encouraged to seek the advice of independent counsel;

The Members have received no representations from Counsel or Firm about this Agreement, including without limitation, the tax consequences of this Agreement;

The Members are hereby advised by Counsel that this Agreement may have tax consequences;

The Members hereby are advised by Counsel to seek the advice of independent tax counsel; and

The Members have had the opportunity to seek the advice of independent tax counsel.

The Members hereby agree and understand that if the Company and its subsidiaries engage the Firm as counsel, then the Members will need to consent to the Firm's joint representation of the Company, and its subsidiaries, and are greatly encouraged to seek independent legal counsel prior to waiving said conflicts, consistent with Alaska's RPC 1.13(g), RPC 1.6 and RPC 1.7.

***Signature page follows.***



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IN WITNESS WHEREOF, the Members have executed this Operating Agreement, effective as of the date first set forth above.

*Members*

X

Rural Retail Management, LLC
By: Jason Evans

X

Robert Kaleak

*Manager of Barrow's Retail, LLC*

X

Rural Retail Management, LLC
By: Jason Evans

*Consent to appointment of member Rural Retail Management, LLC as Manager for Barrow's Retail, LLC*

X

Robert Kaleak



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**EXHIBIT A**

**Members, Capital Contributions, and Interest**

| | Full Required | Paid Contribution | Total Remaining | Percentage |
|---|---|---|---|---|
| Rural Retail Management | $50,000 (inventory) | $0 | $50,000 | 50% |
| Robert Kaleak | $24,000 (cash) | $24,000 | $0 | 50% |
| **TOTALS:** | **$74,000** | **$24,000** | **$50,000** | **100%** |



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**EXHIBIT B**

**Tax Matters**

1. *Definitions*. The capitalized words and phrases used in this **Exhibit B** shall have the following meanings:

1.1. *"Adjusted Book Value"* means with respect to Company Property, the Property's Initial Book Value with the adjustments required under this Agreement.

1.2. *"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 Fiscal Year, after giving effect to the following adjustments:

1.2.1. the Capital Account shall be increased by the amounts which the Member is obligated to restore under this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g)(1) and (i)(5) (i.e., the Member's share of Minimum Gain and Member Minimum Gain); and

1.2.2. the Capital Account shall be decreased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with that Regulation.

1.3. "*Capital Account*" means the account maintained by the Company for each Member in accordance with the following provisions:

1.3.1. A Member's Capital Account shall be credited with the amount of money contributed by the Member to the Company; the fair market value of the Property contributed by the Member to the Company (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code); the Member's allocable share of Profit and items of income and gain; and the amount of Company liabilities that are assumed by the Member under Regulation Section 1.704-1(b)(2)(iv)(c);

1.3.2. A Member's Capital Account shall be debited with the amount of money distributed to the Member; the fair market value of any Company property distributed to the Member (net of liabilities secured by such distributed Property that the Member is considered to assume or take subject to under Section 752 of the Code); the Member's allocable share of Loss and items of deduction; and the amount of the Member's liabilities that are assumed by the Company under Regulation Section 1.704-1(b)(2)(iv)(c);

1.3.3. If Company Property is distributed to a Member, the Capital Accounts of all Members shall be adjusted as if the distributed Property had been sold in a taxable disposition for the gross fair market value of such Property on the date of distribution (taking into account Section 7701 of the Code) and the Profit or Loss from such disposition allocated to the Members as provided in this **Exhibit B**.

1.3.4. If money or other Property (other than a *de minimis* amount) is (a) contributed to the Company by a new or existing Member in exchange for an interest in the Company; or (b) distributed



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by the Company to a retiring or continuing Member as consideration for an interest in the Company; then, if the Members deem such an adjustment to be necessary to reflect the economic interests of the Members, the Book Value of the Company's Property shall be adjusted to equal its gross fair market value on such date (taking into account Section 7701(g) of the Code) and the Capital Accounts of all Members shall be adjusted in the same manner as if all the Company Property had been sold in a taxable disposition for such amount on such date and the Profit or Loss allocated to the Members as provided in this **Exhibit B**.

1.3.5. 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 Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the Book Value of the Company's Property and the Capital Account of the Members shall be adjusted in a manner consistent with the manner in which the Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

1.3.6. If any Interest is 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 Interest. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts or the Adjusted Book Value of Company Property shall be interpreted and applied in a manner consistent with that Section of the Regulations.

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

1.5. *"Company Minimum Gain"* has the meaning set forth in Regulation Section 1.704-2(b)(2) for "partnership minimum gain."

1.6. *"Initial Book Value"* means, with respect to Property contributed to the Company by a Member, the Property's fair market value at the time of contribution and, with respect to all other Property, the Property's adjusted basis for federal income tax purposes at the time of acquisition.

1.7. *"Member Nonrecourse Debt"* has the meaning set forth in Section 1.704- 2(b)(4) of the Treasury Regulations for "partner nonrecourse debt."

1.8. *"Member Nonrecourse Debt Minimum Gain"* has the meaning set forth in Regulation Section 1.704-2(i) for "partner nonrecourse debt minimum gain."

1.9. *"Member Nonrecourse Deductions"* has the meaning set forth in Regulation Section 1.704-2(i) for "partner nonrecourse deductions."

1.10. *"Nonrecourse Deductions"* has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions shall be determined according to the provisions of Regulation Section 1.704-2(c).

1.11. *"Nonrecourse Liability"* has the meaning set forth in Regulation Section 1.704-2(b)(3).

1.12. *"Profit" and "Loss"* means, for each Fiscal 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:



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1.12.1. 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 taxable income or loss;

1.12.2. Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing Profit or Loss;

1.12.3. Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be included in computing Profit or Loss;

1.12.4. If the Adjusted Book Value of Company Property differs from its adjusted basis for federal income tax purposes, then 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 rather than the adjusted basis of the property for federal income tax purposes;

1.12.5. If the Adjusted Book Value of Company Property differs from its adjusted basis for federal income tax purposes, then in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, the depreciation, amortization (or other cost recovery deduction) shall be an amount that bears the same ratio to the Adjusted Book Value of such Property as depreciation, amortization (or other cost recovery deduction) computed for federal income tax purposes for such period bears to the adjusted tax basis of such Property. If the Property has a zero adjusted tax basis, the depreciation, amortization (or other cost recovery deduction) of such Property shall be determined under any reasonable method selected by the Company; and

1.12.6. Any items that are specially allocated pursuant to Sections 2.3 and 2.4 hereof shall not be taken into account in computing Profit or Loss.

1.13. "Treasury Regulations" or "Regulations" means the income tax regulations, including any temporary regulations, promulgated under the Code as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

2. *Allocations*. After making any special allocations contained in Section 2.5, remaining Profits and Losses shall be allocated for any Fiscal Year in the following manner:

2.1. *Profits*.

2.1.1. First, Profits shall be allocated among the Members in proportion to the cumulative Losses previously allocated to the Member under Section 2.2.3 until the cumulative Profits allocated to each Member under this subparagraph equal the cumulative Losses previously allocated to each Member under Section 2.2.3;

2.1.2. Second, Profits shall be allocated proportionately among the Members until the cumulative Profits allocated to each Member under this subparagraph equal the cumulative Priority Return each Member has received through the end of the Fiscal Year plus Losses, if any, allocated to the Member under Section 2.2.2**;** and

2.1.3. Third, Profits shall be allocated to the Members in accordance with their Percentage Interests.



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2.2. *Losses*.

2.2.1. First, Losses shall be allocated to the Members in proportion to the cumulative Profits previously allocated to the Members under Section 2.1.3 until the cumulative Losses allocated pursuant to this subparagraph to each Member are equal to the cumulative Profits previously allocated to each Member under Section 2.1.3.

2.2.2. Second, Losses shall be allocated to the Members in proportion to the cumulative Profits previously allocated to the Members under Section 2.1.2 until the cumulative Losses allocated pursuant to this subparagraph to each Member are equal to the cumulative Profits previously allocated to each Member under Section 2.1.2; and

2.2.3. Third, Losses shall be allocated to the Members in accordance with their Percentage Interests.

2.3. *Loss Limitations*.

2.3.1. *Adjusted Capital Account Deficit*. No Losses shall be allocated to any Member pursuant to Section 2.1 if the allocation causes the Member to have an Adjusted Capital Account Deficit or increases the Member's Capital Account Deficit. All Losses in excess of the limitations set forth in this Subsection shall be allocated to the other Members in accordance with the other Members' Percentage Interests until all Members are subject to the limitation of this Subsection, and thereafter, in accordance with the Members' interest in the Company as determined by the Members. If any Losses are allocated to an Member because of this Subsection, then notwithstanding any other provision of this Agreement, all subsequent Profits shall be allocated to the Members pro rata based on Losses allocated to them pursuant to this Subsection until each Member has been allocated an amount of Profits pursuant to this Subsection equal to the Losses previously allocated to that Member under this Subsection.

2.3.2. *Cash Method Limitation*. If the Company is on the cash method of accounting and more than 35% of the Company's Losses in any year would be allocable to Members who are limited entrepreneurs (within the meaning of § 464(e)(2) of the Code), then except as otherwise provided in Section 2.2.1, the Losses in excess of 35% otherwise allocable to those Members shall be specially allocated among the other Members in the ratio that each shares in Losses. If any Losses are allocated to a Member under this Subsection, then notwithstanding any other provision of this Agreement, all subsequent Profits shall be allocated to the Members pro rata based on Losses allocated to them pursuant to this Subsection until each Member has been allocated an amount of Profits pursuant to this Subsection in the current and previous Fiscal Years equal to the Losses allocated to that Member pursuant to this Subsection in previous Fiscal Years.

2.4. *Section 704(c) Allocations*.

2.4.1. *Contributed Property*. In accordance with Code Section 704(c) and the Regulations thereunder, as well as 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).

2.4.2. *Adjustments to Book Value*. If the Adjusted Book Value of any Company asset is adjusted as provided in clause (iv) of the definition of Capital Account, subsequent allocations of income,



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gain, loss, and deduction with respect to the asset shall, solely for tax purposes, 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 as provided under Code Section 704(c) and the Regulations thereunder.

2.5. *Regulatory Allocations*. The following allocations shall be made in the following order:

2.5.1. *Company Minimum Gain Chargeback*. Except as set forth in Regulation Section 1.704-2(f)(2), (3), (4), and (5), if during any Fiscal Year there is a net decrease in Company Minimum Gain, each Member, prior to any other allocation pursuant to this Section IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, succeeding taxable years) in an amount equal to that Member's share of the net decrease of Company Minimum Gain, computed in accordance with Regulation Section 1.704-2(g)(2). Allocations of gross income and gain pursuant to this Subsection shall be made first from gain recognized from the disposition of Company assets subject to Nonrecourse Liabilities to the extent of the Minimum Gain attributable to those assets and, thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Subsection shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

2.5.2. *Member Nonrecourse Debt Minimum Gain Chargeback*. Except as set forth in Regulation Section 1.704-2(i)(4), if during any Fiscal Year there is a net decrease in Member Nonrecourse Debt Minimum Gain, each Member with a share of that Member Nonrecourse Debt Minimum Gain (determined under Regulation Section 1.704-2(i)(5)) as of the beginning of the Fiscal Year shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, succeeding Fiscal Years) in an amount equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, computed in accordance with Regulation Section 1.704-2(i)(4). Allocations of gross income and gain pursuant to this Subsection shall be made first from gain recognized from the disposition of Company assets subject to Member Nonrecourse Debt to the extent of the Member Minimum Gain attributable to those assets and, thereafter, from a pro rata portion of the Company's other items of income and gain for the Fiscal Year. It is the intent of the parties hereto that any allocation pursuant to this Subsection shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(i)(4).

2.5.3. *Qualified Income Offset*. If a Member unexpectedly receives an adjustment, allocation, or distribution described in Regulation Section 1.704- 1(b)(2)(ii)(d)(4), (5), or (6), then to the extent required under Regulations Section 1.704- 1(b)(2)(d), such Member shall be allocated 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 Fiscal Year) before any other allocation is made of Company items for that Fiscal Year, in the amount and in proportions required to eliminate the Member's Adjusted Capital Account Deficit as quickly as possible. This Subsection is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

2.5.4. *Nonrecourse Deductions*. Nonrecourse Deductions for a Fiscal Year or other period shall be allocated among the Members in proportion to their Percentage Interests.

2.5.5. *Member Nonrecourse Deductions*. Any Member Nonrecourse Deduction for any Fiscal Year or other period attributable to a Member Nonrecourse Liability shall be allocated to the Member who bears the risk of loss for the Member Nonrecourse Debt in accordance with Regulation Section 1.704-2(i).

2.5.6. *Regulatory Allocations*. The allocations contained in Section 2.5 are contained



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herein to comply with the Regulations under Section 704(b) of the Code. In allocating other items of Profit or Loss, the allocations contained in Section 2.5 shall be taken into account so that to the maximum extent possible the net amount of Profit or Loss allocated to each Member will be equal to the amount that would have been allocated to each Member if the allocations contained in Section 2.4 had not been made.

2.6. *Varying Interests; Allocations in Respect to Transferred Interests*. Profits, Losses, and other items shall be calculated on a monthly, daily, or other basis permitted under Code Section 706 and the Regulations. If any Interest is sold, assigned, or transferred in compliance with the provisions of this Agreement, profits, losses, each item thereof, and all other items attributable to such Interest for such period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Company.

2.7. *Tax Matters Partner*. The Manager shall be the Company's tax matters partner ("Tax Matters Partner") unless the Members designate a different Person to serve in this capacity. 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 which 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. The Company shall be responsible for any costs incurred by any Member with respect to a tax audit or tax-related administrative or judicial proceeding against the Member. The Tax Matters Partner shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

2.8. *Returns and Other Elections*. The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business.

2.9. *Annual Accounting Period*. The annual accounting period of the Company shall be its Fiscal Year. The Company's Fiscal Year shall be selected by the Manager, subject to the requirements and limitations of the Code.

2.10. *Knowledge*. The Members acknowledge that they understand the economic and income tax consequences of the allocations and distributions under this Agreement and agree to be bound by the provisions of this **Exhibit B** in reporting their taxable income and loss from the Company.

2.11. *Amendment*. The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this **Exhibit B** to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect the distributions to an Member without the Member's prior written consent.



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## EXHIBIT C

## Formula For Determining an Appraiser to Determine the Purchase Price Of A Transferring Holder's Interest Pursuant To Section VII

When required pursuant to Section VII of this Agreement, the value of an Interest will be determined by a valuation professional accredited in business valuation by the AICPA or American Society of Appraisers ("Appraiser"). Such Appraiser shall be jointly selected by the Company and the Transferring Holder within fifteen (15) days after Manager's and the other Members' actual knowledge of the Transferring Holder's Transfer. The cost of the Appraiser shall be borne equally by the Company and the Transferring Holder. If a mutually satisfactory Appraiser cannot be selected, then the Company and the Transferring Holder each shall select and pay for its own Appraiser and the two Appraisers shall attempt to reconcile their valuations to arrive at a single valuation. If they are unable to do so, they shall jointly select a third Appraiser to value the Transferring Holder's Interest. The cost of the third Appraiser shall be borne equally by the Company and the Transferring Holder. The three Appraisers shall attempt to reconcile their valuations to arrive at a single valuation. If they are unable to do so, then the middle of the three appraisals shall be used as the valuation. The standard of value shall be fair market value.

If applicable, each party shall appoint its Appraiser within seven (7) days after the parties determine they cannot agree on a single Appraiser. The two Appraisers appointed shall select a third Appraiser within seven (7) days after they determine they cannot agree on a single valuation. The Appraisers shall be instructed to provide their valuations within thirty (30) days after their appointment.

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**EXHIBIT D**

**SPOUSAL CONSENT**

I, _____, being the spouse of _____, hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights that I may have in the equity of Barrow's Retail LLC, the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: _____

_____
Signature

_____
Print Name

**SPOUSAL CONSENT**

I, _____, being the spouse of _____, hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights that I may have in the equity of Barrow's Retail LLC, the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: _____

_____
Signature

_____
Print Name

**SPOUSAL CONSENT**

I, _____, being the spouse of _____, hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights

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that I may have in the equity of Barrow's Retail LLC, the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: _____

_____
Signature

_____
Print Name

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