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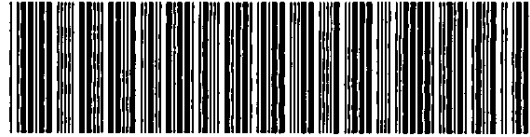
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TALLAHASSEE, FLORIDA

18 JUN 20 AM 8:12

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**COVER LETTER**

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** MIKHAEL MANAGEMENT LP  
Name of Florida Limited Partnership or Limited Liability Limited Partnership

The enclosed Certificate of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

MOHEB MICHAEL

Contact Person

TREAS DEVELOPMENT US LLC

Firm/Company

162 INGLEWOOD DRIVE

Address

MISSISSAUGA, ONTARIO L5G 1Y1

City, State and Zip Code

mohebmichael@rogers.com

E-mail address: (to be used for future annual report notification)

FILED  
13 JUN 20 AM 8:12  
TALLAHASSEE, FLORIDA

For further information concerning this matter, please call:

JONAH SPIEGELMAN

at ( 604 )

569-1445

Name of Contact Person

Area Code and Daytime Telephone Number

Enclosed is a check for the following amount:

☐ \$52.50 Filing Fee

☐ \$61.25 Filing Fee  
and Certificate of  
Status

☐ \$105.00 Filing Fee  
and Certified Copy

☐ \$113.75 Filing Fee,  
Certified Copy, and  
Certificate of Status

**STREET ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
MIKHAEL MANAGEMENT LP**

Insert name currently on file with Florida Department of State

**FILED**  
13 JUN 20 AM 8:12  
STATE ARCHIVE FLORIDA

Pursuant to the provisions of section 620.1202, Florida Statutes, this Florida limited partnership or limited liability limited partnership, whose certificate was filed with the Florida Department of State on JUNE 5, 2012, assigned Florida document number A12000000321, adopts the following certificate of amendment to its certificate of limited partnership.

This amendment is submitted to amend the following:

**A. If amending name, enter the new name of the limited partnership or limited liability limited partnership here:**

**MIKHAEL MANAGEMENT US LP**

New name must be distinguishable and contain an acceptable suffix.

*Acceptable Limited Partnership suffixes: Limited Partnership, Limited, L.P., LP, or Ltd.*

*Acceptable Limited Liability Limited Partnership suffixes: Limited Liability Limited Partnership, L.L.L.P. or LLLP.*

**B. If amending mailing address and/or principal office address, enter new mailing address and/or principal office address here:**

New Principal Office Address:

*(Must be STREET address)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

New Mailing Address:

*(May be post office box)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. If amending the registered agent and/or registered office address on our records, enter the name of the new registered agent and/or the new registered office address here:**

Name of New Registered Agent:

\_\_\_\_\_

New Registered Office Address:

\_\_\_\_\_

*Enter Florida street address*

\_\_\_\_\_, Florida \_\_\_\_\_

*City*

*Zip Code*

**New Registered Agent's Signature, if changing Registered Agent:**

*I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*

\_\_\_\_\_  
If Changing Registered Agent, Signature of New Registered Agent

**D. If amending the general partner(s), enter the name and business address of each general partner being added or removed from our records:**

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____ _____ _____	<input type="checkbox"/> Add <input type="checkbox"/> Remove

**E. If the limited partnership or limited liability limited partnership is amending its "limited liability limited partnership" status, enter change here:**

- ☐ This Limited Partnership hereby elects to be a "Limited Liability Limited Partnership."
- ☐ This Limited Partnership hereby removes its "Limited Liability Limited Partnership" status.

**(NOTE: If adding or removing "limited liability limited partnership" status, all general partners must sign this amendment.)**


F. If amending any other information, enter change(s) here: *(Attach additional sheets, if necessary.)*


Effective date, if other than the date of filing: \_\_\_\_\_

*(Effective date cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State.)*

**Signature(s) of a general partner or all general partners\*:**


(\*NOTE: Only one current general partner is required to sign this document unless the limited partnership is adding or removing a "limited liability limited partnership" election statement. Chapter 620, F.S., requires all general partners to sign when adding or removing a "limited liability limited partnership" election statement.)

  
MOHEB MICHAEL

  
WENDY MICHAEL

**Signature(s) of all new or dissociating general partner(s), if any:**

Filing Fee: \$52.50  
Certified Copy (optional): \$52.50  
Certificate of Status (optional): \$8.75



THE MEMBER INTERESTS REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS PURSUANT TO APPLICABLE EXEMPTIONS. WITHOUT SUCH REGISTRATION, INTERESTS MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE UNITED STATES AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE LIMITED LIABILITY COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE LIMITED LIABILITY COMPANY THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR THE SUBMISSION TO THE MANAGER OF THE LIMITED LIABILITY COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGER TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. ADDITIONALLY, ANY SALE OR OTHER TRANSFER OF THE INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS THAT ARE SET FORTH IN THIS OPERATING AGREEMENT.

**OPERATING AGREEMENT**  
**OF**  
**TREAS DEVELOPMENT US LLC**

**THIS OPERATING AGREEMENT** ("Agreement") is made and entered into effective as of the \_\_\_\_ day of May, 2013, by MOHEB MICHAEL AND WENDY MICHAEL, as Managers and TREAS DEVELOPMENT INC., as Member.

**WITNESSETH**

**WHEREAS**, the Articles of Organization ("Articles") legally creating TREAS DEVELOPMENT US LLC, a Florida limited liability company ("Company"), were filed with the Florida Department of State on June 5, 2012; and

**WHEREAS**, the Member desires to express in writing its understandings and agreements with respect to the formation and operation of the Company; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and conditions contained herein, the undersigned parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**INCORPORATION; DEFINITIONS**

1.01 Incorporation. The foregoing recitals are true and correct and, together with any Schedules and Exhibits attached hereto, are hereby incorporated herein and made a part hereof.

1.02 Definitions. Capitalized terms used, but not otherwise defined, herein shall have the meanings hereafter set forth.

1.03 Adjusted Capital Account Deficit. With respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

1.04 Affiliate. When used with reference to a specified Member, (a) any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Member, (b) any person who is an officer of, partner in or trustee of, or serves in a similar capacity with respect to, the specified Member or of which the specified Member is an officer, partner or trustee, or with respect to which the specified Member serves in a similar capacity, or (c) any person who, directly or indirectly, is the beneficial owner of more than ten percent (10%) of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified Member or of which the specified Member is directly or indirectly the owner of more than ten percent (10%) of any class of equity securities or in which the specified Member has a substantial beneficial interest.

1.05 Agreement. This Operating Agreement or any restatements hereof, as originally executed or amended from time to time.

1.06 Available Cash. Cash funds of the Company, excluding cash proceeds from a Capital Transaction, if any, and after provision for (i) payment of all outstanding and unpaid current obligations, expenses and charges of the Company as of such time (including all amounts of any principal or interest payable with respect to any loans from Members and compensation to any Members that have provided services to the Company); and (ii) a Reserve as determined by the Manager for the management and operation of the Company's business, determined from time to time by the Manager to be available for distribution to the Members. Available Cash shall include the proceeds from sales of property in the ordinary course of business.

1.07 Capital Account. The capital account required to be established, determined and maintained separately for each Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) promulgated under Code Section 704(b).

1.08 Capital Contribution. The amount of cash or the agreed fair market value of property or services contributed by each Member to the capital of the Company, as reflected in the books of the Company.

1.09 Capital Transaction. An Interim Capital Transaction or a Terminating Capital Transaction. Capital Transactions shall exclude sales of property in the ordinary course of business.

1.10 Code. The Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of any federal internal revenue law enacted in substitution of the Internal Revenue Code of 1986.

1.11 Company. TREAS DEVELOPMENT US LLC, a Florida limited liability company.

1.12 Company Accountants. Such certified public accountants for the Company as may be selected from time to time by the Manager.

1.13 Event of Dissolution. Any of the events that result in a dissolution of the Company as set forth in Section 9.01 hereof.

1.14 Fiscal Year. The calendar year.

1.15 Gross Asset Value. With respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as agreed upon by the contributing Member and the Manager;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager as of the following times:

(1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (2) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; and (3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (1) and (2) shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager; and



(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Section 4.05(i) hereof; provided, however, that Gross Asset Values shall not be adjusted to the extent the Manager determines that an adjustment pursuant to subparagraph (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph. If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (c) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses. For purposes of the foregoing provision, "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the depreciation, amortization or other cost recovery deduction for income tax purposes for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

1.16 Interim Capital Transaction. A transaction pursuant to which the Company borrows funds or refinances existing debt, a sale, condemnation, exchange, abandonment or other disposition of a portion (which is less than substantially all) of the assets of the Company, an insurance recovery or any other transaction, other than a Terminating Capital Transaction, that, in accordance with generally accepted accounting principles, is considered capital in nature.

1.17 Law. The Florida Limited Liability Company Act, as amended from time to time.

1.18 Manager. MOHEB MICHAEL and WENDY MICHAEL, and any entity or person who may be appointed as Manager after the date hereof, shall serve as Managers of the Company, having such rights and responsibilities as are set forth herein (the person or persons serving as Managers of the Company shall be individually or collectively referred to herein as "Manager").

1.19 Member Interest or Interests. The entire ownership interest of a Member in the Company at any particular time, including such Member's rights to any and all distributions, allocations and other incidents of participation in the Company to which such Member may be entitled as provided in this Agreement and under applicable law, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement and the Law, and further including its Capital Account hereunder.

1.20 Member Percentages. The respective percentage interest of each Member in the Company as set forth on Schedule A hereto.

**1.21 Net Proceeds of a Capital Transaction.** The proceeds received by the Company in connection with a Capital Transaction after payment of all costs and expenses incurred by the Company in connection with such Capital Transaction, including, without limitation, brokers' commissions, loan fees, loan payments, other closing costs, payment of any Company indebtedness intended to be repaid if the Capital Transaction is a financing or refinancing, and further reduced by any capital reserves deemed necessary or appropriate by the Required Vote of the Members, and by any amounts reinvested or held for reinvestment by the Members

**1.22 Nonrecourse Deductions.** Deductions of the Company described in Section 1.704-2(b)(1) of the Regulations.

**1.23 Nonrecourse Liability.** A liability of the Company described in Sections 1.704-2(b)(3) and 1.752-1(a)(2) of the Regulations.

**1.24 Person.** Any individual, partnership, corporation, limited liability company, trust or other entity.

**1.25 Profits and Losses.** Profits and Losses means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, including gain or loss from Capital Transactions, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

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

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of "Depreciation";

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Member Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Any items which are specially allocated pursuant to Sections 4.05 or 4.06 shall not be taken into account in computing Profits or Losses. The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 4.05 shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (g) above.

1.26 Required Vote. The affirmative vote of the Members entitled to vote having, in the aggregate, one hundred percent (100%) of the Member Percentages of all of the Members entitled to vote.

1.27 Reserve. Reserve shall mean, with respect to any fiscal period, funds set aside during such period which shall be maintained in amounts deemed sufficient by the Manager for working capital, to pay taxes, insurance, debt service, replacements, capital improvements or repairs, contingent liabilities, or other costs and expenses, incident to the ownership or operation of the Property.

1.28 Stipulated Rate. The rate of interest, calculated annually, equal to two percent (2%) per annum plus the annual rate of simple interest reported from time to time by the Wall Street Journal as the "Prime Rate," but not higher than the highest nonusurious rate of simple interest for commercial loans under applicable law, nor lower than the lowest interest rate that may be charged without causing the imputation of interest for federal income tax purposes.

1.29 Terminating Capital Transaction. A sale, condemnation, exchange or other disposition, whether by foreclosure, abandonment or otherwise, of all or substantially all of the then remaining assets of the Company or a transaction that will result in a dissolution of the Company.

1.30 Transfer. The sale, transfer, assignment, syndication, pledge, hypothecation, encumbrance or other disposition, either voluntarily, involuntarily, by operation of law or otherwise.

1.31 Treasury Regulations or Regulations. The Income Tax Regulations and Temporary Regulations promulgated under the Internal Revenue Code, as such Regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

**ARTICLE II**  
**FORMATION, NAME, BUSINESS, TERM**

2.01 Formation. The Member hereby continues the Company for the purposes set forth herein. The Member or Manager, as the case may be, shall execute any and all certificates or other documents, and take whatever action is required, in order to continue to authorize the Company to conduct business as a limited liability company under the Law. The rights and liabilities of the Member shall be as provided in the Articles and the Law, except as otherwise provided herein.

2.02 Name. The business of the Company shall be conducted under the name of the Company.

2.03 Principal Place of Business; Recordkeeping Office. The principal place of business for the transaction of the business of the Company shall be at such location as hereinafter may be determined by the Manager.

2.04 Purposes of the Company. The specific purpose for which this the Company was organized is to serve as the general partner of MIKHAEL MANAGEMENT US LP, a Florida limited partnership. The general purposes for which the Company was organized and is hereby continued, include, but are not limited to, (i) making profits, (ii) increasing the wealth of the Company and the Members, (iii) providing for centralized management of the Company's businesses and investments, (iv) providing for continuity of the Company's businesses and investments, (v) achieving efficiencies and economies of scale in the management and administration of the Company's businesses and investments, (vi) providing for the transferability of interests in the Company, and (vii) providing protection of the Company's assets from the claims of Members' creditors. In connection with the foregoing, the Company will endeavor to:

(a) Exercise exclusive management control of MIKHAEL MANAGEMENT US LP, in the interest of the partners thereof, including the Company;

(b) Consolidate fractional interests in the Company's assets and provide a means so that if the Members transfer Member Interests (pursuant to Article VII hereof), the ownership interest in the Company's assets will not be fractionalized;

(c) Increase Member wealth;

(d) Continue the ownership of the Company's assets and restrict the right of non-Members to acquire interests in the Company's assets;

- (e) Provide flexibility in business planning;
- (f) Establish a means by which the ownership or management of the Assets is not disrupted as a result of the death or disability of a Member;
- (g) Provide protection of Company assets from claims of future creditors or spouses (in the event of divorce) of a Member;
- (h) Provide structured and centralized management of the Company assets;
- (i) Provide a forum for obtaining, analyzing and implementing suggestions of the Members and others with respect to the management and administration of the Company's businesses and investments;
- (j) Provide diversity, economies of scale and synergies for the Company's businesses and investments;
- (k) Provide a mechanism to resolve disputes which may arise among the Members in order to preserve harmony amongst the Members, and to avoid a trial by jury and the expense and adverse publicity associated with litigation; and

2.05 Scope and Jurisdiction. The Company is authorized to engage in all business permitted by the Law. If the Company qualifies to do business in a foreign jurisdiction, then it may transact all business permitted in that jurisdiction. There is no jurisdictional restriction upon the property or activity of the Company.

2.06 Term. The term of the Company as a limited liability company shall continue in full force and effect until terminated in accordance with Article IX of this Agreement or as otherwise provided by the Law.

2.07 Title. Legal title to Company property, whether real, personal or mixed, shall be held in the name of the Company.

2.08 Executory Agreement in Bankruptcy. The Members agree that this Agreement constitutes an executory agreement with respect to all Membership Interests and shall be governed by 11 U.S.C. § 365 in connection with the bankruptcy of the Company or of any Member because, among other provisions and obligations, this Agreement imposes on each Member the following affirmative duties (each of which constitutes a material unperformed, future obligation): (a) the duty and obligation to contribute additional capital to the Company in accordance with Section 3.02 hereof; (b) the duty and obligation to attend Company meetings in accordance with Sections 6.04 and 6.09 hereof; (c) the duty and obligation of good faith and fair dealing in accordance with Section 5.09 hereof; (d) the duty and obligation not to transfer the Member's Membership Interest except in accordance with Article herein entitled "ISSUANCE AND TRANSFERS OF MEMBER INTERESTS;" (e) the duty and obligation not to withdraw or disassociate as set forth in

Section 6.03 hereof; and (f) the duty and obligation not to bring any action for dissolution as set forth in Section 6.03 hereof. Accordingly, any trustee in bankruptcy with rights in and to any Membership Interest shall be required to comply with the terms of this Agreement and Florida law governing this Agreement, including without limitation, the restrictions of the rights of a creditor of a Member or transferee pursuant to Section 608.433, Florida Statutes.

### **ARTICLE III** **CAPITAL CONTRIBUTIONS; LOANS**

3.01 Initial Capital Contributions. The Members have made or shall make the Capital Contributions and shall receive the initial Member Percentages as are set forth on Schedule A hereto.

3.02 Additional Capital Contributions.

(a) Additional Capital Contributions shall be made in such manner and in such amounts as shall be determined by the Manager and the Required Vote of the Members as being necessary or appropriate to fund all expenses associated with the Company's businesses and investments ("Additional Contributions"), which Additional Contributions shall be made by the Members, pro rata, in accordance with their respective Member Percentages. The Additional Contributions shall be made by the Members within twenty (20) days following the date of determination that such Additional Contributions are to be made. (b) In the event that a Member fails to make all or any portion of that Member's share of the Additional Contributions within five (5) business days after such determination that such Additional Contributions are due, then such Member shall be in "Default" of these Regulations ("Defaulting Member"). In the event of such Default, the other Member(s) may elect to advance as a loan to the Defaulting Member an amount equal to the Additional Contributions that the Defaulting Member failed to make ("Default Loan"). The Member(s) electing to make a Default Loan is sometimes hereinafter referred to as the "Lending Member." In the event the Lending Member has advanced such monies to the Company as a Default Loan to the Defaulting Member, then and in such event the following shall be applicable: (i) such Default Loan shall be a demand loan which shall bear interest at ten percent (10%) per annum ("Default Rate"); (ii) all monies to which the Defaulting Member is otherwise entitled from the Company, whether in its capacity as member or lender, shall be paid by the Company to the Lending Member as repayment of such Default Loan, and applied to the costs and expenses of the Lending Member, including attorneys' fees and costs with respect to such Default Loan, secondly towards accrued and unpaid interest, and finally towards the outstanding principal balance; (iii) the Default Loan shall be secured by the Member Interest owned by the Defaulting Member, and (iv) the Default Loan may be called in whole or in part anytime.

(c) In the event the Lending Member shall make the Default Loan and in the further event that the Defaulting Member shall have failed to fully cure the Default hereunder by paying the Default Loan, together with interest thereon at the Default Rate from the date such Default Loan was due until the date of the election by the Lending Member to take

advantage of the provisions of this Section 3.02, the Lending Member shall have the right (which shall only be elected in writing) to convert all or any portion of the Default Loan (including interest which has accrued thereon) to the capital of the Company, whereupon the Member Interest of the Lending Member shall be proportionately and permanently increased and the Member Interest of the Defaulting Member shall be proportionately and permanently reduced in the manner set forth in Section 3.02(d) below. Notwithstanding anything contained herein to the contrary, the Lending Member shall give the Defaulting Member three (3) days' written notice of its intention to invoke the provisions of Section 3.02(d) below, during which time the Defaulting Member shall have the right to satisfy in full the then outstanding principal balance, together with any accrued but unpaid interest, of the Default Loan owing to the Lending Member

(d) In the event that the Lending Member shall determine to convert all or any portion of the Default Loan to the capital of the Company pursuant to Section 3.02(c) above, the Member Interests of the Lending Member and the Defaulting Member shall be redetermined pursuant hereto so that each Member's redetermined Member Percentage shall be equal to the product of the total Member Percentages of the Lending Member and the Defaulting Member, and a fraction, the numerator of which shall be equal to any Capital Contributions of such Member (including the Member's Adjusted Capital amount), plus two hundred percent (200%) of any Default Loans theretofore made by such Member, and the denominator of which is equal to the Capital Contributions of the Lending Member and the Defaulting Member (including each Member's Adjusted Capital amount), and two hundred percent (200%) of any Default Loans theretofore made by the Lending Member.

### 3.03 Loans.

(a) Subject to the limitations provided herein, in the event that at any time or from time to time additional funds in excess of the Capital Contributions of the Members are required by the Company for or in respect of its business or any of its obligations, expenses, costs, liabilities or expenditures, the Manager may, but shall not be obligated to, apply on behalf of the Company to borrow such required additional funds, with interest payable at the then prevailing rates, from commercial banks, savings and loan associations or other lending institutions. Any Member may, but is not required to, provide security or personal guarantees for such loans, in exchange for which such Member may be compensated in such amount as shall be agreed to by the Manager.

(b) In the event that the Manager is unable or chooses not to cause the Company to borrow said required additional funds from a commercial bank, savings and loan association or other lending institution, any Member (or an Affiliate of any Member) may, but is not required to, lend such funds to the Company. In the event that a Member elects to provide the additional funds in the form of a loan to the Company, any such loan shall be evidenced by a negotiable promissory note of the Company and shall bear interest at a rate and on such terms as may be agreed upon by the lending Member and the Manager, notwithstanding that the lending Member and the Manager may be Affiliates. In no event shall any such loan bear interest at a rate in excess of the highest lawful nonusurious rate permitted by the law applicable to the loan. Any change in the Stipulated Rate, shall

automatically result in a change in the rate of interest charged to the Company in respect of the respective loan. Any interest paid pursuant to this Paragraph shall be deemed an expense of the Company and repayment of such loan(s) shall not affect the Capital Account of the Member. All loans made by a Member shall be and are hereby declared to be secured by a lien upon the assets of the Company, subject only to any prior liens granted to third party lenders. This provision is not intended to be for the benefit of any creditor or other Member (other than a Member in its capacity as a Member) to whom any debts, liabilities or obligations are owed by the Company or any of the Members.

### **3.04 Other Matters Relating to Capital and Loans.**

(a) Interest earned on Company funds shall inure solely to the benefit of the Company, and, except as specifically provided herein, no interest shall be paid upon any contributions or advances to the capital of the Company or upon any undistributed or reinvested income or profits of the Company.

(b) The Capital Contributions of the Members shall be utilized for carrying out the purposes of the Company as set forth in this Agreement and for payment of any expenses incurred in connection therewith, including payment or reimbursement of expenses paid or incurred on behalf of the Company whether prior or subsequent to the execution of this Agreement.

(c) Loans by a Member to the Company (including those arising by virtue of payment under a guaranty or indemnity of the Company obligations) shall not be considered contributions to the capital of the Company and shall not increase the Capital Account of the lending Member.

(d) Except as specifically provided herein in Section 6.07, no Member shall be entitled to withdraw its Capital Contribution, or to a return of any part of his Capital Contribution or to receive property or assets other than cash in return thereof without the consent of the Manager, and the Manager shall not be liable for the return of all or any portion of the Members' Capital Contributions.

(e) No Member shall be entitled to priority over any other Member, either with respect to a return of his Capital Contribution or to allocations of taxable income, gains, losses or credits, or to distributions, except as provided in this Agreement.

## **ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS**

**4.01 Distribution of Available Cash and Net Proceeds from Interim Capital Transactions.** Available Cash and Net Proceeds from Interim Capital Transactions may be distributed to the Members in the discretion of the Manager (or such may be accumulated for future investment -- also in the discretion of the Manager) in accordance with the provisions of this Section 4.01. In the event any such distributions are made, Available Cash and Net Proceeds from Interim Capital Transactions shall be distributed to the Members, pro rata,



in accordance with their then existing respective Member Percentages (subject to the provisions of Section 4.09 hereof).

4.02 Distribution in Cash Only. No Member shall have the right to demand or receive property from the Company for any reason whatsoever and no Member shall have the right to sue for partition of the Company or of the Company's assets.

4.03 Allocations of Profits and Losses. Profits and Losses shall be allocated to the Members, pro rata in accordance with their respective Member Percentages.

4.04 Special Allocations. The following special allocations shall be made in the following order:

(a) Qualified Income Offset; Loss Limitation.

(i) If any Member unexpectedly receives any adjustment, allocation, or distribution described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which causes or increases a deficit capital account balance in such Member's Capital Account (as determined in accordance with such Regulations), items of Company income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that such allocations shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IV have been tentatively made as if this Section were not in the Agreement. This provision is intended to be a "qualified income offset," as defined in Regulation Section 1.704-1(b)(2)(ii)(d), such Regulations being specifically incorporated herein by reference.

(ii) The Losses allocated pursuant to Section 4.04 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 4.03, the limitation set forth in this Subsection shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(b) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article IV have been made as if Section 4.04(c) hereof and this Section were not in this Agreement.

(c) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

4.05 Curative Allocations. The allocations set forth in Section 4.04 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section. Therefore, notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), the Members shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 4.03. 4.06 Tax Allocations: Code Section 704(c).

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of 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 such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subparagraph (i) of the definition of "Gross Asset Value").

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of "Gross Asset Value," subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

(d) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the Fiscal Year.

#### 4.07 Other Allocation Rules.

(a) Profits, Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article IV as of the last day of each Fiscal Year; provided that Profits, Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company property are adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

(c) All allocations to the Members pursuant to this Article IV shall, except as otherwise provided, be divided among them in proportion to the Member Percentages held by each.

(d) The Members are aware of the income tax consequences of the allocations made by this Article IV and hereby agree to be bound by the provisions of this Article IV in reporting their shares of Company income and loss for income tax purposes, except to the extent otherwise required by law.

4.08 Allocations to Transferred Interests. Profits and Losses which are allocable to a Member Interest that was transferred or assigned during a Fiscal Year shall be further allocated between or among the transferor and transferee Members in proportion to the number of days during the Fiscal Year that each such Member owned said Member Interest or in any other proportion authorized by the Code and selected by the Manager, without regard to the actual Profits and Losses as of the date of such transfer or assignment and without regard to any distributions made with respect to such Member Interest.

4.09 Distributions. The Members hereby acknowledge and agree that the Manager shall have the right to make distributions of Available Cash and Net Proceeds from Interim Capital Transactions in a manner that is disproportionate amongst the Members, provided that there is a corresponding adjustment in Member Percentages to reflect the resulting proportionate interest in the net assets of the Company. Any such disproportionate distributions may be treated as a partial redemption of Member Interests in the discretion of the Manager. The Manager shall have the discretion to determine what assets may be used to fund any such distributions.

## **ARTICLE V MANAGEMENT OF THE COMPANY**

**5.01 Rights, Powers and Duties of the Manager.** The overall management and control of the business and operations of the Company shall be vested in the Manager. The Manager shall have all the rights and powers provided in this Agreement, the Law and the Articles and any action taken by the Manager shall constitute the act of and serve to bind the Company. If there shall be multiple Managers of the Company, each Manager shall have the authority to exercise all powers of the Manager hereunder with the authorization of a majority of the Managers. The Manager shall conduct the day-to-day operations of the Company and shall use good faith efforts to carry out the business of the Company as set forth herein. With respect to all of its obligations, powers and responsibilities and the limitations thereon as provided in this Agreement, the Manager is authorized to execute and deliver, for and on behalf of the Company, such agreements or instruments as the Manager may deem necessary or desirable, all on such terms and conditions as it may deem necessary or desirable, and the execution of such agreements, instruments or other documents by the Manager shall be sufficient to bind the Company. Without limiting the generality of the foregoing, the Manager has the right, power and authority, on behalf of the Company, to:

(a) Determine whether and how to proceed with the ownership, development, repair, management, lease and disposition of all or any part of the Company's businesses and investments;

(b) Execute, on behalf of the Company, any and all agreements, contracts, documents, certificates and instruments necessary or convenient in connection with the management, leasing, maintenance, operation and disposition of the Company's businesses and investments;

(c) Employ such agents, employees, managers, accountants, attorneys, consultants and other professionals as it may deem necessary or desirable for the conduct of the Company's businesses and investments, and pay from Company assets such fees, expenses, salaries, wages and other compensation to such parties as it may determine;

(d) Pay from Company assets, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise upon such terms as it may determine, and upon such evidence as it may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Company;

(e) Make from Company assets any and all expenditures that it may deem necessary or desirable for the conduct of the Company's business and the carrying out of its obligations and responsibilities under this Agreement to the extent permissible under any other agreements (including mortgages) to which the Company is a party;

(f) Subject to the provisions of Article VII, admit Persons as Members, including substituted Members;

(g) Make or have made for the Company such market research reports, economic and statistical data, evaluations, analyses, opinions and recommendations as it may deem necessary or desirable with respect to the business of the Company;

(h) Purchase liability and other insurance to protect the Company and the Company's assets and business;

(i) Invest the Company's assets in bank and savings and loan association savings accounts, commercial paper, government securities, certificates of deposit, bankers' acceptances, other short term interest bearing obligations and any other investments in the sole and absolute discretion of the Manager;

(j) Maintain adequate records and accounts of all operations and expenditures and furnish the Members with annual statements of accounts as of the end of each Company Fiscal Year, together with tax reporting information;

(k) Make, refrain from making, or revoke such elections under the tax laws of the United States, the several States and other relevant jurisdictions as to the treatment of items of Company income, gain, loss, deduction, and credit and as to all other relevant matters, including, without limitation, elections under Section 754 of the Code;

(l) Make any purchases for, on behalf of, or in the name of, the Company;

(m) Redeem Member Interests of the Members;

(n) Establish, maintain and release any Reserve, in such amount as the Manager determines appropriate, in its reasonable discretion under the then existing circumstances;

(o) To create subsidiary entities (e.g., other partnerships, corporations or limited liability companies) to carry out any of the purposes or authorities herein; and

(p) Take any and all other action permitted under the Law and that is reasonably related to Company purposes.

#### 5.02 Liability and Indemnification of Manager.

(a) Neither the Manager nor its officers, directors, partners, employees, agents, Affiliates, successors or assigns shall be liable to the Company or the Members for any loss or damage incurred by reason of any act performed or omitted in connection with the activities of the Company or in dealing with third parties on behalf of the Company, unless such act or omission was taken or omitted by the Manager, in bad faith, and such act or omission constitutes fraud, gross negligence or willful breach of fiduciary duty.

(b) The Company, its receiver or its trustee, shall indemnify and save harmless the Manager and its officers, directors, partners, employees, agents, Affiliates, successors and assigns, from any claim, liability, loss, judgment or damage incurred by them by reason of any act

performed or omitted to be performed in connection with the activities of the Company or in dealing with third parties on behalf of the Company, including costs and attorneys' fees (which attorneys' fees may be paid as incurred) and any amounts expended in the settlement of any claims of liability, loss or damage provided that the act or omission of the Manager is not found, by a final, non-appealable ruling of a court of competent jurisdiction to have resulted from an act or omission of the Manager taken in bad faith and that constitutes fraud, gross negligence or willful breach of fiduciary duty by the Manager. The Company shall advance all sums required to indemnify and hold the Manager and its Affiliates harmless as provided herein from the initiation of any claim against such indemnified Persons, subject to acknowledgment in writing by such indemnified Person of the obligation to reimburse the Company in the event that, following the entry of a final, non-appealable judgment, it is determined that the Company was not obligated to indemnify such Person pursuant to this Agreement. All judgments against the Company and the Manager, wherein the Manager is entitled to indemnification, must first be satisfied from Company assets before the Manager shall be responsible for such obligations. The provisions of this Section shall survive the termination of the Company.

5.03 Contractual Provisions. The Manager shall have the right and authority to require a provision in all Company contracts that it not be personally liable thereon and that the person or entity contracting with the Company is to look solely to the Company and its assets for satisfaction.

5.04 Delegation of Duties. The Manager shall have the right and authority to delegate to one or more Persons the Manager's right and powers to manage and control the businesses, investments and affairs of the Company, including to delegate to agents, employees and Affiliates of the Manager or Company.

5.05 Reimbursement. The Manager shall have the authority to reimburse the Manager for reasonable and customary expenses incurred if and to the extent that such expenses are attributable to Company affairs.

5.06 Other Activities. The Manager and its respective Affiliates may have other business interests and may engage in other activities in addition to those relating to the Company, including, without limitation, the rendering of advice or services of any kind to other investors, the making of other investments and serving as a general partner, managing member or in similar capacities in other partnerships or entities of any kind. The pursuit of such ventures, even if competitive with the business of the Company, shall not be deemed wrongful or improper.

5.07 Transactions with Affiliates. The validity of any transaction, agreement or payment involving the Company, on the one hand, and the Manager or its Affiliates, on the other hand, permitted by the terms of this Agreement shall not be affected by reason of the relationship between the Company and the Manager or its Affiliates; provided, however, that in all events such agreements shall be on the same or similar terms available to the Company if it was to contract with an unaffiliated third party similarly situated.

#### 5.08 Successor Manager; Removal of Manager.

(a) The Members may by Required Vote remove any other party serving as a Manager of the Company. In the event that a Manager shall be removed by a vote of the Members, and no other Managers are then acting, a successor Manager shall be selected by the Required Vote of the Members.

(b) Upon death, incapacity, removal or resignation, the former Manager shall immediately cease to have any authority to act as a Manager for the Company. Any of the Company funds or other property in the possession or under the control of such removed Manager shall immediately be released and transferred to its successor. The former Manager shall cooperate in the orderly transition of affairs to its successor.

5.09 Fiduciary Duty. The Members hereby acknowledge and agree that Section 608.423, Florida Statutes, prohibits the terms of this Agreement from: (a) eliminating the Manager's duty of loyalty under Section 608.4225, Florida Statutes, except as otherwise provided in Sections 608.423(2)(b)1. or 2., Florida Statutes; or (b) unreasonably reducing the Manager's duty of care and obligations of good faith and fair dealing under Section 608.4225, Florida Statutes, except as otherwise provided in Section 608.423(1)(d), Florida Statutes. Accordingly, each Manager shall comply with the Manager's fiduciary duties owed to the Company and the Members in accordance with Florida law. Further, each Member agrees to comply with the duty of good faith and fair dealing in accordance with the same standard and limitations applicable to the Manager under Section 608.4225(1)(c), Florida Statutes.

### **ARTICLE VI** **MATTERS REGARDING MEMBERS**

#### 6.01 Liability and Indemnification of Members.

(a) Except as provided above and in Article III hereof, the Members shall not be bound by, or personally liable for, obligations or liabilities of the Company beyond the amount of their initial Capital Contributions and any additional Capital Contributions to the Company; provided, however, the Members are obligated to return a distribution from the Company to the extent that, immediately after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their interest in the Company and liabilities as to which recourse of creditors is limited to specified property of the Company, exceed the fair value of the Company assets, provided that the fair value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the Company assets only to the extent that the fair value of the property exceeds this liability.

(b) Neither the Members nor their officers, directors, partners, employees, agents, affiliates, successors or assigns shall be liable to the Company or the other Members for any loss or damage incurred by reason of any act performed or omitted in connection with the activities of the Company or in dealing with third parties on behalf of the Company, unless

such act or omission was taken or omitted by the Member, in bad faith, and such act or omission constitutes fraud, gross negligence or willful breach of fiduciary duty.

(c) The Company, its receiver or its trustee, shall indemnify and save harmless each Member and their respective officers, directors, partners, employees, agents, Affiliates, successors and assigns, from any claim, liability, loss, judgment or damage incurred by them by reason of any act performed or omitted to be performed in connection with the activities of the Company or in dealing with third parties on behalf of the Company, including costs and attorneys' fees (which attorneys' fees may be paid as incurred) and any amounts expended in the settlement of any claims of liability, loss or damage provided that the act or omission of the Member is not found, to have resulted from an act or omission of the Member taken in bad faith and that constitutes fraud, gross negligence or willful breach of fiduciary duty by the Member. The Company shall advance all sums required to indemnify and hold the Member and its Affiliates harmless as provided herein from the initiation of any claim against such indemnified Persons, subject to acknowledgment in writing by such indemnified Person of the obligation to reimburse the Company in the event that it is determined that the Company was not obligated to indemnify such Person pursuant to this Agreement. All judgments against the Company and a Member, wherein the Member is entitled to indemnification, must first be satisfied from Company assets before the Member shall be responsible for such obligations. The Company shall not pay for any insurance covering liability of the Member or of its officers, directors, partners, employees, agents, Affiliates, successors and assigns for actions or omissions for which indemnification is not permitted hereunder; provided, that nothing contained herein shall preclude the Company from purchasing and paying for such types of insurance, including extended coverage liability and casualty and worker's compensation, as would be customary for any person owning comparable property and engaged in a similar business or from naming the Member and any of its Affiliates as additional insured parties thereunder. Nothing contained herein shall constitute a waiver by any Member of any right which he may have against any party under Federal or state securities laws. The provisions of this Section shall survive the termination of the Company.

6.02 Management. The Members in their capacity as Members shall not participate in the operation or management of the business of the Company, or transact any business for or in the name of the Company.

6.03 Limitation of Certain Rights. The Members shall not have the right or power to:

- (a) withdraw or reduce their Capital Contributions to the Company except as a result of the dissolution of the Company or as otherwise provided in this Agreement or by the Law;
  - (b) withdraw or disassociate from the Company;
  - (c) bring an action for partition against the Company or with respect to any of its property;
  - (d) compel any sale of all or any portion of the assets of the Company pursuant to any applicable law,
  - (e) cause the appointment of a receiver for all or any portion of the assets of the Company,
- or



(f) cause the termination or dissolution of the Company by court decree or as may be permitted by the Law, such rights being specifically waived by the Members. Each Member has been induced to enter into this Agreement in reliance upon the waivers set forth in this Section, and without those waivers, no Member would have entered into this Agreement.

6.04 Voting. Whenever the Members are entitled by this Agreement to vote on any particular matter, each Member shall be entitled to vote in proportion to the Member Percentage of such Member as set forth on Schedule A. Except as specifically provided to the contrary herein, all actions of the Members shall be authorized by Required Vote of the Members.

#### 6.05 Meetings of the Members.

(a) Meetings of the Members for any purpose may be called by the Manager, and shall be called by the Manager upon receipt of a request in writing signed by the Required Vote of the Members. Such request shall state the purpose or purposes of the proposed meeting and the business to be transacted. Notice of any such meeting shall be delivered to all Members in the manner prescribed in Section 11.02 of this Agreement within ten (10) days after receipt of such request and no fewer than fifteen (15) days or more than sixty (60) days before the date of such meeting. The notice shall state the place, date, hour and purpose of the meeting. At each meeting the Members present or represented by proxy shall adopt such rules for the conduct of such meeting as they shall deem appropriate. A list of the names and addresses of all Members shall be maintained as part of the books and records of the Company.

(b) The presence in person or by proxy of the Required Vote of the Members shall constitute a quorum at all meetings; provided, however, that if there be no such quorum, Members (or their proxies) holding more than fifty (50%) percent of the Member Percentages of the Members at such meeting may adjourn the meeting from time to time without further notice, until a quorum shall be obtained.

(c) Each Member may authorize any person or persons to act for him by proxy in all matters in which a Member is entitled to participate. Every proxy must be signed by the Member or his attorney-in-fact (other than the Manager). No proxy shall be valid after the expiration of six (6) months from the date thereof. Every proxy shall be recoverable and rescindable (if rescinded prior to any vote) by the Member executing it.

#### 6.06 Special Power of Attorney.

(a) Each Member, by his execution of the Member's signature page to this Agreement, irrevocably makes, constitutes and appoints the Manager, with full power of substitution, their true and lawful attorney-in-fact, for them and their names, places and steads, to make, execute, sign, acknowledge, swear to, deliver, record and file any document or instrument which may be considered necessary or desirable by the Manager to carry out the provisions of this Agreement, including, without limitation, the following:

(i) Any amendment to this Agreement made with such consents, if any, of the Members as provided herein, any separate certificate of membership, any certificate of doing business under any assumed name, and any other certificate, instrument or document which may be required to be filed, or which the Manager deems advisable to file, under the laws of any state or the regulations of any governmental agency, as well as any amendments to the foregoing; and

(ii) Any instrument or document which may be required or appropriate to carry out the purposes of the Agreement, effect the continuation of the Company, approve the choice of and admit any additional or substituted Member, dissolve and terminate the Company, or consent to the return to the Members of all or a part of their respective Capital Contributions by reason of Distributions to the Members, or as may be required or helpful to effectuate a transaction approved by the Required Vote of the Members pursuant to Section 7.06 hereof.

(b) The foregoing special power of attorney granted by each Member shall be one which:

(i) Is a special power of attorney coupled with an interest, is irrevocable and shall survive the death or legal incapacity of the granting Member;

(ii) May be exercised by the Manager for each Member by a facsimile signature or by executing any instrument with a single signature as attorney-in-fact for all Members; and

(iii) Shall survive the delivery of any attempted assignment by a Member of any part of his Member Interest, except that where the assignee has been approved by the Manager for admission to the Company as a substituted Member, this special power shall survive the delivery of such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument or document necessary to effect such substitution.

6.07 Manager's Ownership of Member Interests. In the event that the Manager shall own any Member Interest, the Manager shall in all respects be treated as a Member with respect to the Member Interest owned by the Manager.

6.08 No Priority. Except as otherwise specifically set forth herein, no Member shall have the right to demand or receive property other than cash in any distribution. Except as otherwise specifically set forth herein, no Member shall have priority over any other Member.

6.09 Member Meetings to Review Investment Plan. The Members acknowledge that one of the primary purposes of the Company, as stated above, is to promote the Members' knowledge of, and communication about, assets formerly owned by one or more of the Members individually, and to assist in the implementation of an investment strategy that may survive the death of one or more of the Members. To perpetuate said purpose, the Manager shall have the exclusive right, but no obligation, to call for meetings of all the Members, either in person or telephonically, to allow the Members an opportunity to participate in formulating, implementing and effectuating an "Investment Plan" pursuant to

which investment strategies shall be developed, implemented and monitored for the assets of the Company, and to address other issues affecting the Members such as computation of the net cash flow of the Company; provided that any and all decisions regarding the formulation of the Investment Plan shall be made solely by the Manager, taking into account the Manager's duty of care and loyalty to the Company and the terms of this Agreement.

## **ARTICLE VII**

### **ISSUANCE AND TRANSFERS OF MEMBER INTERESTS**

7.01 Prohibition. Except as provided in this Article VII, absent the written consent of the Manager, no Member shall Transfer all or any portion of its Member Interest or any interest or right therein; provided however, each Member shall have the right to Transfer all or any portion of its Member Interest or any interest or right therein to her or his family members, to trusts for the primary benefit of her or his family members, and/or to entities that are controlled by one or more of the Members. Any purported Transfer of a Member Interest in violation of the provisions of this Agreement shall be void ab initio.

7.02 Rights of Assignee. For purposes of this Agreement, an "Assignee" is any Person who acquires (by purchase, gift, inheritance, judgment or otherwise), or claims to have an ownership or security interest (including any charging lien) in or against the Company or any Member Interest, but who has not been admitted as a Member of the Company in accordance with Section 7.03. Any interest in the Company or any Member Interest acquired by an Assignee is subject to the terms and conditions of this Agreement and the Articles. An Assignee has no rights or entitlements in respect to the Company or any Member Interest except as specifically granted to the Assignee in this Agreement or the Articles. By way of illustration and not limitation, an Assignee shall have no (i) voting rights of any nature or kind, or (ii) rights to require any information or accounting of the Company's transactions or finances or to inspect Company books. If, however, an Assignee is admitted to the Company as a Member, such admission shall vest in such Assignee all rights, powers, authorities and responsibilities inuring to and imposed upon Members hereunder.

7.03 Additional Member Interests; Admission of Members.

(a) No additional Members shall be admitted into the Company without the prior written consent of the Members, which consent may be granted or withheld in the sole and absolute discretion of the Members. Any additional Member admitted into the Company shall be admitted upon such terms and conditions as determined by the Members and in compliance with the provisions of this Agreement. Additional Members shall agree in writing to be bound by this Agreement.

(b) An Assignee will be admitted to the Company as a successor or additional Member only if all of the following conditions are met:

(i) The Members consent in writing to the admission of the Assignee as a Member, provided that it shall not be unreasonable for the Members to withhold consent with respect to an Assignee if consenting would: (A) permit access to the business and affairs of the Company to a Person that is in competition with or, in the good faith opinion of the Manager; would be detrimental to the best interests of the Company; (B) subject the Company to investment or other legal restrictions to which it would otherwise not be subject; or (C) permit a Person, who is not an "Accredited Investor" (as defined in Rule 501 promulgated under the Securities Act of 1933, as amended (the "Act")) to be a Member;

(ii) The Assignee agrees in writing to be bound by the provisions of this Agreement;

(iii) The Assignee delivers to the Members documentation, satisfactory to the Members, evidencing Assignee's right to an interest in the Company or a Member Interest, and executes any and all documents, including an amendment to this Agreement, required to effectuate or evidence its admission to the Company as a Member;

(iv) The Assignee reimburses the Company for all reasonable costs and expenses (including reasonable attorney's fees) incurred in connection with the transfer and admission;

(v) The Assignee is not a minor or legally incompetent;

(vi) The Transfer does not constitute a default under any agreement to which the Company or Assignee is bound; and

(vii) If deemed necessary by the Members, an opinion of counsel is delivered to the Members in form, substance and from counsel satisfactory to the Members to the effect that: (A) the proposed Transfer does not require registration under the Act or any other applicable state or federal securities laws, including, in each case, the rules and regulations promulgated thereunder; and (B) that such action will not cause the Company to be terminated for federal income tax purposes pursuant to Code Section 708.

**7.04 Rights of Individual Member's Personal Representative.** Upon the death or disability of an individual who is a Member, his personal representative shall have all of the rights of a Member for the purpose of settling or managing his estate, and such power as the decedent or incompetent possessed to constitute a successor as an Assignee and to join with such assignee in making application to substitute such Assignee as a Member. However, such personal representative shall not have the right to become a substituted Member in the place of his predecessor in interest unless the conditions of Section 7.03 (other than the requirement that the assignor execute and acknowledge instruments) are satisfied.

**7.05 Rights of Non-Individual Member's Representative.** Upon the adjudication of bankruptcy, dissolution or other cessation of existence as a legal entity of a Member which is not an individual, the authorized representative of such entity shall have all of the rights of a Member for the purpose of effecting the orderly winding-up and disposition of the business of such entity and such power as such entity possessed to constitute a successor

as an Assignee and to join with such Assignee in making application to substitute such assignee as a Member.

**7.06 Sale or Conversion of Company.** In lieu of selling all or substantially all of the assets of the Company, the Manager may arrange a transaction pursuant to which the interests of the Manager and the Members in the Company shall be acquired by a Person in exchange for cash, property (including an equity interest in such Person or its Affiliate), or any combination of the foregoing or the Company shall be converted into a different form of entity. If the Manager arranges such a transaction and, following not less than twenty (20) days' prior written notice to the Members describing the material terms thereof, the transaction is approved by the Required Vote of the Members, the same shall be deemed an Approved Transaction for purposes of this Section. In the event of an Approved Transaction, each Member, whether or not it voted for the Approved Transaction, agrees (i) to raise no objection to the consummation of the Approved Transaction; (ii) if the Approved Transaction is structured as a merger, consolidation or other transaction to which such rights would be applicable, hereby waives any dissenters, appraisal or similar rights in connection therewith; (iii) agrees to convey its interest in the Company as contemplated by the Approved Transaction; and (iv) agrees to take such other actions and to execute such documents as shall be deemed necessary or desirable by the Manager in connection with the entering into and consummation of the Approved Transaction. Each Member shall, in connection with the Approved Transaction, receive in exchange for its interest in the Company the same consideration as such Member would have received if the aggregate consideration paid with respect to the entire Approved Transaction had been received by the Company and distributed in complete liquidation pursuant to the rights and preferences set forth in this Agreement.

**7.07 Right of First Refusal.**

(a) The parties agree that the identity of the Members was material to the Members' decision to participate in the Company. Therefore, the parties have agreed that the prohibition and restrictions set forth in Sections 7.01 and 7.02 hereof are fair and reasonable. If a court of competent jurisdiction shall determine that this restriction on Transfer is invalid or unenforceable ("Decision"), then any proposed Transfer that is not to be made as expressly permitted in this Agreement shall be stayed, without the posting of any bond or other undertaking, pending the later to occur of the date that all appeals of the Decision have been exhausted or on which all rights to appeal the decision have expired. As of such date, if the Decision remains in effect ("Effective Date"), the remaining provisions of this Section shall become effective and shall be the method by which a Member may Transfer his Member Interest (other than as otherwise expressly provided in this Agreement), including, but not limited to, the Transfer that was the subject of the proceeding giving rise to the Decision, and, with respect to such Transfer, a Notice of Offer (as defined below) may only be given subsequent to the Effective Date.

(b) In the event that a Member desires to sell all, but not less than all, the Member's Member Interest ("Offered Interest") to any person or entity other than the Company ("Proposed Transferee") and other than pursuant to another Section of this Agreement,

such Member ("Offeror Member") shall first give written notice ("Notice of Offer") of the proposed sale to the Company and to all the other Members. The Notice of Offer shall include: (i) a true copy of a bona fide, signed, written offer by the Proposed Transferee to purchase the Offered Interest, the price ("Purchase Price") and the terms and conditions ("Purchase Terms") upon which such offer is made, including any deposit paid or required, and the name and the residence address of the Proposed Transferee; and (ii) an offer ("Purchase Offer") to sell all the Offered Interest at the Purchase Price and on the Purchase Terms to the Company and, secondarily, in the event the Company is unable or does not desire to purchase the Offered Interest, to all the other Members (hereinafter referred to individually as "Offeree Member" and collectively as "Offeree Members").

(c) The Company and each Offeree Member shall give the Offeror Member written notice of its or his acceptance or rejection of the Purchase Offer within twenty (20) days after the date on which the Notice of Offer was given ("Acceptance Period").

(d) If the Company does not give the Offeror Member written notice of its acceptance of the Purchase Offer within the Acceptance Period, the Offeree Members who have given the Offeror Member written notice of their acceptance of the Purchase Offer (hereinafter referred to individually as "Purchasing Member" and collectively as "Purchasing Members") shall purchase all the Offered Interest at the Purchase Price and on the Purchase Terms in such individual proportions as they shall mutually agree or, in the absence of such agreement, in such individual proportions as the amount of each Purchasing Member's Member Interest bears to the aggregate amount of all the Member Interest owned by the Purchasing Members. The foregoing shall not prohibit the Company and the Offeree Members from collectively purchasing all the Offered Interest in such individual proportions as they shall mutually agree.

(e) In the event that neither the Company nor any of the Offeree Members give the Offeror Member written notice of their acceptance of the Purchase Offer in the manner described above within the Acceptance Period, the Offeror Member may sell all the Offered Interest to the Proposed Transferee for the Purchase Price and subject to the Purchase Terms; provided, however, that the sale to the Proposed Transferee must be unconditionally concluded within sixty (60) days after the expiration of the Acceptance Period, or the Offeror Member must again offer the Offered Interest to the Company and the Offeree Members in accordance with the provisions of this Section prior to consummating the sale with the Proposed Transferee. Unless admitted as a Member in accordance with Section 7.03 hereof, the party purchasing the Member Interest pursuant to the foregoing shall be an Assignee. (f) The closing ("Closing") of the purchase of the Offered Interest by the Company and/or the Purchasing Members pursuant to this Article, shall be held on the date set forth for Closing in the Purchase Terms if such date is not earlier than the thirtieth (30<sup>th</sup>) day, nor later than the sixtieth (60<sup>th</sup>) day, following the date on which the Notice of Offer was given. Otherwise, the Closing date shall be the forty-fifth (45<sup>th</sup>) day after the date on which the Notice of Offer was given (or, if not a business day, the next business day thereafter). At Closing, the Offeror Member shall: (i) represent and warrant that the Offeror Member is the sole owner of the Member Interest being sold, that such Member Interest is held free and clear of any and all pledges, claims, liens and rights of others (other than the

effect of this Agreement) and that the Offeror Member has the full power, right and authority to consummate the transaction; (ii) resign and cause the Offeror Member's appointees to resign from all offices and directorships held with the Company; and (iii) deliver to the Company and/or the Purchasing Members Certificates representing the Member Interest so sold, duly endorsed for transfer with all necessary stock transfer tax stamps affixed, together with all other documents necessary to transfer such Member Interest.

## **ARTICLE VIII**

### **FISCAL MATTERS**

8.01 Books and Records. The Manager shall keep, or cause to be kept, full and accurate books and records of all transactions of the Company using such method of accounting as determined by the Manager in consultation with the Company accountants. All organizational records of the Company and other records required to be kept by the Company under the Law, shall, at all times, be maintained at the Company's record keeping office, and shall be open during ordinary business hours for inspection and copying upon the reasonable request and at the expense of the Members and their authorized representatives.

#### **8.02 Reports and Statements.**

(a) Within ninety (90) days after the end of each Fiscal Year, the Company shall, at its expense, cause to be delivered to the Members the following unaudited financial statements, which obligation may be satisfied by delivery to the Members of a copy of the Company's federal tax return:

(i) A profit and loss statement for such period; and

(ii) A balance sheet of the Company as of the end of such period.

(b) The Manager shall, at the expense of the Company prepare, or cause to be prepared, for delivery to the Members prior to the due date thereof (excluding extensions), all federal and any required state and local income tax returns for the Company for each Fiscal Year of the Company.

8.03 Appointment of Tax Matters Partner. The Manager is hereby designated pursuant to Code Section 6231(a)(7) as the Company's Tax Matters Partner, and is responsible for acting as the liaison between the Company and the Internal Revenue Service ("Service"). The Tax Matters Partner shall have the duties of a tax matters partner as provided in the Code, in addition to such other duties as are provided under this Agreement. The Tax Matters Partner shall be reimbursed by the Company for all out-of-pocket expenses, costs and liabilities expended or incurred by the Tax Matters Partner in acting as the Company's Tax Matters Partner.

8.04 Tax Status. Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code. The parties intend that the Company be taxed as a partnership for United States income tax purposes. The parties intend that all special allocations be considered to have economic effect under the "qualified income offset" provisions described in section 1.704-1(b)(2)(ii)(d) of the Regulations. All questions of construction and interpretation shall be resolved consistently with that intent.

8.05 Tax Elections. The Members shall from time to time determine whether or not to make or attempt to revoke any and all tax elections regarding depreciation methods and recovery periods, capitalization of construction period expenses, amortization of organizational and startup expenditures, basis adjustments upon admission or retirement of Members, and any other federal, state, or local income tax elections.

## **ARTICLE IX** **DISSOLUTION**

9.01 Dissolution. The Company shall be dissolved only upon the occurrence of any of the following:

- (a) The sale of all or substantially all of the assets of the Company;
- (b) The written election by the Required Vote of the Members that the Company should be dissolved; or
- (c) The date on which the Company is required to be dissolved under the Law.

9.02 Wind-Up of Affairs.

(a) Upon dissolution, the Manager shall proceed with dispatch and without any unnecessary delay to sell or otherwise liquidate the Company's assets. The Capital Account of each Member shall be determined. Profits or Losses to the date of termination, including realized profits or losses arising from a sale of all of the assets of the Company (whether or not recognized for Federal income tax purposes), and unrealized profits and losses on any assets to be distributed in kind (determined as if such assets had been sold by the Company for prices equal to their respective fair market value) shall be allocated as set forth in Article IV and credited or charged to the Capital Accounts of the Members. After paying or duly providing for all liabilities to creditors of the Company, the Manager shall distribute the net proceeds and any other liquid assets of the Company among the Members in the manner hereinafter set forth:

- (i) First, to the expenses of any such sale or disposition;



(ii) Next, to the payment of just debts and liabilities of the Company (including all amounts of any principal or interest payable with respect to any loans from Members), in the order of priority as provided by the Law;

(iii) Next, to the establishment of any Reserve that the Manager may deem reasonably necessary for any contingent or unforeseen liabilities and other obligations of the Company or of the Members arising out of or in conjunction with the Company's affairs; and

(iv) Finally, to the Members, an amount equal to their then existing positive Capital Account balances, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which such liquidation occurs.

(b) The wind-up of the affairs of the Company shall be conducted exclusively by the Manager. In liquidating the assets of the Company, all tangible assets of a saleable value shall be sold at such price and terms as the Manager in good faith determines to be fair and equitable. Any partnership, corporation or other entity in which all or any of the Members are in any way interested may purchase such assets at such sale. It shall not be necessary to sell any intangible assets of the Company. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to enable the Company to minimize the losses normally occurring upon a liquidation.

(c) If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the then fair market value thereof (after adjusting the Capital Accounts of all Members for any unrealized gain or loss inherent in such property, as set forth above). The fair market value shall be determined by the Manager, or, if requested by the Members, by an independent appraiser who shall be selected by agreement of the Manager and the Required Vote of the Members. In the discretion of the Manager, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article IX may be:

(i) Distributed to a trust established for the benefit of the Members solely for the purposes of liquidating Company property, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Manager in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Article IX; or

(ii) Withheld to provide a reasonable Reserve for Company liabilities (contingent or otherwise) and to allow for the collection of the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

(d) The portion of the distributions that would otherwise have been made to each of the Members that is instead distributed to a trust or withheld to provide a Reserve pursuant hereto shall be determined in the same manner as the expense or deduction would have

been allocated if the Company had realized an expense equal to such amounts immediately prior to Distributions being made pursuant to this Article IX.

9.03 Termination. The Company shall terminate when all Company assets shall have been disposed of.

## **ARTICLE X** **MISCELLANEOUS**

10.01 Amendments. This Agreement may be amended by the unanimous vote of the Members.

10.02 Notices. Any notice required or permitted to be delivered to any Member under the provisions of this Agreement shall be deemed to have been duly given (a) upon hand delivery thereof, (b) upon telefax and written confirmation of transmission, (c) upon receipt of any overnight deliveries, or (d) on the third (3<sup>rd</sup>) business day after mailing United States registered or certified mail, return receipt requested, postage prepaid, addressed to each Member as set forth on Schedule A hereto or at such other address, or to such other Person and at such address for that Person, as any Member shall designate in writing to the other Members in the manner hereinabove set forth.

10.03 Agency. Except as provided herein, nothing herein contained shall be construed to constitute any Member hereof the agent of any other Member hereof or to limit in any manner the Members in the carrying on of their own respective businesses or activities. Any Member may engage in and/or possess any interest in other business ventures of every nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence; and neither the Company nor any Member hereof shall have any rights in or to any such independent ventures or the income or profits derived therefrom.

10.04 Further Assurances. The Members will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purposes of this Agreement.

10.05 Headings. The headings of the various sections of this Agreement are intended solely for convenience of reference, and shall not be deemed or construed to explain, modify or place any construction upon the provisions hereof.

10.06 Successors and Assigns. This Agreement and any amendments hereto shall be binding upon and, to the extent expressly permitted by the provisions hereof, shall inure to the benefit of the Members, their respective heirs, legal representatives, successors and assigns.

10.07 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement is intended to be performed in

accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations of the jurisdictions in which the Company does business.

**10.08 Entire Agreement.** This Agreement sets forth all (and is intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to the Company, the Company business and the Company assets, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, except as set forth herein.

**10.09 Counterparts.** This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument. Photocopies, facsimile and pdf copies shall be deemed as originals.

**10.10 Gender.** Wherever the context requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter in form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural and vice versa as the case may require.

**10.11 Remedies.** Each of the Members acknowledges and agrees that in the event that a Member shall violate any of the restrictions or fails to perform any of the obligations hereunder, the Company or the other Members will be without adequate remedy at law and will therefore be entitled to enforce such restrictions or obligations by temporary or permanent injunctive or mandatory relief obtained in an action or proceeding instituted in any court of competent jurisdiction without the necessity of proving damages and without prejudice to any other remedies it may have at law or in equity.

**10.12 Litigation.** If the Company or any party hereto is required to engage in litigation against any other party hereto, either as plaintiff or as defendant, in order to enforce or defend any rights under this Agreement, and such litigation results in a final judgment in favor of such party ("Prevailing Party"), then the party or parties against whom said final judgment is obtained shall reimburse the Prevailing Party for all direct, indirect or incidental expenses incurred, including, but not limited to, all attorneys' fees, court costs and other expenses incurred throughout all negotiations, trials or appeals undertaken in order to enforce the Prevailing Party's rights hereunder.

**10.13 No Third Party Beneficiary.** This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

**10.14 No Recordation.** Neither this Agreement nor any memorandum thereof shall be recorded amongst the public records of any governmental authority without the prior written consent of the Manager.

10.15 Member Representations. By their execution below, each Member represents and warrants to the Manager, the other Members and the Company as follows:

(a) The Member is a sophisticated investor by virtue of its education, training and/or numerous prior investments made on its own behalf or through entities which it, alone or with others, controls. The Member is knowledgeable and experienced in financial and business matters which have risks similar to those which may be encountered by the Company. The Member is capable of evaluating the merits and risks of an investment in the Company and is capable of exercising the control over the operations of the Company to the full extent permitted by this Agreement.

(b) The Member has been furnished or otherwise obtained all information necessary to enable it to evaluate the merits and risks of his prospective investment in the Company. The Member recognizes that the Company has no prior operating history, may be highly leveraged and involves substantial risks. The Member acknowledges that an investment in the Company is highly speculative and that the Member may suffer a complete loss of his investment.

(c) The Member has been furnished or has had access to any and all material documents and information regarding the Company, the Company's Business and the other Members. The Member has had an opportunity to question the Manager and other Members and receive adequate answers to such questions. The Member hereby acknowledges that the Company has made available to the Member prior to any investment in the Company all information requested by the Member and reasonably necessary to enable the Member to evaluate the risks and merits of an investment in the Company. The Member, after a review of this information and other information it has obtained, is aware of the speculative nature of any investment in the Company.

(d) The Members are aware that the Members will have to make the Capital Contributions required hereunder. The Members can bear the economic risk of the investment in the Company (including the possible loss of their entire cash payment and any amount guaranteed) without impairing the Members' ability to provide for themselves in the same manner that the Members would have been able to provide prior to making an investment in the Company. The Members understand that they must continue to bear the economic risk of the investment in the Company for an indefinite period of time.

(e) The Member understands that the Member Interests have not been registered under the Securities Act of 1933, as amended, or related laws and regulations or any other applicable securities laws of any other jurisdiction (collectively, the "Securities Laws"), inasmuch as the offering of Member Interests is exempt from registration, based on the exemption available to private placements of securities to a limited group of potential investors. The Member understands that it has no right whatsoever to require, and that the Company is under no obligation whatsoever to file, a registration statement registering the Member Interests under the Securities Laws.

(f) The Member Interests that the Member is acquiring are being acquired solely for its account and are not being purchased with a view to, or for resale in connection with, any distribution within the meaning of the Securities Act of 1933, as amended, or any other applicable Securities Laws. The Member will not resell or offer to resell any Member Interests except in accordance with the terms of this Agreement and in compliance with all applicable Securities Laws.

(g) The Member acknowledges that there is no current market for the Member Interests and none is anticipated to develop. Moreover, there are substantial restrictions on the Transfer of the Member Interests. Therefore, the Member has considered its prospective investment in the Company to be a long-term illiquid investment acceptable because the Member is willing and can afford to accept and bear the substantial risks of the investment for an indefinite period of time.

(h) The Member is aware that there is no assurance, representation or warranty, by any Person, that the Company's Business and the other assets anticipated to be acquired by the Company will operate at a profit, will generate sufficient cash flow for distribution to the Members, or will appreciate in value or be sold at a profit. The use of Company revenues for Company purposes, including but not limited to, the establishment and maintenance of any Reserve, will delay the Member's receipt of available cash distributions from the Company, and may require the Member to report and pay tax on Company income without having received contemporaneous cash distributions, even if the Company is profitable.

(i) The Member understands that if it receives a distribution from the Company at a time when the Company is insolvent, the Member may be liable to the Manager for contribution to the extent that the Member accepted such distribution knowing that such distribution was made in violation of the Laws for a period up to two (2) years from the date of the distribution. In addition, the Member will be liable to the Company and/or its creditors as provided by the Law.

(j) The Member understands that major changes were made by tax laws enacted in the past, and more will likely be enacted in the future. The Member is aware that it should understand that the tax consequences of an investment in the Company are subject to change. The Member is further aware that this Agreement contains complex tax attribute allocations. The Member agrees that the Company and the Manager have not, will not, and cannot assure the Member that such allocations will be respected for federal income tax purposes by the IRS. Depending on which allocations were to be disregarded if challenged by the IRS, the Member's share of income, gains, losses, deductions and credits of the Company could be affected and could change. In such an event, the Member may have to amend its tax return for the year or years of such change(s).

(k) The Member understands that the federal income tax treatment of the Company and the ownership of interests therein, whether direct or indirect, are complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. It is possible that the United States Internal

Revenue Service ("IRS") may successfully challenge the tax treatment accorded certain items by the Company.

(l) The Member is aware that the IRS may audit the income tax returns of the Company and may audit the Member's income tax return as the result of the Member's investment in or claimed deductions or losses from its investment in the Company. Such deductions and losses, when taken together with other items reported on the Member's tax return, may prompt the IRS to examine the Member's return, both as to income and deductions relating to the Company and as to other matters. The Company and the Manager cannot assure the Member that such an audit or examination will not occur or that the Member will not incur additional liability and costs as a result of any such audit or examination.

10.16 Legal Representation. The Company may retain one or more legal counsel ("Law Firm"), from time to time, to represent the Company on specified matters and the Members hereby recognize and acknowledge that representation of the Company shall not establish any attorney-client relationship between the Members and the Law Firm. It is further expressly acknowledged and agreed by the Members, that any Law Firm representing the Company may also represent a Member or any Affiliates of a Member. Each Member hereby acknowledges and agrees that: (i) Altro Levy LLP ("Firm") has represented the Company with respect to the formation of the Company, (ii) the Firm has represented one or more of the Company and/or the Members in other unrelated matters, (iii) the Members and Manager hereby expressly waive any conflict of interest created thereby; (iv) the Firm has advised each of the Members and the Manager to consult with legal counsel to represent them in connection with the negotiation and review of the terms of this Agreement; and (v) each of the Members and the Manager hereby represent and warrant that they have consulted with such legal counsel or other consultants as they deem necessary or appropriate to understand the terms of this Agreement and the consequences of this waiver of conflict.

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**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

MEMBERS:


Treas Development Inc., an Ontario Company

By: 

MOHEB MICHAEL, President

MANAGERS:

  
MOHEB MICHAEL

  
WENDY MICHAEL

**SCHEDULE A  
MEMBERS**

**Name & Address Capital Contribution Member Percentage  
As of May \_\_, 2013**

Treas Development Inc. 162 Inglewood Drive Mississauga, Ontario L5G 1Y1	\$1000.00	100%
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