

Memorandum No. \_\_\_\_\_

May 1, 2023

Delivered to: \_\_\_\_\_

**PRIVATE PLACEMENT MEMORANDUM**

Offering \$1,000,000 of Convertible Unsecured Debt

by

**NIGHTWISE, LLC**

(a Delaware Limited Liability Company)

10895 Brunson Drive  
Duluth, GA 30097

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Minimum Investment: \$ 10,000 (with possible exceptions)

Nightwise, LLC (the “Company” or the “Issuer”) is offering to Accredited Investors only up to \$1,000,000 of 8% unsecured convertible debt of the Company, credited upon conversion or payable upon maturity on the third anniversary of the date such investor’s subscription is accepted by the Company, a Delaware Limited Liability company that has had limited earnings or revenues as of the date of this Memorandum. (See “The Business” and “Financial Statements.”) With the proceeds of this offering, the Company proposes to use the funds primarily for product manufacture, marketing, general and administrative costs and working capital. (See “Use of Proceeds” and “The Business.”) The minimum investment amount per Investor is \$10,000 (the “Minimum Investment Amount”), although the Company may accept subscriptions for smaller amounts under certain circumstances (See “Plan of Distribution”). The debt shall be evidenced by promissory notes (the “Notes”) payable by the Company to each respective Investor.

Upon subscription and acceptance, the Notes shall accrue interest at an annual rate of 8%, payable upon maturity, on the principal amount of their investments through the maturity date of the Note, which, for each Note, will be the third anniversary of the acceptance of the respective Investor’s subscription. In addition, if there is a Qualified Financing or sale of the Company, Note holders will be entitled to either 1) convert the outstanding balance of the Notes into Membership equity in the Company at a price described in the Note, less 25%, and thereafter share in any distributions of the Company’s profits and losses based upon such Member's pro-rata ownership interest in the Company based upon when they become Members, as described in the Operating Agreement.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THIS OFFERING IS MADE IN RELIANCE ON AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION PROVIDED BY RULE 506(c) OF REGULATION D UNDER THE SECURITIES ACT OF 1933, AND OTHER EXEMPTIONS UNDER THE LAWS OF GEORGIA AND OTHER JURISDICTIONS IF OFFERS AND SALES ARE MADE WITHIN OR OTHERWISE SUBJECT TO THE LAWS OF THOSE JURISDICTIONS.

THIS INVESTMENT INVOLVES A DEGREE OF RISK THAT MAY NOT BE SUITABLE FOR ALL PERSONS. ONLY THOSE INVESTORS WHO CAN BEAR THE LOSS OF THEIR ENTIRE INVESTMENT SHOULD PARTICIPATE IN THE INVESTMENT.

**CERTAIN TERMS OF THE OFFERING**

	Investment (1)	Selling Commission (2)	Proceeds to Company
Minimum Offering Amount	\$10,000	\$ 0	\$10,000
Maximum Offering Amount	\$1,000,000	\$ 0	\$1,000,000

1. The acceptance of Investors is contingent upon the Manager's receipt and acceptance of subscriptions equal to at least the Minimum Offering Amount within six (6) months from the date of this Memorandum. After the Minimum Offering Amount is raised, the Offering will continue until (i) the Maximum Offering Amount is raised, (ii) the Offering Period expires, or (iii) the Offering is withdrawn by the Company.
2. Notes will be sold directly by the Company and by the officers and employees of the Manager and its affiliates. No selling commissions will be paid in connection with this offering.

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## CONFIDENTIALITY AGREEMENT

A prospective investor in Notes of the Company, by accepting receipt in whatever manner or form, of this Private Placement Memorandum (the “Memorandum”), agrees not to duplicate, disseminate or to furnish copies of the Memorandum or any part thereof in any form whatsoever, including but not limited to electronic means, or to divulge information garnered from this Memorandum to persons other than such investor’s investment and tax advisors, accountants and legal counsel instructed solely to assist the investor in the evaluation, and such advisors, accountants and legal counsel together with the prospective investors and any other persons to which this Memorandum comes into their possession are prohibited from duplicating, disseminating or using the Memorandum and any information contained herein in any manner other than to determine whether the investor wants to invest into the Company. The agreements made herein shall survive if the investor withdraws from the Company for whatever reason, whenever said withdrawal should occur, and shall continue in full force and effect. If the investor withdraws from the Company for whatever reason the investor shall immediately return to the Managing Member of the Company his or her copy of this Private Placement Memorandum, together with any copies furnished by the investor to such investor’s advisors or counsel.

**THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (“SEC”) OR UNDER THE SECURITIES LAW OF ANY STATE OR NATION. NO FEDERAL, STATE OR OTHER GOVERNMENTAL AGENCY HAS PASSED UPON THE MERITS OF OR GIVEN ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THIS PRIVATE PLACEMENT, NOR PASSED UPON THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. THESE SECURITIES ARE OFFERED PURSUANT TO EXEMPTIONS FROM REGISTRATION WITH THE SEC AND IN RELIANCE UPON PREEMPTION OR EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES LAWS OF THE VARIOUS STATES IN WHICH THEY MAY BE OFFERED; HOWEVER, NEITHER THE SEC NOR ANY STATE NOR ANY GOVERNMENT AGENCY HAS MADE ANY DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT OR PREEMPTED FROM REGISTRATION. (See “Plan of Distribution.”)**

AN INVESTMENT IN THE NOTES INVOLVES SUBSTANTIAL RISKS (SEE “RISK FACTORS”). THE NOTES ARE A SUITABLE INVESTMENT ONLY FOR ACCREDITED INVESTORS WHO CAN EVALUATE THE POTENTIAL RISKS OF THIS INVESTMENT, AND ALSO HAVE SUFFICIENT FINANCIAL RESOURCES TO BEAR THE RISK OF A COMPLETE LOSS OF THEIR INVESTMENT. (SEE “SUITABILITY STANDARDS.”)

THERE IS NO PRESENT TRADING MARKET FOR THE NOTES, AND THERE IS NO EXPECTATION THAT SUCH A MARKET WILL DEVELOP. (SEE “RISK

FACTORS – THERE IS NO MARKET FOR THE NOTES AND TRANSFERRABILITY IS SEVERELY RESTRICTED.”)

THESE SECURITIES WHEN PURCHASED WILL BE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION OR PREEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. (SEE “RISK FACTORS - NO MARKET AND RESTRICTED TRANSFERABILITY OF NOTES” AND “DESCRIPTION OF THE NOTES.”)

The Notes will be offered and sold by the Issuer and the sole Managing Member and other executive officers of the Company, who will receive no compensation for the sale of the securities. This will be a “best efforts” Private Placement. There is no underwriter for the Notes or any other person who has agreed to purchase or distribute all or any amount of the Notes. There can therefore be no assurance as to how many, if any, of the Notes offered hereby will be sold. Upon the sale of a Note valued at \$10,000 or more (the “Minimum Investment”), proceeds from the sale of Notes will be immediately available to the Company to be utilized for the purposes described in this Memorandum. (See “Risk Factors - Best Efforts Private Placement,” “Use of Proceeds” and “Description of the Notes”.)

**The organization of the Company has involved, and its operations will in the future involve, transactions among the Company, the Managing Member, the Executive Officers and their affiliates that constitute potential conflicts of interest. (See “Conflicts of Interest.”)**

## ITEM ONE

### SUITABILITY STANDARDS

Reasons For and Establishment of Standards: Because of the risks involved in a purchase of the Notes and the lack of liquidity of such an investment, an investment in the Notes is suitable for, and will only be offered to, those who demonstrate to the Company that they are, Accredited Investors. This will be demonstrated initially through an Investor Qualification Questionnaire (“IQQ”) that must be completed and approved by the Company before any investment in Notes will be accepted. The representations in the IQQ must be substantiated in the Investor’s Subscription Agreement for Notes before that Subscription agreement will be accepted by the Company. In addition, the Notes are being offered pursuant to Rule 506(c) promulgated by the Securities and Exchange Commission, pursuant to which the status of an investor as accredited must be reasonably verified by the Company. Accordingly, the Company may require potential investors to provide financial and identification information to a third party in order for the Company to secure that verification.

“Accredited Investor” shall mean any person who comes within the definition of that term as set forth in Regulation D, (Reg. Section 230.501) of the United States Securities and Exchange Commission (SEC) as that definition may be amended from time to time. Currently, that definition includes the following persons:

(a) Any bank or any savings and loan association or other such institution whether acting in its individual or fiduciary capacity, any securities broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance Company; any investment Company registered under the Investment Company Act of 1940 or a business development Company as defined in that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality or a state or its political subdivisions for the benefit of the Company’s employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance Company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are Accredited Investors;

(b) Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or Company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000.

(c) Any director or executive officer of the issuer;

(d) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000, excluding the value of the principal residence of such person;

(e) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; or

(f) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merit and risks of an investment in the Notes.

(g) Any entity in which all of the equity owners are Accredited Investors.

Application of Standards. Notes will be offered and sold only to persons who are "Accredited Investors" as defined herein. To determine a potential investor's suitability, the Company will require each person who wishes to invest to submit written proof in a form satisfactory to the Company that he meets these suitability requirements established for this offering.

An investor who satisfactorily demonstrates that he meets the qualifications set forth in this Memorandum may subscribe for Notes by executing one copy of the Subscription Agreement, and delivering it to the Company, together with his payment by a check made payable to the order of Nightwise, LLC. Management of the Company reserves the right in the Company's sole discretion to decline to accept any proffered Subscription Agreement. A person will become a Note holder of the Company only upon his subscription funds being accepted by the Company and his Note being issued. (See "Plan of Distribution")

## ITEM TWO

### RISK FACTORS

#### **Risks Related to the Company's Business and Industry**

##### ***The Company has limited prior operating experience.***

The Company is a relatively new business with limited prior operating experience and very limited revenues. Danny Rinaldi, the Managing Member, will manage and control the Company and its operations. Mr. Rinaldi has no prior experience managing any other company of this type. (See "Prior Performance of the Managing Member.") Other than in the context of the Company, Mr. Rinaldi does not have any experience in raising funds

from investors. The financial success of the Company and its ability to pay distributions or return any investment to the purchasers of Notes, will be dependent upon the soundness of the Company's business concept and the ability of the Managing Member to successfully and profitably execute that concept, including its ability to hire qualified personnel to perform the functions for which Mr. Rinaldi has little significant experience other than in the context of this Company. There can be no assurance that can be accomplished.

***The Company has a new and unproven business.***

The Company has developing for retail marketing a timed-release nutraceutical consumer sleep aid product (the "Product"). There is no proven demand for such a product and no proven method for developing and marketing it. The Management of the Company believes it has the ability and contacts to enable it to design, develop and market the product, but Management has no experience or track record in such endeavors with this Product. There can be no assurance that either this concept or its execution will lead to profitable operations or to sufficient cash flow to pay Distributions or return principal to Investors. (See "The Business" and "Financial Statements")

***There is no assurance of repayment of this investment or any distributions.***

There can be no assurance that the operations of the Company will generate sufficient funds to allow the Company to pay any returns to any Note holders or Members, including a return of the Note holders' or Members' investments. In this connection, a prospective investor in Notes should understand that there is no security for the investment and any payments from the Company are not guaranteed by any person or entity. (See "Use of Proceeds" and "Financial Statements.")

***The development and commercialization of the Company's products is highly competitive.***

The Company faces competition with respect to any products that it may seek to develop or commercialize in the future. The Company's competitors include major companies worldwide. Many of the Company's competitors have significantly greater financial, technical and human resources than it has and superior expertise in research and development and marketing approved products and thus may be better equipped than the Company to develop and commercialize products. These competitors also will be competing with the Company in recruiting and retaining qualified personnel and acquiring technologies. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. Accordingly, the Company's competitors may commercialize products more rapidly or effectively than the Company is able to, which would adversely affect the Company's competitive position, the likelihood that the Company's products will achieve initial market acceptance and the Company's ability to generate meaningful additional revenues from its products.



***The depends on third party providers to supply some of the operational support necessary to provide some of the Company's products.***

Some of the Company's operational support vendors, including packaging and delivery, represent its sole source of supply. If demand exceeds these vendors' capacity or if these vendors experience operating or financial difficulties or are otherwise unable to provide the services it needs in a timely manner, at the Company's specifications and at reasonable prices, the Company's ability to provide some products might be materially adversely affected, or the need to procure or develop alternative sources of the affected services might delay the Company's ability to serve its customers. These events could materially and adversely affect the Company's ability to retain and attract customers, and have a material negative impact on its operations, business, financial results and financial condition.

***The demand for the Company's product is highly correlated with general economic conditions, which may deteriorate to the Company's detriment.***

A substantial portion of the Company's revenue is derived from discretionary spending by individuals, which typically falls during times of economic instability. Declines in economic conditions in the U.S. or in other countries in which it operates may adversely impact the Company's consolidated financial results. Because such declines in demand are difficult to predict, it or the industry may have increased excess capacity as a result. An increase in excess capacity may result in declines in prices for the Company's products.

***The Company's success depends on the experience and skill of the managing member, its executive officers and key employees.***

In particular, the Company is dependent on Danny Rinaldi, Stephen Gross, Scott Forsberg, and Ed Klein, who are CEO, CFO, CIO, and CMO of the Company. The Company has or intends to enter into employment or independent contractor agreements with those persons, although there can be no assurance that it will do so or that they will continue to be employed by or associated with the Company for a particular period of time. The loss of any of those persons could harm the Company's business, financial condition, cash flow and results of operations.

***One person has significant control over Company decisions.***

Except for certain fundamental matters affecting the basic structure of the Company as to which the Members have some authority under Georgia law or the Operating Agreement, the authority to manage the business of the Company will be vested in the Managing Member, which is managed and controlled by Danny Rinaldi. (See "Operating Agreement.") The Purchasers of Notes will have no ability to manage or control the Company, its decisions or its management, unless and until there is a conversion into equity in which case they would have the limited rights of other holders of Membership interests. The success of this investment is, therefore, significantly dependent on the

vision and skill of Mr. Rinaldi in envisioning and executing the business plan of the Company. If Mr. Rinaldi were to die or become disabled, there is no succession plan for subsequent management of the Managing Member or the Company. It would be up to the Members (and not the holders of Notes) to obtain such assistance as necessary to manage the Business to conclusion and to operate it thereafter. (See “Management” and “Financial Statements.”)

***The Company relies on third-party suppliers for the materials used in the manufacturing of the Company’s products.***

In 2022, a single supplier provided the coating for 100% of the Company’s product. If it or this supplier decided to terminate this business relationship, depending upon the circumstances of the termination, the Company’s sales and earnings might be adversely affected, or reduced to zero, until the Company is able to establish relationships with suppliers of a comparable service. Any delay or interruption in manufacturing operations (or failure to locate a suitable replacement for such supplier) could materially adversely affect the Company’s business, prospects, or results of operations.

***The Company relies on various intellectual property rights, including patents, in order to operate its business.***

Such intellectual property rights, however, may not be sufficiently broad or otherwise may not provide the Company a significant competitive advantage. In addition, the steps that the Company has taken to maintain and protect its intellectual property may not prevent it from being challenged, invalidated, circumvented or designed-around, particularly in countries where intellectual property rights are not highly developed or protected. In some circumstances, enforcement may not be available to the Company because an infringer has a dominant intellectual property position or for other business reasons, or countries may require compulsory licensing of its intellectual property. The Company’s failure to obtain or maintain intellectual property rights that convey competitive advantage, adequately protect its intellectual property or detect or prevent circumvention or unauthorized use of such property, could adversely impact its competitive position and results of operations. The Company also relies on nondisclosure and noncompetition agreements with employees, consultants and other parties to protect, in part, trade secrets and other proprietary rights. There can be no assurance that these agreements will adequately protect its trade secrets and other proprietary rights and will not be breached, that it will have adequate remedies for any breach, that others will not independently develop substantially equivalent proprietary information or that third parties will not otherwise gain access to its trade secrets or other proprietary rights.

As the Company expands its business, protecting its intellectual property will become increasingly important. The protective steps the Company has taken may be inadequate to deter its competitors from using its proprietary information. In order to protect or enforce its patent rights, the Company may be required to initiate litigation against third parties, such as infringement lawsuits. Also, these third parties may assert claims against the Company with or without provocation. These lawsuits could be expensive, take

significant time and could divert management's attention from other business concerns. The law relating to the scope and validity of claims in the technology field in which the Company operates is still evolving and, consequently, intellectual property positions in its industry are generally uncertain. The Company cannot assure you that it will prevail in any of these potential suits or that the damages or other remedies awarded, if any, would be commercially valuable.

***From time to time, third parties may claim that one or more of the Company's products infringe their intellectual property rights.***

Any dispute or litigation regarding patents or other intellectual property could be costly and time-consuming due to the uncertainty of intellectual property litigation and could divert the Company's management and key personnel from its business operations. A claim of intellectual property infringement could force the Company to enter into a costly or restrictive license agreement, which might not be available under acceptable terms or at all, could require it to redesign its products, which would be costly and time-consuming, and/or could subject the Company to an injunction against development and sale of certain products. The Company may have to pay substantial damages, including damages for past infringement if it is ultimately determined that its products infringe on a third party's proprietary rights. Even if these claims are without merit, defending a lawsuit takes significant time, may be expensive and may divert management's attention from other business concerns. Any public announcements related to litigation or interference proceedings initiated or threatened against the Company could cause the Company's business to be harmed. Its intellectual property portfolio may not be useful in asserting a counterclaim, or negotiating a license, in response to a claim of intellectual property infringement. The Company may rely on third party intellectual property licenses and it cannot ensure that these licenses will be available in the future on favorable terms or at all.

***The amount of capital the Company is attempting to raise in this Offering is not enough to sustain the Company's current business plan.***

In order to achieve the Company's near and long-term goals, the Company will need to procure funds in addition to the amount raised in the Offering. There is no guarantee the Company will be able to raise such funds on acceptable terms or at all. If the Company is not able to raise sufficient capital in the future, it will not be able to execute its business plan, its continued operations will be in jeopardy and the Company may be forced to cease operations and sell or otherwise transfer all or substantially all of its remaining assets, which could cause an Investor to lose all or a portion of his or her investment.

The Management of the Company is conducting this Private Placement on a best efforts basis. There can be no assurance, therefore, that all or any of the Notes being offered for sale will be sold. Management estimates that it must raise \$1,000,000 in this Private Placement before it will be able to fund the necessary costs to successfully carry out the next phase of its business plan, and additional funds will be required following that. (See "Plan of Distribution.")

***Although dependent on certain key personnel, the Company does not have any key man life insurance policies on any such people.***

The Company is dependent on Stephen Gross, Scott Forsberg, Ed Klein, and Danny Rinaldi in order to conduct its operations and execute its business plan, however, the Company has not purchased any insurance policies with respect to those individuals in the event of their death or disability. Therefore, if any of Stephen Gross, Scott Forsberg, Ed Klein, and Danny Rinaldi die or become disabled, the Company will not receive any compensation to assist with such person's absence. The loss of such person could negatively affect the Company and its operations.

***The Company is subject to various taxes, such as payroll, sales, use, value-added, net worth, property and goods and services taxes.***

Significant judgment is required in determining the Company's provision for tax liabilities. In the ordinary course of its business, there are many transactions and calculations where the ultimate tax determination is uncertain. Although the Company believes that its tax estimates are reasonable: (i) there is no assurance that the final determination of tax audits or tax disputes will not be different from what is reflected in its income tax provisions, expense amounts for non-income based taxes and accruals and (ii) any material differences could have an adverse effect on its financial position and results of operations in the period or periods for which determination is made.

***The Company is not subject to Sarbanes-Oxley regulations and lack the financial controls and safeguards required of public companies.***

The Company does not have the internal infrastructure necessary, and is not required, to complete an attestation about its financial controls that would be required under Section 404 of the Sarbanes- Oxley Act of 2002. There can be no assurance that there are no significant deficiencies or material weaknesses in the quality of its financial controls. The Company expects to incur additional expenses and diversion of management's time if and when it becomes necessary to perform the system and process evaluation, testing and remediation required in order to comply with the management certification and auditor attestation requirements.

***The Company's business operations may be materially adversely affected by a pandemic such as the Coronavirus (COVID-19) outbreak.***

In December 2019, a novel strain of coronavirus was reported to have surfaced in Wuhan, China, which spread throughout other parts of the world, including the United States. On January 30, 2020, the World Health Organization declared the outbreak of the coronavirus disease (COVID- 19) a "Public Health Emergency of International Concern." On January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the U.S. healthcare community in responding to COVID-19, and on March 11, 2020, the World Health Organization characterized the outbreak as a "pandemic." COVID-19 resulted in a

widespread health crisis that adversely affected the economies and financial markets worldwide. The Company's business could be materially and adversely affected. The extent to which COVID-19 impacts the Company's business will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 and the actions to contain COVID-19 or treat its impact, among others. If the disruptions posed by COVID-19 or other matters of global concern continue for an extended period of time, or if there are other similar disruptions, the Company's operations may be materially adversely affected.

***Growth rates higher than planned or the introduction of new products requiring special ingredients could create higher demand for ingredients greater than the Company can source.***

Although the Company believes that there are alternative sources available for its key ingredients, there can be no assurance that the Company would be able to acquire such ingredients from substitute sources on a timely or cost-effective basis in the event that current suppliers could not adequately fulfill orders, which would adversely affect its business and results of operations.

***Failure by the Company's transportation providers to deliver its products on time or at all could result in lost sales.***

The Company currently relies upon third-party transportation providers for a significant portion of its product shipments. Its utilization of delivery services for shipments is subject to risks, including increases in fuel prices, which would increase its shipping costs, and employee strikes and inclement weather, which may impact the ability of providers to provide delivery services that adequately meet its shipping needs. The Company may, from time to time, change third-party transportation providers, and the Company could therefore face logistical difficulties that could adversely affect deliveries. The Company may not be able to obtain terms as favorable as those it may receive from the third-party transportation providers that it currently uses or may incur additional costs, which in turn would increase its costs and thereby adversely affect its operating results.

***The Company may not timely identify or effectively respond to consumer trends or preferences, whether involving physical retail, e-commerce retail or a combination of both retail offerings, which could negatively affect its relationship with its customers and the demand for its products.***

It is difficult to predict consistently and successfully the products the Company's customers will demand. The success of the Company's business depends in part on how accurately it predicts consumer demand, availability of merchandise, the related impact on the demand for existing products and the competitive environment, whether for customers purchasing products at stores, through its e-commerce businesses or through the combination of both retail offerings. A critical piece of identifying consumer

preferences involves price transparency, assortment of products, customer experience and convenience. These factors are of primary importance to customers, and they continue to increase in importance, particularly as a result of digital tools and social media available to consumers and the choices available to consumers for purchasing products online, at physical locations or through a combination of both retail offerings. Failure to timely identify or effectively respond to changing consumer tastes, preferences (including the key factors described above) and spending patterns, whether for physical retail offerings, e-commerce offerings or through a combination of these retail offerings, could negatively affect the Company's relationship with its customers and the demand for its products.

***The Company's business and results of operations may be adversely affected if the Company is unable to maintain its customer experience or provide high quality customer service.***

The success of the Company's business largely depends on its ability to provide superior customer experience and high-quality customer service, which in turn depends on a variety of factors, such as its ability to continue to provide a reliable and user-friendly website interface for customers to browse and purchase products, reliable and timely delivery of products, and superior after sales services. Sales may decrease if website services are severely interrupted or otherwise fail to meet customer needs. Should the Company or its third-party delivery companies fail to provide product delivery and return services in a convenient or reliable manner, or if customers are not satisfied with product quality, the Company's reputation and customer loyalty could be negatively affected. As a result, if the Company is unable to continue to maintain its customer experience and provide high quality customer service, it may not be able to retain existing customers or attract new customers, which could have an adverse effect on its business and results of operations.

***The Company's advertising and marketing efforts may be costly and may not achieve the desired results.***

The Company will incur substantial expense in connection with its advertising and marketing efforts. Although the Company targets its advertising and marketing efforts on current and potential customers who the Company believes are likely to be in the market for the products it sells, it cannot assure you that its advertising and marketing efforts will achieve the desired results. In addition, the Company periodically adjusts its advertising expenditures in an effort to optimize the return on such expenditures. Any decrease in the level of advertising expenditures, which may be made to optimize such a return could adversely affect sales.

***The Company may be required to collect sales tax on its direct marketing operations.***

Various states or foreign countries may seek to impose sales tax collection obligations on out-of-state direct mail companies. A successful assertion by one or more states that the Company should have collected or should be collecting sales taxes on the direct sale of merchandise could have an adverse effect on the Company's business.

***Changes in federal, state or local laws and regulations could increase the Company's expenses and adversely affect its results of operations.***

The Company's business is subject to a wide array of laws and regulations. The current political environment, financial reform legislation, the current high level of government intervention and activism and regulatory reform may result in substantial new regulations and disclosure obligations and/or changes in the interpretation of existing laws and regulations, which may lead to additional compliance costs as well as the diversion of management's time and attention from strategic initiatives. If the Company fails to comply with applicable laws and regulations, it could be subject to legal risk, including government enforcement action and class action civil litigation that could disrupt its operations and increase the cost of doing business. Changes in the regulatory environment regarding topics such as privacy and information security or product safety, including regulations in response to concerns regarding climate change, collective bargaining activities, minimum wage laws and health care mandates, among others, could also cause compliance costs to increase and adversely affect the Company's business and results of operations.

***The Company's profitability is vulnerable to cost increases, inflation and energy prices.***

Future increases in the Company's costs, such as the cost of merchandise, shipping rates, freight and fuel costs, may reduce its profitability. The minimum wage has increased or is scheduled to increase in multiple states and local jurisdictions, and there is a possibility Congress will increase the federal minimum wage. These cost changes may be the result of inflationary pressures, which could further reduce sales or profitability. Increases in other operating costs, including changes in energy prices, wage rates and lease and utility costs, may increase the Company's costs of sales or operating expenses and reduce its profitability.

## **Risks Related to the Securities**

***There is no market for the Notes and transferability is severely restricted.***

You should be aware of the long-term nature of this investment. There is not now and likely will not be a public market for the Convertible Notes offered. Because the Notes have not been registered under the Securities Act or under the securities laws of any state or non-United States jurisdiction, the Notes have transfer restrictions and cannot be resold in the United States unless the Notes to be resold are registered with appropriate securities regulators or are exempt from such registration. It is not currently contemplated that registration under the Securities Act or other securities laws will be effected. Limitations on the transfer of the Notes may also adversely affect the price that you might be able to obtain for the Notes in a private sale. Purchasers should be aware of the long-term nature of their investment in the Company. Each Purchaser in this Offering will be required to represent that it is purchasing the Notes for its own account, for investment purposes and not with a view to resale or distribution thereof. In light of the

foregoing, it is likely that an investor in the Notes will not be able to liquidate or transfer his investment at any time in the foreseeable future.

***There is no guarantee of return on your investment.***

There is no assurance that a Purchaser will realize a return on its investment or that it will not lose its entire investment. For this reason, each Purchaser should read the Memorandum and all Exhibits carefully and should consult with its own attorney and business advisor prior to making any investment decision.

***Neither the Offering nor the Securities have been registered under federal or state securities laws, leading to an absence of certain regulations applicable to the Company.***

No governmental agency has reviewed or passed upon this Offering, the Company or any Securities of the Company. The Company also has relied on exemptions from securities registration requirements under applicable state securities laws. Investors in the Company, therefore, will not receive any of the benefits that such registration would otherwise provide. Prospective investors must therefore assess the adequacy of disclosure and the fairness of the terms of this Offering on their own or in conjunction with their personal advisors.

***A majority of the Company's equity is owned by one person.***

Currently, Danny Rinaldi owns approximately 69% of the Company's equity. Subject to any fiduciary duties owed to the Company's other owners or investors under Georgia law, he can exercise significant influence over matters requiring owner approval, including the selection of officers and approval of significant Company transactions, and will have significant control over the Company's management and policies. Mr. Rinaldi may have interests that are different from investors' and may support proposals and actions with which an investor may disagree. In addition, he could use his voting influence to maintain the Company's existing management, delay or prevent changes in control of the Company, or support or reject other proposals that are subject to owner approval.

***The offering price of the Notes is arbitrary.***

The Offering price for the Notes should not be considered an indication of the actual value of the Notes and is not based on the Company's net worth or prior earnings. The Company cannot assure you that the Notes could be resold by you at the Offering price or at any other price.

***Your ownership of the Notes will be subject to dilution.***

Owners of Notes do not have preemptive rights. If the Company conducts subsequent offerings or issuances of notes or other Securities, Purchasers in this Offering who do not



participate in those other Securities issuances will experience dilution in their percentage ownership of the Company's Securities if their conversion option is exercised. Furthermore, Purchasers may experience a dilution in the value of their interests depending on the terms and pricing of any future Securities issuances and the value of the Company's assets at the time of issuance.

***The Management's liability is limited.***

The Company's Limited Liability Company Operating Agreement provides that the Managing Member and the Company's agents, attorneys, affiliates and employees will be indemnified against costs and expenses incurred in connection with, and will not be liable to the Company or a Purchaser for, any action taken, or failure to act, on behalf of the Company in connection with the business of the Company, determined by the Managing Member to be taken in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Company. Therefore, a Purchaser may have a more limited right of action against the Managing Member than would be available if these provisions were not contained in the Company's Limited Liability Operating Agreement.

***Purchasers will not participate in management.***

The Company's Managing Member has full responsibility for managing the Company. The Purchasers will not be entitled to participate in the management or operation of the Company or in the conduct of its business. The Purchasers may not vote in the election of the Company's Manager or for any other reason. Even if the conversion option is exercised, the Purchasers' right to vote will be limited, except in limited circumstances as allowed under Georgia law. Please consult the Limited Liability Operating Agreement.

***There may be income tax risks.***

Each prospective Purchaser is urged to consult with its own representatives, including its own tax and legal advisors, with respect to the federal (as well as state and local) income tax consequences of this investment before purchasing any of the Notes. Certain prospective Purchasers, such as organizations which are exempt from federal income taxes, may be subject to federal and state laws, rules and regulations which may prohibit or adversely affect their investment in the Company. The Company is not offering you any tax advice upon which you may rely.

***An audit by the Internal Revenue Service could affect the Company adversely.***

Information tax returns filed by the Company are subject to audit by the Internal Revenue Service. An audit of the Company's tax return may lead to adjustments to such return which would require an adjustment to each Purchaser's personal federal income tax return. Such adjustments can result in reducing the taxable loss or increasing the taxable income allocable to the Purchasers from the amounts reported on the Company's tax return. In addition, any such audit may lead to an audit of a Purchaser's individual

income tax return, which may lead to adjustments other than those related to the investments in the Securities offered hereby.

In addition to the risks listed above, businesses are often subject to risks not foreseen or fully appreciated by the management. It is not possible to foresee all risks that may affect us. Moreover, the Company cannot predict whether the Company will successfully effectuate the Company's current business plan. Each prospective Purchaser is encouraged to carefully analyze the risks and merits of an investment in the Securities and should take into consideration when making such analysis, among other, the Risk Factors discussed above.

### ITEM THREE

#### THE BUSINESS

##### **Description of the Business**

The Company produces and sells patented-formula dietary supplement sleep products to help improve people's lives by aiding their ability to fall asleep and stay asleep at night. The Company's products are manufactured and packaged for distribution, and orders fulfilled, by third party vendors contracted by the Company.

##### **Business Plan**

NightWise, LLC is a limited liability company located in Atlanta, Georgia. The Company was formed to produce dietary supplement sleep products to help improve people's lives by aiding their ability to fall asleep and stay asleep at night. NightWise spent two years researching and developing a proprietary ingredient delivery technology called the Intelligent Release Technology™, which releases eight of the safest, natural sleep ingredients in the appropriate amounts and at the appropriate times during the night. The product brand name is NightWise®, launched in April 2022. NightWise sees its core audience divided into two main segments: "try and reject" and "reluctant over-the-counter users." Both market segments are afraid of prescription sleep medications like Ambien, tend to dislike how ZzzQuil makes them feel in the morning, and are confused about why they wake up at 3 AM despite taking melatonin. The demographics of the Company's core consumers are male and female between the ages of 25 and 45 living in the USA. NightWise is a highly differentiated sleep aid designed to work with our bodies' natural sleep rhythms. By providing more uninterrupted sleep, NightWise allows your body to naturally modulate the ratio between REM and deep sleep to meet your individual needs. The natural sleep ingredients are a collection of the best nature has to offer. But ingredients are only as effective as their delivery. Some other brands tend to overdose ingredients like melatonin, hoping that the dose will last through the night. NightWise provides what is needed, when it is needed. NightWise is using a multi-channel approach for its go-to-market sales strategy. The Company launched its e-commerce, direct-to-consumer (D2C) channel first, providing a Shopify website to allow

consumers to place one-time orders, as well as subscribe-and-save subscription orders by signing up for monthly recurring billing and shipping. Under the Company's plan, beginning in 2024, NightWise will start to secure progressive distribution in multi-outlet, national retail chains in the drug, mass, airport, grocery, Walmart, dollar, and club stores channels. NightWise has sufficient raw material and finished goods inventory to sell 15,000 additional bottles by the end of the year 2023, which would generate approximately \$675,000 in revenue or 18 times additional revenue than the original pilot campaign. The Company's goal is to disrupt the category which has seen minimal disruption over the last 75 years. The market categorizes sleep aids by prescriptions, over-the-counter, and natural sleep aids and by the number and amounts of ingredients and the number of delivery stages of the ingredients. Single-ingredient and single-release formulations dominate the leading products in the space, making a multi-ingredient, multi-release sleep system, like NightWise, innovative and unique to the category. Creating a genuinely differentiated sleep aid like NightWise takes a culture that emphasizes a dedication to true innovation (research and development), creativity, and risk-taking. NightWise believes most leading Pharmaceutical and Consumer Packaged Goods companies are looking to enrich their branded product portfolios, increase margins and accelerate growth by buying innovation through strategic acquisitions rather than investing their time, effort, and funding, underrating the threat of speed and technology change in the market. The Company's aim is to build NightWise, LLC as a sustainable, exit-ready consumer health company that can stand on its own or complement the portfolios of any leading Pharma and CPG companies looking to expand their portfolio of brands. NightWise's goal is to initially access somewhere between one and five percent of the sleep aid category market in a large and growing sleep market that is expected to hit \$1B in sales by 2026. The Company's goal is to generate \$100,000,000 in revenue by 2027, running a multi-channel e-commerce and major national retail chain businesses. Achieving this objective will help the Company to capture a 10% market share. There can be no assurance that this goal, or any particular sales goal, will be achieved.

## **History of the Business**

The Company's product has evolved from a liquid supplement to a controlled-release capsule. The Company initially trial-marketed a local retail approach to selling its product but has since focused on an E-Commerce based marketing model.

The Company is contemplating developing other products related to its current product, but no products currently contemplated would represent a material change to the Company's business in the near future.

## **Competition**

The Company's primary competitors are Nature Made - Wellblends; Nature's Bounty - Sleep 3; Proper Sleep + Restore; ZzzQuil - Pure Zzzs.

At the present time, the Company is trying to establish a new and, the Company believes, superior product, so it has no market share. The Company faces significant competition

from well-established companies that have competitive sleep-aid products. The Company's competitors have significantly greater financial, marketing, personnel and other resources than the Company does, and those competitors have greater name recognition than the Company does. The Company's success will depend upon its ability to establish its product in this market.

### **Supply Chain and Customer Base**

NightWise is manufactured in a cGMP facility located in the United States using globally-sourced ingredients from numerous suppliers. In general, these materials are available from multiple sources. The controlled-release coating is supplied by a leading manufacturer in the United States that is also a part owner of the Company.

### **Intellectual Property**

#### **Patents and Trademarks**

The Company holds Patent No. 11,351,150 for "Compositions for treating a sleep disorder, modifying or improving the sleep-wake cycle in a subject, comprising one or more sleep promoting active agents, one or more sleep quality active agents, one or more sleep recovery active agents," covering the United States. The patent was granted June 7, 2022.

In addition, the Company holds registered trademarks for Nightwise ®, Intelligent Release Technology ®, and Harmonix Sleep Formula 39®.

#### **Governmental/Regulatory Approval and Compliance**

The DSHEA of 1994. The Dietary Supplement Health and Education Act of 1994 ("DSHEA") amended the Federal Food, Drug, and Cosmetic Act ("FDCA" or "the Act") and established a comprehensive regulatory framework for dietary supplements. Under the FDCA, the manufacturer and distributor of a product are required to meet a stringent safety and manufacturing standard prior to marketing a dietary supplement. More specifically, a dietary ingredient must not pose a significant or unreasonable risk of harm under its labeled conditions of use or, if the label does not provide a condition of use, under ordinary conditions of use. In this regard, under the FDCA, the FDA may consider a dietary supplement product adulterated if it: (1) presents a significant or unreasonable risk of illness or injury when used as directed or, if there are no directions, under ordinary conditions of use; (2) is or contains a new dietary ingredient for which there is inadequate information to provide assurance that it does not present a significant or unreasonable risk of illness or injury; (3) is declared by the Secretary of Health and Human Services to pose an imminent hazard to public health or safety; or (4) is or contains a dietary ingredient that bears or contains any poisonous or deleterious substance that may render it injurious to health. Equally important to the safety of dietary supplements is ensuring that all products are manufactured and distributed in accordance with the FDA's current good manufacturing practice ("cGMP") set forth in 21 C.F.R. Part 111 of FDA's

regulation for dietary supplements. Finally, there are also several basic label elements and requirements for all dietary supplement products. The product label must have a principal display panel, which must have a product identity statement; a statement of the net quantity of contents; nutrition labeling; a list of ingredients; and the name and address of the manufacturer or distributor. Other items also found on the label of dietary supplements, such as directions for use, warnings, and claims, are not mandatory, although they are customarily provided. Regarding the manufacturing and safety of NightWise®'s dietary ingredients, each of these ingredients has been widely used prior to and after October 15, 1994. The FDA has not raised any safety concerns regarding any of these ingredients with any company. Moreover, the FDA has never attempted to remove these ingredients from the marketplace.

### **Litigation**

There are no existing legal suits pending, or to the Company's knowledge, threatened, against the Company.

## ITEM FOUR

### USE OF PROCEEDS

The Managing Manager projects that the proceeds from the Offering, assuming the Maximum Offering Amount is raised, will be used as follows:

The following table lists the use of proceeds of the Offering if the Minimum Amount of \$10,000, an intermediate amount of \$400,000, and the Maximum Amount of \$1,000,000 are raised.

	% of \$10,000	Amount if \$10,000 Raised	% of \$400,000	Amount if \$400,000 Raised	% of \$1,000,000	Amount if \$1,000,000 Raised
Use of Proceeds	\$10,000		\$400,000		\$1,000,000	
Sales Concessions and Fees			0.00%	\$0	0%	\$0
Campaign marketing expenses or related reimbursement			62.50%	\$250,000	35.00%	\$350,000
Estimated Attorney Fees			1.25%	\$5,000	0.25%	\$2,500
Estimated Accountant/Auditor Fees					0.00%	
			0.50%	\$2,000	0.00%	\$0
General Marketing	100%	\$10,000	3.75%	\$15,000	2.50%	\$25,000
Research and Development			2.50%	\$10,000	1.00%	\$10,000
Manufacturing			14.25%	\$57,000	24.30%	\$243,000
Future Wages			4.50%	\$18,000	16.00%	\$160,000
Accrued Wages			0.00%	\$0	4.70%	\$47,000
Repayment of Debt			6.25%	\$25,000	4.50%	\$45,000
General Working Capital			4.50%	\$18,000	11.75%	\$117,500
<b>Total</b>	<b>100%</b>	<b>\$10,000</b>	<b>100.00%</b>	<b>\$400,000</b>	<b>100.00%</b>	<b>\$1,000,000</b>

If the Company raises an amount between the Maximum Offering Amount and Minimum Offering Amount, the estimated use of proceeds for each category would likely be between the amounts described above. The Company has the discretion to alter the use of proceeds as set forth above. The Company may alter the use of proceeds if business conditions require a different allocation of proceeds, the Company may alter the use of proceeds described above.

## ITEM FIVE

### MANAGEMENT

#### **Managing Member**

The Managing Member and Executive Officers of the Company are listed below along with all positions and offices held at the Company and their principal occupation and employment responsibilities.

***Name***

Daniel E. Rinaldi

CEO, Manager, NightWise, LLC January 2011 to present.

***Education***

The Pennsylvania State University, Smeal College of Business Bachelor of Science - Marketing Management and Sales Management

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**Executive Officers of the Company**

The executive officers of the Company are listed below along with all positions and offices held at the Company and their principal occupation and employment responsibilities for the past three (3) years and their educational background and qualifications.

***Name***

Stephen Gross

CFO, NightWise, LLC, May, 2018 to present.

Employer: Trusted CFO Solutions Employer's principal business: Outsource accounting, Sage Intacct and CFO advisory services. Employer Title: Principal Dates of Service: Since 2010 Responsibilities: Outsource accounting, Sage Intacct and CFO advisory services.

***Education***

Duke University Licensed CPA, Chartered Global Management Accountant, Certified Fraud Examiner, Certified Valuation Analyst, and he has been Certified in Financial Forensics.

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***Name***

Scott Forsberg

Chief Innovation Officer, October, 2015 to present.

Employer: Peregrine Research LLC Employer's principal business: Management, Scientific, and Technical Consulting Services Employer Title: Principal Dates of Service: Since 1997 Responsibilities: Fractional Chief Innovation and Scientific Officer

***Education***

Weber State University Bachelor of Integrated Studies, Microbiology with Honors  
Emphases- Biotechnology, Immunology

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***Name***

Ed Klein

Chief Marketing Officer November, 2016 to present

Employer: eKlein Consulting Employer's principal business: Marketing Consulting  
Services Employer Title: Principal Dates of Service: Since 2016

***Education***

University of Michigan Bachelors, Marketing Concentration

**ITEM SIX**

**COMPENSATION AND FEES TO THE MANAGING MEMBER AND EXECUTIVE  
OFFICERS**

***Direct Compensation and Remuneration***

After the Business is more fully developed and operating, the Managing Member, Mr. Rinaldi, may cause the Company to pay him and other Executive Officers monthly, quarterly or annual compensation commensurate with the time and expertise devoted to the management of the Business. In addition, certain Executive Officers may receive additional compensation in the nature of membership interests of the Company.

The Company may also pay or reimburse the Managing Member and others for past and future costs and expenses incurred by the Managing Member and advanced on behalf of the Company or for direct loans which the Managing Member has made to the Company, including ongoing legal, accounting and bookkeeping fees and expenses.

***Indemnification***

Indemnification is authorized by the Company to directors, officers or controlling persons acting in their professional capacity pursuant to Georgia law. Indemnification includes expenses such as attorney's fees and, in certain circumstances, judgments, fines and settlement amounts actually paid or incurred in connection with actual or threatened actions, suits or proceedings involving such person, except in certain circumstances



where a person is adjudged to be guilty of gross negligence or willful misconduct, unless a court of competent jurisdiction determines that such indemnification is fair and reasonable under the circumstances.

ITEM SEVEN

CAPITALIZATION AND OWNERSHIP

**Capitalization**

The Company has issued the following outstanding Securities:

Type of security	Class A LLC/Membership Interests
Amount outstanding	1,471,702
Voting Rights	Full voting rights.
Anti-Dilution Rights	No anti-dilution rights
How this Security may limit, dilute or qualify the Notes/Bonds issued pursuant this Offering	The issuance of additional interests would dilute the interests of all owners, including Noteholders after conversion
Percentage ownership of the Company by the holders of such Securities (assuming conversion prior to the Offering if convertible securities).	100.0%

The Company has the following debt outstanding:

Type of debt	Convertible Notes
Amount outstanding	\$2,195,626
Maturity date	Varies
Interest rate	Varies

ITEM EIGHT

CONFLICTS OF INTEREST

The Managing Member will have, subject to its fiduciary responsibility to the Company and the Members holders of the Notes (See “Fiduciary Responsibility of the Managing

Member”) and certain provisions of the Company’s Operating Agreement (see Exhibit “B”), substantial and largely unsupervised control over the fees, transactions and business of the Company. This presents opportunities for the Managing Member and the Company’s Management to conduct transactions or other business with or on behalf of the Company that would be advantageous to them or disadvantageous to the Company. Some of the more potentially significant of those potential conflicts of interest and factors that might ameliorate against those potential conflicts are set forth below in this Item Four.

Differing Financial Incentives. The Managing Member may receive its compensation and distributions from the Company at different times and on a different basis than the Members. For example, the Managing Member may receive a salary and reimbursement of its expenses, payment of which may conflict with payment of amounts due under the Notes and distributions to Members. In addition, the fact that the Managing Member holds a controlling interest in the Company may incentive him to take a different approach to management decisions than Note holders or Members might. Ameliorating these various potential conflicts of interest which are created by the different ways in which the Managing Member and the Members receive benefits from the Company, are the Managing Member’s fiduciary duty to the Company and the Members (See “Fiduciary Responsibility of the Managing Member”) and the Managing Member’s desire to establish by its management of the Company a favorable track record to assist future activities.

Expense Reimbursement. The Company, at various times and in various circumstances, will reimburse the Managing Member for all expenses which it incurs for the benefit of the Company which are not the responsibility of the Managing Member to pay under the Operating Agreement. (See “Compensation and Fees to the Managing Member and the Executive Officers.”) Upon the investors’ subscriptions being accepted, the Company will use those funds in its operation of its business and will reimburse the Managing Member for certain expenses that the Managing Member and its affiliates have incurred to date. After the proceeds of the offering are distributed, the Company will reimburse the Managing Member for all expenses that it incurs for the benefit of the Company. No independent third party will review those reimbursements to assure that they shall have been incurred in the best interests of the Company.

## ITEM NINE

### FIDUCIARY RESPONSIBILITY OF THE MANAGING MEMBER

Accountability. The Managing Member is accountable to the Company and to the Members as a fiduciary and consequently must exercise good faith and integrity in handling Company affairs. This is a rapidly developing and changing area of the law, and Members who have questions concerning the duties of the Managing Member should consult with their counsel.

Georgia law provides that the Operating Agreement of a limited liability company may provide for the Managing Member to be significantly indemnified and held harmless by the Company for acts or failures to act that might otherwise be found to be breaches of the Managing Member's fiduciary duty to the Company and its Members. The ability of the Company to indemnify and hold harmless its Managing Member is limited in that no such provision can eliminate or limit the liability of a partner for intentional misconduct or a knowing violation of law or for any transaction for which the Partner received a personal benefit in violation or breach of any provision of the Operating Agreement.

Limitations of Liability. The Managing Member shall not be liable to the Company, the Special Member or the Members for any act or omission performed or omitted by the Managing Member in good faith and pursuant to the authority granted to it in the Operating Agreement, except in the case of gross misconduct or willful misconduct by the Managing Member. The Managing Member is entitled to rely upon the advice of counsel and accountants, and shall not be liable for damages to the Company, the Special Member or the Members for any act or omission occurring as a result of such advice.

Indemnification. Subject to the limitations imposed by Georgia law, the Operating Agreement provides that the Company shall indemnify and hold harmless the Managing Member from any loss or damage, including attorneys' fees, for any act performed by the Managing Member in good faith on behalf of the Company's project or in furtherance of its interests, excluding acts opposed to the best interests of the Company or which are a result of gross negligence or will or wanton conduct by the Managing Member.

## ITEM TEN

### PRIOR PERFORMANCE OF THE MANAGING MEMBER

The Managing Member's only experience in offering securities is with the Company in connection with its previous sales of securities. The background of the Managing Member is described in Management.

The Company will be entirely dependent upon persons and companies with experience in the various areas needed to successfully complete the offering and the Business and to operate the Business once it is completed. (See "The Business" and "Management.")

## ITEM ELEVEN

### DESCRIPTION OF THE NOTES

Summary of Note Terms. Convertible, unsecured promissory notes issued by the Company in the original principal amount of \$1,000,000 (the "Notes") are being offered

for sale by this Private Placement Memorandum. The minimum purchase, with possible exceptions, will be \$10,000.

The Notes will accrue interest at the rate of 8% annually until their Maturity Date, which will be three years after the date on which the respective Note holder's subscription is accepted by the Company. Interest shall be paid at maturity or credited and added to the principal of the Note at conversion.

Upon a qualified financing exceeding \$2,000,000 prior to the Maturity Date of Note, or thereafter prior to maturity, the Note Holder will have the opportunity to convert the principal balance of his Note together with unpaid accrued interest to Units of Membership Interest in the Company at a cost per Unit equal to 25% less than the price per Unit in such financing. A right of conversion shall likewise exist in the event of a sale of a majority interest of the Company's equity, as further described in the Note.

Alternatively, at maturity or an earlier sale as described in the Note, a Noteholder may elect to receive payment in full of the principal amount of the Note and any unpaid accrued interest.

The form of Note which will be given to investors is attached hereto as Exhibit "C".

Becoming a Noteholder. Upon acceptance by the Company of a prospective investor's subscription agreement, the investor will become a Note holder of the Company. Upon acceptance by the Company of a Subscription Agreement, the investor will have the rights and privileges of a Note holder as established by the terms of the Convertible Promissory Note. Subscription Agreements are not binding on the Company until accepted by the Company, which reserves the right to reject, in whole or in part, in its sole and absolute discretion, any subscription. If the Company rejects all or a portion of any subscription, the applicable prospective Purchaser's funds will be returned without interest or deduction.

Restrictions on Resale or Transfer Required by Law. The Notes are being offered and sold without registration under the (federal) Securities Act of 1933, the Georgia Securities Act or the securities law of any other state in which the Notes may be sold. As a result, the Notes, when issued, will have the following significant restrictions on transfer required to perfect and document exemptions from registration of sales of the Notes under federal and state securities laws:

(a) No Notes or interest therein may be offered for sale, sold, pledged, transferred, or otherwise disposed of except pursuant to an effective registration (which is not expected to occur) or pursuant to an exemption from registration;

(b) To insure compliance with this legal restriction, no Unit or any interest therein may be transferred 1) until the holder thereof provides evidence satisfactory to the Managing Member (which, in the discretion of the Managing Member, may include an opinion of counsel satisfactory to the Managing Member) that the

securities are registered under the act or are exempt from registration, and that such offer, sale, pledge, transfer, or other disposition will not violate applicable federal or state securities laws; and 2) unless the Company agrees to such transfer. The transfer agent, if not the Company, will be so instructed.

Additional Restrictions of Resale or Transfer of Membership imposed by the Operating Agreement. Upon conversion, the Holder will become subject to restrictions upon transfer of membership Units imposed by the Company's Operating Agreement,

## ITEM TWELVE

### PLAN OF DISTRIBUTION

Investor Qualifications. Because of the risks involved in a purchase of the Notes and the lack of liquidity of such an investment, an investment in the Notes is suitable for, and the requirements of SEC Rule 506(c), under which these Notes are being offered, the Notes will only be sold to those who demonstrate to the Company that they are Accredited Investors as defined herein. The Company will require each person who wishes to invest to submit written proof in a form satisfactory to the Company that he meets one or more of the suitability requirements established for this offering. The Company may require that any potential investor's status as an accredited investor be verified by a third party designated by the Company.

An investor who satisfactorily demonstrates that he meets the qualifications set forth in this Memorandum may subscribe for Notes as described below. The Company reserves the right, in the Company's sole discretion, to decline to accept any proffered Subscription Agreement. An investor will become a Member of the Company only upon his Subscription Agreement being accepted in writing by the Managing Member and his Note being issued.

Salespersons and Strategies. The Notes will be offered and sold on a best efforts basis by the Company by the Managing Member and executive officers, who will receive no commission or other remuneration related to the sale of securities.

Minimum Investment. The minimum purchase amount will be \$10,000. A person may purchase, in addition to this minimum, such additional Notes as he is qualified to purchase and as may be offered to him by the Company in its discretion. These minimum purchase requirements may be waived in specific instances by action of the Managing Member. Waivers are not expected to be granted except in exceptional cases where a prospective Investor's association with the Company would be beneficial to the Company.

No Escrow. Upon the sale and acceptance of the initial Note in the amount of \$10,000, funds will be available to the Company for its use according to the terms hereof.

Exemptions from Registration. In reliance on various exemptions from registration, the Notes are not being registered for sale with the United States Securities and Exchange Commission (“SEC”) or the Georgia Securities Commissioner or any securities regulatory agency of any other state in which the Notes may be offered or sold. The Company is principally relying upon the exemption from registration for sales to one or more Accredited Investors that is provided in Rule 506(c) of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933 (the “1933 Act”).

The Notes are also not being registered under the securities laws of Georgia or any other state in or from which they may be sold in reliance upon the preemption of state registration laws as set forth in Section 18(b)(4)(C) of the 1933 Act. In order to secure relevant state exemptions, it may be necessary for the Company to make certain filings with the SEC and certain state securities agencies.

Termination of Placement. This offering is scheduled to terminate on April 30, 2024, but may be terminated sooner or extended one or more times by action of the Managing Member upon such terms and conditions and with such changes as the Managing Member may determine from time to time to be in the best interest of the Company.

Manner of Subscription. In order to subscribe for a Note, prospective Investors must a) execute a Subscription Agreement, in the form attached hereto as Exhibit “D”; b) execute an Investor Qualification Questionnaire (“IQQ”) in the form attached hereto as Exhibit “E”; and c) prepare a check for the amount of the desired Note amount payable to “Nightwise, LLC.” These items must be delivered to the Company, which will review the Subscription Agreement and IQQ and make a determination as to whether the Investor’s subscription will be accepted. Upon acceptance, the Company will deposit the check for the Company’s use, and issue the Note in the correct amount.

## ITEM THIRTEEN

### FINANCIAL STATEMENTS

Attached hereto as Exhibit “A” are a Balance Sheet and Profit Loss Statement of the Company reflecting the financial condition and operations of the Company as of December 31, 2022. These financial reports have not been reviewed (or audited). These financial statements were prepared by the Managing Member for use in this Private Placement Memorandum. The Managing Member represents that these statements fairly represent the financial condition and financial results of operations of the Company’s operations, as of the dates indicated thereon, to the best of its knowledge and belief.

**Exhibit "A"**

**NightWise, LLC**

**Financial Statements**

**As of and for the Year Ended December 31, 2022**

# NightWise, LLC

## Profit and Loss - Detail

As of Date:

	<b>Year Ended</b>
	<b>12/31/2022</b>
<b>Revenue</b>	
Total Revenue - Products	28,217
Total Revenue - Shipping	1,091
Total Revenue	29,308
<b>Cost of Revenue</b>	
Total Cost of Products Revenue	8,162
Total Cost of Revenue	8,162
<b>Gross Profit</b>	<b>21,145</b>
<b>Operating Expenses</b>	
General and Administrative Expenses	
Total Due and Subscriptions	11,946
Total Education	235
Total Finance Charges	814
Total Legal and Accounting	120,019
Total Travel, Meals and Entertainment	929
Total Office Supplies	227
Total Postage and Delivery	824
Total General and Administrative Expenses	134,995
Total Marketing and Advertising Expenses	16,118
Total Depreciation and Amortization Expense	8,309
Total Facilities	17,884
Total Rent	1,950
Total Utilities	2,198
Operating and Maintenance Expenses	
Total Automobile Expenses	455
Total Miscellaneous Expense	93
Total Professional Services	100,355
Total Shipping	484
Total Software and Maintenance	37,918
Total Other Operating Expense	171,679
Total Operating and Maintenance Expenses	310,983
Total Insurance	16,692
<b>Total Operating Expenses</b>	<b>509,128</b>
<b>Other Income (Expense)</b>	
Total Interest Expenses	(106,104)
Total Other Expenses	(873)
<b>Total Other Income (Expense)</b>	<b>(106,976)</b>
<b>Net Income (Loss)</b>	<b>(594,959)</b>



## NightWise, LLC

### Balance Sheet

	<u>As of</u> <u>12/31/2022</u>	<u>As of</u> <u>12/31/2021</u>
<b>Assets</b>		
Current Assets		
Total Cash and Cash Equivalents	11,128	3,302
Total Inventory	222,951	255,416
Total Prepaid Expenses	4,159	12,295
Total Current Assets	<u>238,238</u>	<u>271,013</u>
Intangible Assets, Net		
Total Patents and Trademarks	27,495	27,495
Total Amortization	0	0
Total Intangible Assets, Net	<u>27,495</u>	<u>27,495</u>
<b>Total Assets</b>	<b><u>\$ 265,733</u></b>	<b><u>\$ 298,508</u></b>
<b>Liabilities and Equity</b>		
Liabilities		
Current Liabilities		
Total Accounts Payable	549,422	352,358
Total Interest Payable	301,286	186,286
Total Accrued Liabilities	301,286	186,286
Total Note Payable Other - Current Portion	2,071	19,507
Loans Payable		
Note Payable - Current - Ascentium #1	1,150	6,644
Note Payable - Current Related Parties	87,495	72,783
Total Loans Payable	<u>88,645</u>	<u>79,427</u>
Convertible Notes Payable- Current	141,166	100,000
Total Current Liabilities	<u>1,082,590</u>	<u>737,578</u>
Long Term Liabilities		
Convertible Notes Payable - Long Term	1,524,497	1,321,325
Total Convertible Notes Payable Long Term	<u>1,524,497</u>	<u>1,321,325</u>
Total Long Term Liabilities	<u>1,524,497</u>	<u>1,321,325</u>
<b>Total Liabilities</b>	<b><u>2,607,087</u></b>	<b><u>2,058,903</u></b>
Stockholders Equity		
Total Stockholders Equity	<u>(2,341,354)</u>	<u>(1,760,395)</u>
<b>Total Liabilities and Equity</b>	<b><u>\$ 265,733</u></b>	<b><u>\$ 298,508</u></b>

## Exhibit "B"

### LIMITED LIABILITY COMPANY AGREEMENT OF HARMONIX, LLC (AS AMENDED AND RESTATED)

This Limited Liability Company Agreement (the "Agreement") of Harmonix, LLC (the "**Company**"), a limited liability company organized under the laws of the State of Georgia, as entered into by and among the Persons listed on Exhibit "A" attached hereto (individually, a "**Member**" and collectively, the "**Members**"), and as amended on February 15, 2018, pursuant to the provisions of the Agreement as it existed prior to such amendment.

#### ARTICLE I

#### DEFINITIONS

For purposes of this Agreement, the following terms not defined elsewhere have the following meanings:

**"Act"** means the Georgia Limited Liability Company Act, as amended from time to time.

**"Affiliate"** means, with respect to any Member or other Person, the spouse, lineal descendant, ancestor or sibling (whether by blood or adoption) of such Member or other Person (each, a "Family Member") or a trust for the benefit of such Member or other Person or for the benefit of a Family Member of such Member or other Person, or any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Member or other Person. For the purpose of this definition, the term "control" means, with respect to any Person, the beneficial ownership of 50% or more of the equity or voting interests in such Person.

**"Agreed Value"** means, with respect to any Membership Interest, the product of (a) the Percentage Interest representing such Membership Interest, multiplied by (b) the value of the Company, as determined by the Manager at each annual meeting of the Manager, or, if the Manager has not, within the 12 months prior to the event giving rise to a determination of Agreed Value, determined the Agreed Value of the Company, by an independent appraiser mutually agreed upon by the Company and the Transferor, whose determination shall be final and binding upon the parties. Agreed Value shall be determined without regard to minority interest discount or discount for illiquidity of such Membership Interest. The cost of any independent appraisal shall be borne equally by the Company and the Transferor.

**"Agreement"** means this Limited Liability Company Agreement.

**"Bankruptcy"** means an adjudication of bankruptcy or the entry of an order for relief or the filing of a voluntary case or petition under the federal bankruptcy law or any state or local bankruptcy law, and, in addition, any other status constituting bankruptcy within the meaning of the Act.

**"Capital Account"** of a Member on any given date means the capital contribution to the Company by the Member as adjusted from time to time pursuant to Section 7.2.

**"Code"** means the Internal Revenue Code of 1986, as it may be amended or replaced from time to time.

“**Distributable Cash**” has the meaning set forth in Section 3.3.

“**Manager**” has the meaning set forth in Section 5.1.

“**Membership Interest**” refers to a Member’s right, title and interest in the Company and includes a Member’s rights to share in Profits and Losses, receive distributions, and vote on, consent to or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

“**Percentage Interest**” means the percentage representing each Member’s Membership Interest, as set forth on Exhibit "A."

“**Person**” means any person, firm, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, custodian, nominee, joint venture, foreign business organization or other individual or entity.

“**Profits**” and “**Losses**” means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined by the Company’s accountants in accordance with Section 703(a) of the Code.

“**Regulations**” means the proposed, final or temporary regulations promulgated from time to time by the United States Treasury Department under the Code.

“**Required Records**” has the meaning set forth in Section 7.1.

“**Transferor**” has the meaning set forth in Section 9.2(c).

## ARTICLE II

### FORMATION OF LIMITED LIABILITY COMPANY

**Section 2.1 Formation.** The Company was formed as a limited liability company under the laws of the State of Delaware on January 19, 2011 by the filing of the Certificate of Formation with the Office of the Secretary of State. The Company was converted to a Georgia limited liability company on February 4, 2018.

**Section 2.2 Name.** The name of the Company is “Harmonix, LLC”, and all business of the Company shall be conducted in such name.

**Section 2.3 Purpose.** The purpose of the Company is to market, distribute and sell a brand of products designed to promote sleep and to engage in any other lawful business permitted by the Act or the laws of any jurisdiction in which the Company may conduct its business. The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the purposes of the Company.

**Section 2.4 Office.** The principal place of business of the Company is 10895 Brunson Drive, Duluth, Georgia 30097, or such other principal place of business as the Manager may from time to time determine. The Company may have, in addition to such office, such other offices and places of business at such locations, both within and outside of the State of Georgia, as the Manager may from time to time determine.

**Section 2.5 Registered Office and Registered Agent.** The Company’s registered office is at 10895 Brunson Drive, Duluth, Georgia 30097, and the name of its registered agent at

such address is Daniel E. Rinaldi. The registered office and registered agent of the Company may be changed from time to time in the Manager's discretion by filing the necessary documents pursuant to the Act.

## ARTICLE III

### MEMBERS AND MEMBERSHIP INTERESTS

**Section 3.1 Contributions and Membership Interests.** The Membership Interests owned by each Member and his Percentage Interest are set forth in Exhibit "A." No Member shall be entitled to demand or receive the return of his capital contribution or any of the Company's assets. As additional Members are added, or in the event a Member ceases to be a Member, the manager may modify Exhibit "A" to reflect such changes.

**Section 3.2 Allocation of Profits and Losses.**

(a) Except as otherwise provided herein, Profits and Losses shall be allocated to the Members in accordance with their respective Percentage Interests.

(b) Gain from the sale, exchange or other disposition, whether by way of condemnation, eminent domain, receipt of casualty insurance proceeds (other than business interruption proceeds) or otherwise, of all or substantially all of the assets of the Company shall be allocated to produce positive Capital Account balances for the Members in the following order and to the following extent:

(1) First, to the Members in proportion to and to the extent of the deficit balances, if any, in their Capital Accounts; and

(2) Thereafter, the balance, if any, to the Members in accordance with their respective Percentage Interests.

(c) The allocation provisions herein are intended to comply with applicable provisions of the Code and the Regulations, including Regulations promulgated under Section 704 of the Code, and shall be interpreted and applied in a manner consistent with such statutory and regulatory provisions.

(d) For any Membership Interest not owned for the entire fiscal year or other period, Profits and Losses for such fiscal year or other period shall be prorated based upon the proportion that the number of days such Membership Interest is owned during such period bears to the total number of days constituting such period.

**Section 3.3 Distributions.**

(a) From time to time, but no less frequently than once a year, the Manager shall determine, in his reasonable judgment, to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, but not limited to, for operating expenses, debt service (including, without limiting the generality of the foregoing, the repayment of any loans from a Member or his Affiliate), and a reasonable contingency reserve ("**Distributable Cash**") and shall cause the Company to distribute any Distributable Cash to the Members in accordance with their respective Percentage Interests.

(b) Notwithstanding Section 3.3(a), the Manager shall cause the Company to make annual distributions from the earnings of the Company either during the fiscal year or as soon as practicable following the end of such fiscal year in an amount equal to the aggregate federal, state and local income tax liability as such Member would have incurred as a result of such Member's ownership of his Membership Interest calculated as if such Member were taxable at rates under applicable federal, state and local income tax laws applicable to the highest income brackets with respect to natural persons in such jurisdictions in which the Members reside calculated pursuant to the assumption that each Member shall be taxed at the maximum federal, state and local tax rate. Any such distribution shall be made in the same proportion as the Profits and Losses related to such distribution were allocated pursuant to Section 3.2.

**Section 3.4 Company Opportunities.** So long as a Member is a Member of the Company, such Member and his Affiliates (a) shall not engage in or possess any interest in any Person (other than another Member) engaged in a business that is competitive with that of the Company (including the provision of operations or consulting services); (b) shall be obligated to present to the Company any opportunity to engage in or possess an interest in any Person engaged in a business that is competitive with that of the Company; and (c) shall not have the right to take for his own account (individually or as a partner, shareholder, fiduciary or otherwise) or to recommend to others an opportunity to engage in a business that is competitive with that of the Company unless and until he has received the written consent of all of the other Members.

**Section 3.5 Liability of Members.** No Member shall be liable for the debts, liabilities, contracts or other obligations of the Company except to the extent of any unpaid capital contributions such Member has agreed to make to the Company. No Member shall be required to make any loans to the Company, except as may be agreed between a Member and the Company, with approval of the Manager. The Company shall indemnify and hold harmless a Member if such Member becomes liable, notwithstanding the first sentence of this Section 3.5, for any debt, liability, contract or other obligation of the Company, except to the extent expressly provided in the first sentence of this Section 3.5.

**Section 3.6 Rights of Members.** If a Member ceases to be a Member for any reason, including, without limitation, as a result of death, dissolution or Bankruptcy, such Member or its personal representative or estate, as applicable, shall be entitled to receive distributions on account of its Membership Interest, and, except as expressly provided herein, such Member and its personal representative or estate shall have no other rights with respect to the Company, including, without limitation, the right to receive the fair value of its Membership Interest and the right to vote on any matter reserved to the Members.

## ARTICLE IV

### MEETINGS OF MEMBERS

**Section 4.1 Meetings.** A meeting of the Members may be called for any purpose or purposes, unless otherwise prescribed by statute, by the Manager. Only business within the purpose or purposes described in the notice of meeting of Members may be conducted at such meeting.

**Section 4.2 Place of Meetings.** Meetings of Members shall be held at such places, within or outside of the State of Georgia, as may from time to time be fixed by the Manager or as shall be specified or fixed in the respective notices thereof.

**Section 4.3 Notice of Meetings.** Written or printed notice stating the place, day and hour of each meeting of the Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than two nor more than 45 days before the date of the meeting, either personally or by mail, telegram, express courier or telefax or similar communication, by or at the direction of the Person(s) calling the meeting, to each Member entitled to vote at the meeting.

**Section 4.4 Quorum of and Action by Members.** The presence of a majority of the Percentage Interests of the Members, represented in person or by proxy, shall constitute a quorum at each meeting of Members for the transaction of business, except as otherwise provided by the Act. With respect to any matter, the vote of a majority of the Percentage Interests represented at a meeting in person or by proxy shall be required to constitute an act of the Members. The Members represented in person or by proxy at a meeting of Members at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of a majority of the Percentage Interests represented in person or by proxy at that meeting. At any such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally convened.

**Section 4.5 Voting by Members.** Except as otherwise provided herein, all actions and votes of the Members shall be by the majority of the Percentage Interests and not on a per capita basis. At any meeting of the Members, every Member having the right to vote shall be entitled to vote either in person or by proxy executed in writing by such Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member, shall be treated as an execution in writing for purposes of this Section 4.5. No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Each proxy shall be delivered to the Manager prior to or at the time of the meeting.

**Section 4.6 Action Without a Meeting; Telephone Meetings.** Any action required by the Act or this Agreement to be taken at any annual or special meeting of the Members, or any action which may be taken at any annual or special meeting of Members, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the Member or Members holding not less than the minimum Percentage Interests that would be necessary to authorize or take such action at a meeting at which all of the Members were present. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section 4.6. Subject to the provisions of applicable law and this Agreement regarding notice of meetings, Members may participate in and hold a meeting by using conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a telephone meeting pursuant to this Section 4.6 shall constitute presence in person at such meeting, except when a person participates in the meeting

for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

## ARTICLE V

### MANAGEMENT

**Section 5.1 Management of the Company.** The powers of the Company shall be exercised by and under the authority of, and the business and affairs of the Company shall be managed under the direction of the **Manager**. Except as specifically authorized by the Manager, no Member, in his capacity as such, shall have the authority to bind the Company.

**Section 5.2 Powers of the Manager.** Except as otherwise provided herein, the Manager (acting on behalf of the Company) shall have the right, power and authority in the management of the business and affairs of the Company to do or cause to be done any and all acts, at the expense of the Company, deemed by the Manager to be necessary or appropriate to effectuate the business, purpose and affairs of the Company. The power and authority of the Manager shall include, without limitation, the power and authority on behalf and at the expense of the Company to do the following:

(a) Deal with the assets of the Company for all proper Company purposes and authorize the execution, delivery, performance and carrying out of any and all contracts and agreements for such purposes.

(b) Acquire for Company purposes, by purchase, lease or otherwise, any property or assets of any kind and character, and take title thereto in the name of the Company or in the name of any Person, as nominee, to hold for the account of the Company.

(c) Apply proceeds of any sale, exchange, or mortgage, pledge or other disposition of Company assets to payment of liabilities of the Company and/or pay, collect, compromise, arbitrate or otherwise adjust any and all other claims or demands of or against the Company or hold such proceeds against the payment of contingent liabilities, known or unknown.

(d) Purchase and maintain, at the expense of the Company, liability, indemnity and any other insurance (including, without limitation, errors and omissions insurance and insurance to cover the obligations of the Company under Article X hereof), sufficient to protect the Company, the Managers, the officers or any other Person, from those liabilities and hazards which may be insured against in the conduct of the business and in the management of the business and affairs of the Company.

(e) Borrow money or obtain credit in such amounts, on such terms and conditions, at such rates of interest and upon such other terms and conditions as the Manager deems appropriate, from banks, other lending institutions or any other Person, including the Members, for any purpose of the Company, and in connection with such loans, pledge, assign or otherwise encumber or alienate any or all of the Company assets, including any income therefrom, to secure or provide for the repayment thereof. As between any lender and the Company, it shall be conclusively presumed that the proceeds of such loans are to be and will be used for the purposes authorized herein and that the Manager has the full power and authority to borrow such money and to obtain such credit.

(f) Assume obligations, enter into contracts, including contracts of guaranty or suretyship, incur liabilities, lend money and otherwise use the credit of the Company to secure any of the obligations, contracts or liabilities of the Company, by mortgage, pledge or other encumbrance of all and any part of the property and income of the Company.

(g) Make, execute, assign and acknowledge on behalf of the Company any and all documents or instruments of any kind which the Manager may deem necessary or appropriate in carrying out the purposes and business of the Company, including, without limitation, powers of attorney, indemnification agreements, contracts of sale, deeds, options, loan obligations, mortgages, deeds of trust, notes, documents or instruments of any kind or character, and amendments thereto, any of which may contain confessions of judgment against the Company. Any person dealing with the Manager shall not be required to determine or inquire into the authority or power of the Manager to bind the Company or to execute, acknowledge or deliver any and all documents in connection therewith.

(h) Invest funds of the Company in interest-bearing accounts and investments including, without limitation, obligations of the federal, state and local governments and their agencies, mutual funds (including money market funds), time deposits, commercial paper and certificates of deposit of commercial banks, savings banks or savings and loan associations.

(i) Make any election on behalf of the Company as is or may be permitted under the Code or under the taxing statute or rule of any state, local, foreign, or other jurisdiction, and to supervise the preparation and filing of all tax and information returns which the Company may be required to file.

(j) Request, demand, collect and receive all payments due the Company, institute legal proceedings in the name of the Company for the collection thereof, settle or compromise all such legal proceedings and any other disputes with respect thereto, and incur such expenses in connection therewith as the Manager shall determine to be necessary or appropriate, which expenses may include the costs of counsel for any such matter.

(k) Employ and engage agents, employees, advisers, consultants and counsel (including any custodian, investment adviser, accountant, attorney, corporate fiduciary, bank or other financial institution or any other agents, employees or Persons who may serve in such capacity for the Manager) to carry out any activities which the Manager is authorized or required to carry out or conduct under this Agreement, including, without limitation, a Person who may be engaged to undertake some or all of the management, financial accounting and record keeping or other duties of the Manager, to indemnify such Persons against liabilities incurred by them in acting in such capacities on behalf of the Company, and to rely on the advice given by such Persons, it being agreed and understood that the Manager shall not be responsible for any acts or omissions of any such Persons and shall assume no obligations in connection therewith other than the obligation to use due care in the selection thereof.

(l) Qualify the Company to do business in any state, territory, dependency or foreign country.

(m) In general, exercise in full all of the powers of the Company, and do any and all acts and conduct all proceedings and execute all rights and privileges, contracts and agreements of any kind whatsoever, although not specifically mentioned in this Agreement, that



the Manager, in his sole discretion, may deem necessary or appropriate to the conduct of the business and affairs of the Company or to carry out the purposes of the Company. The expression of any power or authority of the Manager in this Agreement shall not in any way limit or exclude any other power or authority which is not specifically or expressly set forth in this Agreement.

**Section 5.3 Powers Reserved by the Members.** The Manager shall not have the right, power or authority to do or cause to be done any of the following acts without the approval of the Members holding at least a majority of the Percentage Interests at a meeting called expressly for such purpose:

(a) Engage in or consummate any merger, consolidation, business combination of any type or recapitalization, or any sale or pledge of all or substantially all of the assets of the Company.

(b) File a petition under the federal or any state bankruptcy act or any other insolvency law, or admit in writing its bankruptcy, insolvency or general inability to pay its debts.

(c) Perform any act which would cause the Company to be deemed an association taxable as a corporation for federal income tax purposes.

(d) Except as otherwise provided in Section 10.2, amend, alter or repeal this Agreement; provided, however, that the Manager may, without the consent of the Members, amend any provision of this Agreement or the Certificate of Formation, and authorize an appropriate officer of the Company to execute, swear to, acknowledge and record all documents required or desirable in connection therewith, solely to reflect the following:

(1) The admission, substitution, termination or withdrawal of a Member in accordance with this Agreement.

(2) A change that is necessary to qualify the Company as a limited liability company in which the Members have limited liability under the laws of any state or that is necessary or advisable in the discretion of the Manager to ensure that the Company will not be treated as an association taxable as a corporation for federal income tax purposes.

(3) A change that is: (i) of an inconsequential nature and does not adversely affect the Members in any material respect; (ii) necessary or desirable to cure any ambiguity, to correct or supplement any provision herein that would be inconsistent with any other provision herein, or to make any other provision with respect to any other matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement; (iii) necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, order or ruling or regulation of any federal or state agency or contained in any federal or state statute; or (iv) otherwise expressly required, permitted or contemplated by this Agreement.

**Section 5.4** [RESERVED]

**Section 5.5 Initial Manager.** A Manager may but need not also be a Member. Until changed in accordance with these Bylaws, the Manager shall be Daniel E. Rinaldi.

**Section 5.6 Term of Service.** The Manager shall serve as Manager until a successor shall have been selected by the Members and qualified or until his earlier death, resignation, retirement, disqualification or removal in accordance with this Agreement.

**Section 5.7 Removal; Filling of Vacancies.** The Manager may be removed, either for or without cause, at any meeting of Members called expressly for that purpose by the vote of three-fourths of the Percentage Interests of the Company. In the event of the Manager death, resignation, retirement, disqualification or removal from office of the Manager or otherwise, a new Manager shall be selected at any meeting of Members called for such purpose by a majority vote of the Percentage Interests.

**Section 5.8 Place of Meetings.** Meetings of the Manager members may be held either within or outside the State of Georgia.

**Section 5.9 Transactions With Interested Persons.** No transaction between the Company and one or more of its Members, its Manager or its officers or between the Company and any other business entity in which one or more of its Members, its Manager or its officers have an interest shall be void or voidable solely for this reason, or solely because the Manager, Member or officer is present at or participates in a meeting of the Managermembers which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if (a) the material facts as to the transaction are disclosed or are known to the Manager or the Members entitled to vote thereon and the contract or transaction is specifically approved in good faith by the Manager or majority vote of the Percentage Interests of disinterested Members or (b) the transaction is fair as to the Company as of the time it is authorized, approved or ratified by the Manager or the Members.

**Section 5.10 Compensation and Reimbursement of a Manager.** The compensation, if any, of a Manager shall be fixed from time to time by the Manager. In addition to such compensation, the Manager shall be entitled to reimbursement for reasonable expenses incurred in managing the Company.

**Section 5.11 Time Devoted to Company.** The Manager shall devote such time to Company business as he deems necessary to manage and supervise Company business and affairs in an efficient manner; but nothing in this Agreement shall preclude the employment of any agent, third party or affiliate to manage or provide other services with respect to the Company's assets or business as the Manager shall determine.

**Section 5.12 Liability of a Manager.** No Manager shall be liable for the debts, liabilities, contracts or other obligations of the Company; provided, however, that each Manager shall be liable for any debts, liabilities, contracts or other obligations of the Company incurred or agreed to by such Manager without authorization and in violation of Section 5.4 of this Agreement. No Manager and no officer, member, employee, agent, representative or Affiliate of a Manager shall have any liability to the Company or any Member of any loss, cost or expense suffered or incurred by the Company or any Member that arises out of or relates to any action or inaction of any of such Manager or other Person if such action or omission to act was undertaken in good faith upon a determination that such course of conduct did not constitute gross negligence or willful misconduct on the part of such Manager or other Person.

## ARTICLE VI

### OFFICERS

**Section 6.1 Officers.** The Manager may designate one or more individuals (who may or may not be the Manager or a Member) to serve as officers of the Company. The Company shall have such officers as the Manager may from time to time determine, which officers may (but need not) include a Chairman, a President, one or more Vice Presidents (and in case of each such Vice President, with such descriptive title, if any, as the Manager shall deem appropriate), a Secretary, an Assistant Secretary and a Treasurer. Any two or more offices may be held by the same person.

**Section 6.2 Compensation.** The compensation, if any, of all officers of the Company shall be fixed from time to time by the Manager.

**Section 6.3 Term of Office; Removal; Filling of Vacancies.** Each officer of the Company shall hold office until his successor is chosen and qualified in his stead or until his earlier death, resignation, retirement disqualification or removal from office. Any officer designated by the Manager may be removed at any time by the Manager whenever in his judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Designation of an officer shall not of itself create contract rights. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Manager.

**Section 6.4 [RESERVED]**

**Section 6.5 President.** The President, if one is designated by the Manager, shall be the chief executive officer of the Company and shall have general supervision of the affairs of the Company. The President shall sign, execute and acknowledge, in the name of the Company, deeds, mortgages, bonds, contracts or other instruments, authorized by the Manager, except in cases where the signing and execution thereof shall be expressly delegated by the Manager, or by this Agreement, to some other officer or agent of the Company; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be determined by the Manager.

**Section 6.6 Vice Presidents.** Each Vice President that is designated by the Manager shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Manager.

**Section 6.7 Secretary.** The Secretary, if one is designated by the Manager, shall keep and account for the records of the Company and, in general, perform all duties incident to the office of Secretary and such other duties and services as shall from time to time be prescribed or delegated by the Manager or the President.

**Section 6.8 Assistant Secretary.** The Assistant Secretary, if one is designated by the Manager, shall generally assist the Secretary.

**Section 6.9 Treasurer.** The Treasurer, if one is designated by the Manager, shall be the chief accounting and financial officer of the Company and shall have active control of and shall be responsible for all matters pertaining to the accounts and finances of the Company.

**Section 6.10 Additional Powers and Duties.** In addition to the foregoing especially enumerated duties, services and powers, the several officers of the Company shall perform such other duties and services and exercise such further powers as may be provided by statute, the Certificate of Formation or this Agreement, or as the Manager may from time to time determine or as may be assigned to them by any competent superior officer. In addition to the designation of officers and the enumeration of their respective duties, services and powers, the Manager may grant powers of attorney to individuals to act as agents for or on behalf of the Company, to do any act which would be binding on the Company, to incur any expenditures on behalf of or for the Company, or to execute, deliver and perform any agreements, acts, transactions or other matters on behalf of the Company. Such powers of attorney may be revoked or modified as deemed necessary by the Manager.

## ARTICLE VII

### ACCOUNTING AND TAX MATTERS; REPORTS; BANKING

**Section 7.1 Books and Records.** The Manager shall keep or cause to be kept books of account for the Company in accordance with generally accepted accounting principles consistently applied in accordance with the terms of this Agreement and the Act. The Manager shall cause the following records to be kept at the Company's registered office (the "**Required Records**").

(a) A current list of the full names and last known addresses of all of the Members and Manager.

(b) A copy of this Agreement and the Certificate of Formation of the Company (however denominated) and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any certificate was executed.

(c) Promptly after becoming available, copies of the Company's federal, state and local income tax returns and reports, if any, for each year.

(d) True and full information regarding the status of the business and financial condition of the Company.

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member.

Any Member may inspect the Required Records during ordinary business hours upon reasonable request for a proper business purpose and, in furtherance thereof, may copy the Required Records at such time at the Member's expense.

**Section 7.2 Capital Accounts.** An individual Capital Account shall be established and maintained by the Company for each Member in accordance with the applicable provisions of the Code and the Regulations, including Regulations §1.704-1(b)(2)(iv). The Manager is authorized to modify the manner in which the Capital Accounts are maintained if the Manager determines that such modification (a) is required or prudent to comply with the Regulations and

(b) is not likely to have a material effect on the amounts distributable to any Member upon the dissolution of the Company.

**Section 7.3 Tax Returns.** The Manager shall prepare or cause to be prepared and timely filed all federal, state and local income and other tax returns and reports as may be required as a result of the business of the Company. Within seventy-five (75) days after the end of each fiscal year of the Company, the Manager shall cause to be delivered to each Person who was a Member at any time during the fiscal year a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of each Member's Federal, state and local income tax (or information) returns, including a statement showing each Member's share of income, gain or loss, and credits for such fiscal year.

**Section 7.4 Tax Matters Partner.** Daniel E. Rinaldi shall be the initial "tax matters partner" ("TMP") under Section 6231 of the Code. A TMP may be removed, and a successor TMP be selected, by the vote of the Members holding at least a majority of the Percentage Interests.

**Section 7.5 Tax Elections.** The TMP shall make or cause to be made such accounting and tax elections as directed by the Manager.

**Section 7.6 Bank Accounts; Investment of Company Funds.** The Managers shall cause one or more accounts to be maintained in the name of the Company in one or more banks, which accounts shall be used for the payment of expenditures incurred in connection with the business of the Company and in which shall be deposited any and all receipts of the Company. All amounts deposited in such accounts shall be and remain the property of the Company and shall be received, held and disbursed for the purposes specified in this Agreement. There shall not be deposited in any of such accounts any funds other than funds belonging to the Company, and no other funds shall in any way be commingled with such funds. The Manager may invest the Company funds in any manner which the Manager deems appropriate, in his discretion.

## ARTICLE VIII

### TERM, DISSOLUTION, LIQUIDATION AND TERMINATION

**Section 8.1 Term.** The Company shall continue until terminated pursuant to statute or any provision of this Agreement.

**Section 8.2 Dissolution.** The Company shall be dissolved upon the first occurrence of any of the following:

- (a) The entry of a decree of judicial dissolution under the Act.
- (b) The unanimous written consent of all of the Members.
- (c) If the Company has only one Member, the death, retirement, resignation, expulsion, Bankruptcy or dissolution of such Member or the occurrence of any other event which terminates the continued membership of such Member in the Company, unless within ninety (90) days after the occurrence of the event the personal representative of such Member agrees in writing to continue the business of the Company and to the admission of such personal representative or his nominee or designee to the Company as a Member effective as of the occurrence of the event. If the Company has more than one Member, the death, retirement,

resignation, expulsion, Bankruptcy or dissolution of any Member or any other event which terminates the continued membership of a Member in the Company shall not cause the Company to be dissolved or its affairs to be wound up, and the Company shall be automatically continued without dissolution.

**Section 8.3 Liquidation and Termination.** Upon dissolution of the Company, the Manager shall act as liquidator or may appoint in writing one or more liquidators who shall have full authority to wind up the affairs of the Company and make final distributions as provided herein. The liquidator shall continue to operate the Company with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

(a) As promptly as possible after dissolution and again after final liquidation, the liquidator, if requested by any Member or by the Manager, shall cause a proper accounting to be made by the Company's independent accountants of the Company's assets, liabilities and operations through the last day of the month in which the dissolution occurs or the final liquidation is completed, as appropriate.

(b) After making payment or provision for all debts and liabilities of the Company, including debts and liabilities to Members, the liquidator shall sell all properties and assets of the Company for cash as promptly as is consistent with obtaining the best price therefor. All gain, loss and amount realized on such sales shall be allocated to the Members as provided in this Agreement, and the Capital Accounts of the Members shall be adjusted accordingly. The liquidator shall then distribute the proceeds of such sales to the Members in accordance with their Percentage Interests.

(c) Except as expressly provided herein, the liquidator shall comply with any applicable requirements of the Act, including, without limitation, Sections 18-801, 18-803 and 18-804 thereof, and all other applicable laws pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

(d) Notwithstanding any provision in this Agreement to the contrary, no Member shall be obligated to restore a deficit balance in his Capital Account at any time.

(e) The distribution of cash and/or property to the Members in accordance with the provisions of this Section 8.3 shall constitute a complete return to the Members of their capital contributions and a complete distribution to the Members of their interest in the Company and all Company property.

## ARTICLE IX

### ASSIGNMENT OF MEMBERSHIP INTERESTS

**Section 9.1 Assignment by Member.** A Member's Membership Interest shall not be assigned, in whole or in part, without first complying with the provisions of this Article IX. Unless an assignee becomes a substituted Member in accordance with the provisions set forth in Section 9.3, an assignee shall not become, nor shall an assignee be entitled to exercise any of the rights or powers of a Member, except the right to receive all or a part of the share of the Profits, Losses, cash distributions or returns of capital to which his assignor would otherwise have been entitled and which are assigned to the assignee.

**Section 9.2 Transfer of Membership Interests.** Except as otherwise provided in this Article IX, no Member may, without the prior consent of the Manager, voluntarily or involuntarily sell, assign, encumber or otherwise transfer all or any portion of his Membership Interest, except as follows:

(a) Subject to the provisions of Section 9.2(c), in the case of incompetency of a Member, his Membership Interest shall vest in his personal representative and, in the case of death, in his beneficiaries. Subject to the provisions of Section 9.2(d), in the case of Bankruptcy of a Member, his Membership Interest shall vest in the trustee, receiver or administrator of the bankrupt's estate.

(b) If any Member shall at any time desire to sell his Membership Interest, the following provisions shall apply:

(1) Such Member (the "**Selling Member**") shall first obtain a bona fide written offer which he desires to accept (the "**Offer**") to purchase all, but not less than all, of his Membership Interest for a fixed cash price (which may be payable over time). The Offer shall set forth the date, the proposed price and any other terms and conditions upon which the purchase is to be made, as well as the name and address of the prospective purchaser. The Selling Member shall transmit copies of the Offer to the Company and the other Members within seven days after his receipt of the Offer.

(2) Transmittal of the Offer to the Company by the Selling Member shall constitute an offer by the Selling Member to sell all, but not less than all, of his Membership Interest to the Company at the price and upon the terms and conditions set forth in the Offer. For a period of 15 days after the submission of the Offer to the Company, the Manager shall have the option, on behalf of the Company, and in their sole discretion, to cause the Company to accept the Selling Member's offer as to the Selling Member's Membership Interest; which acceptance shall be exercisable by written notice to the Selling Member with a copy to each of the other Members.

(3) If the Company does not exercise its option with respect to Selling Member's Membership Interest as set forth above, the Selling Member shall, upon notice from the Manager of the Company's decision not to accept the Selling Member's offer as to his Membership Interest (or upon expiration of the 15 day option period referred to above if the Company fails to give notice), be deemed to have offered in writing to sell all, but not less than all, of his Membership Interest to the other Members (the "**Offeree Members**") at the price and upon the terms set forth in the Offer. For a period of 15 days after such offer by the Selling Member to the Offeree Members, the Offeree Members shall have options, exercisable by written notice to the Selling Member with a copy to the Company and to each of the other Offeree Members, to accept the Selling Member's offer as to the Selling Member's Membership Interest. Each Offeree Member who shall exercise this option shall agree, by doing so, to purchase that proportionate part of the Selling Member's Membership Interest which the Membership Interest owned by such Offeree Member bears to the total number of Membership Interests owned by all Offeree Members (or in such other proportions as the Offeree Members may agree among themselves).

(4) If one or more of the Offeree Members does not exercise his option in accordance with Section 9.2(b)(3), the Offeree Members who exercised their options pursuant to Section 9.2(b)(3) shall have further options for a period of 15 additional days

following expiration of the 15 day period set forth in Section 9.2(b)(3) to accept the Selling Member's offer as to the Selling Member's then remaining Membership Interest, and each such Offeree Member who shall exercise this further option shall agree, by doing so, to purchase that proportionate part of the Selling Member's remaining Membership Interest which the Membership Interest owned by such Offeree Member bears to the total number of Membership Interests owned by all of the Offeree Members who exercise their options pursuant to this Section 9.2(b)(4) (or in such other proportions as such Offeree Members may agree among themselves).

(5) If, at the end of the option periods described above, options have not been exercised by the Company or the Offeree Members to purchase the entire Membership Interest of the Selling Member, then any options so exercised shall be null and void and the Selling Member shall be free for a period of 40 days thereafter to sell all, but not less than all, of his Membership Interest to the prospective purchaser at the price and upon the terms and conditions set forth in the Offer. If such Membership Interest is not so sold within the aforesaid 40 day period, the Selling Member shall not be permitted to sell such Membership Interest without again complying with this Section 9.2(b).

(6) Settlement for the purchase of the Selling Member's Membership Interest by the Company or by an Offeree Member pursuant to this Section 9.2(b) shall be made within 45 days following the date of exercise of the last option exercised. Payment of the purchase price set forth in the Offer shall be payable on the same terms contained in the Offer or such other terms as agreed by the Selling Member and the Company or Selling Member, as appropriate.

(c) Upon the death of any Member (the "**Deceased Member**") or if any Member becomes Disabled (the "**Disabled Member**") (each, a "**Triggering Event**"), then the Company shall purchase from the Disabled Member, the Disabled Member's personal representative or the Deceased Member's personal representative, as appropriate (the "**Transferor**"), and the Transferor shall sell to the Company, all of the Disabled Member's or Deceased Member's Membership Interest for a purchase price equal to the Agreed Value of such Membership Interest.

(d) The Members agree that the interests of the Company and its Members would be seriously affected by any sale or disposition of any Member's Membership Interest by any legal or equitable proceedings against such Member. Accordingly, it is hereby covenanted and agreed that in the event of a Proceeding (as hereinafter defined) with respect to any Member, the Company and the other Members shall have options to purchase all, but not less than all, of such Member's Membership Interest in accordance with the provisions of Section 9.2(b) in the same manner as if the Company and the other Members had received notice of an Offer under Section 9.2(b) on the date that the Company receives notice of a Proceeding. The purchase price of a sale pursuant to the exercise of options granted in this Section 9.2(d) shall be the Agreed Value of such Membership Interest and the payment terms shall be those set forth in Section 9.2(c)(2) hereof. A "**Proceeding**" means (1) any judgment is obtained in any legal or equitable proceeding against a Member and the sale of any of such Member's Membership Interest is contemplated or threatened under legal process as a result of such judgment; (2) any execution process is issued against a Member or the Membership Interest held by a Member; (3) the Member is the subject of or a party to a divorce proceeding or has entered into a divorce settlement agreement regarding the disposition of marital assets; (4) the



Membership Interest of a Member is attached; or (5) there is instituted by or against a Member a Bankruptcy action.

(e) If the employment of any Member is terminated for “cause” (as hereinafter defined), the Company and the other Members shall have options to purchase the terminated employee’s Membership Interest as if the terminated employee had transmitted notice of an Offer pursuant to Section 9.2(b) on the effective date of termination at a purchase price equal to the terminated employee’s capital contribution, payable in cash within 45 days following the date of exercise of the last option exercised. For purposes of this Agreement, “cause” shall mean either (1) the definition of “cause” set forth in such terminated employee’s employment or other service agreement with the Company, if any, or (2) if cause is not defined in any such employment agreement or no employment or other service agreement exists, a finding by the Manager, after full consideration of the facts, that the terminated employee has breached his employment or other service agreement with the Company, or that the terminated employee has been engaged in disloyalty to the Company, including, without limitation, fraud, embezzlement, theft, commission of a felony or proven dishonesty in the course of his employment or service, or has committed an intentional or grossly negligent act detrimental to the interests of the Company.

**Section 9.3 Substitution of Members.** An assignee of a Membership Interest may become a substituted Member subject to the following terms, conditions and limitations:

(a) the assigning Member has complied with the provisions of this Article IX;

(b) the assignee has paid to the Company all costs and expenses incurred in connection with such assignee’s substitution as a Member, which costs and expenses shall include, without limitation, all legal and accounting fees and expenses incurred by the Company or its counsel and all costs incurred in amending this Agreement and in preparing, filing, recording and publishing any certificates and instruments necessary or appropriate in connection therewith; and

(c) the assignee will have executed and delivered such instruments and documents, in form and content satisfactory to the Manager, as the Manager may deem necessary, advisable or appropriate to effect the substitution of such assignee as a Member.

The Company and the Manager will be entitled to consider the owner of any Membership Interest in the Company as set forth in the Required Records of the Company as the absolute owner thereof for all purposes. Neither the Company nor the Manager will incur any liability for distributions of cash or other property made in good faith to the owner of an interest in the Company until such time as a written assignment of such Membership Interest has been received and accepted by the Manager and recorded on the books of the Company. In the event of an assignment by a Member, allocations between the assignor and assignee of deductions, credits and income of the Company for federal, state and local income tax purposes shall be based on the portion of the year during which the assignor and assignee each owned such Membership Interest, unless all of the Members determine to close the books on the date of such assignment.

**Section 9.4 Resignation of a Member.** No Member shall be entitled to resign from the Company unless he obtains the prior written consent of the Manager. If a Member receives the consent of the Manager to resign from the Company, such Member shall be entitled to

receive from the Company the Agreed Value of his Membership Interest on the date of resignation payable in twenty (20) quarter-annual installments of principal commencing ninety (90) days after the date of resignation. The Company's obligation under this Section 9.4 shall be represented by a promissory note dated as of the date of resignation and delivered to the resigning Member within sixty (60) days thereof. Any attempt to resign from the Company without complying with this Section 9.4 shall be ineffective.

**Section 9.5 Admission of Additional Members.** The Company may admit additional members (other than substituted members) with the approval of the Manager.

**Section 9.6 Drag-Along Right.** If the entire Membership Interest owned by Members owning at least a majority of the outstanding Membership Interests is to be sold or otherwise transferred to a Person who is not a Member or an Affiliate of a Member pursuant to an Offer by such prospective purchaser, and the prospective purchaser wishes to purchase all of the Membership Interests of the Company, the Selling Member shall have the right, in his sole and absolute discretion, to require all of the other Members to sell or otherwise transfer all of their Membership Interests to the prospective purchaser at the price (on a per Percentage Interest basis) and upon the terms and conditions set forth in the Offer. If the Selling Member desires to exercise his option under this Section 9.6, he shall deliver written notice (the "**Drag-Along Notice**") to the other Members stating the purchase price, terms and conditions of the purchase. Any transaction to which this Section 9.6 applies shall close on the 45<sup>th</sup> day following the delivery of the Drag-Along Notice or on such other date as the Selling Member and the prospective purchaser shall agree. Each other Member shall take all necessary and desirable actions, as requested by the Selling Member to consummate a sale or other transfer of Membership Interests pursuant to this Section 9.6.

## ARTICLE X

### INDEMNIFICATION OF MANAGERS, OFFICERS AND OTHER PERSONS

#### Section 10.1 Indemnification.

(a) The Company shall indemnify the Manager and each officer of the Company and shall have the power to indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Manager, officer, employee or agent of the Company, or is or was serving in some other capacity on behalf of the Company, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, to the fullest extent now or hereafter permitted under the Act.

(b) To the extent that a Manager, officer, employee or agent of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to Section 10.1(a) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(c) Any indemnification of an employee or agent of the Company under Section 10.1(a) (unless required by Section 10.1(b)) shall be made by the Company only as

authorized in a specific case upon a determination that indemnification of the Manager, officer, employee or agent is proper in the circumstances because he has acted in good faith and not in violation of this Agreement and/or his employment or other service agreement. Such determination shall be made by the Manager.

(d) Expenses (including attorneys' fees) actually and reasonably incurred by a Manager or officer in defending a civil, criminal, administrative or investigative action, suit or proceeding for which such Manager or officer could be entitled to indemnification under this Article X, may be paid by the Company in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such Manager or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorized hereby. Such expenses (including attorneys' fees) actually and reasonably incurred by other employees may be so paid upon such terms and conditions, if any, as the Manager deems appropriate.

(e) Except as otherwise provided under the Act, the indemnification and advancement of expenses provided by this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any of the provisions of the Certificate of Formation, this Agreement, any other agreement, any vote of the Members or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(f) The indemnification and advancement of expenses provided or granted pursuant to this Article X, shall, unless otherwise provided when authorized or ratified, continue as to a Person who has ceased to be a Manager, officer, employee or agent of the Company and shall inure to the benefit of the heirs, executors and administrators of such a Person.

**Section 10.2 Amendment.** The provisions of Section 10.1 relating to indemnification and to the advancement of expenses shall constitute a contract between the Company and its Manager and officers which may be modified as to the Manager or officer only with that Person's consent or as specifically provided in this Section 10.2. Notwithstanding any other provision of this Agreement relating to its amendment generally, any termination, modification or amendment of Section 10.1 which is adverse to any Manager or officer shall apply to such Manager or officer only on a prospective basis, and shall not limit the rights of persons covered by Section 10.1 to indemnification or to the advancement of expenses with respect to any action or failure to act occurring prior to the time of such termination, modification, or amendment. Notwithstanding any other provision of this Agreement, no termination, modification, or amendment of this Agreement shall affect any or all of Section 10.1 so as to limit indemnification or the advancement of expenses in any manner unless adopted by (i) the Manager, or (ii) the affirmative vote of Members holding at least a majority of the Percentage Interests; provided that no such termination, modification, or amendment shall have retroactive effect inconsistent with the preceding sentence.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Manner of Giving Notice.** Except as otherwise expressly provided in this Agreement, all notices, demands, requests, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be given either (a) in person, or, if to an entity, upon an executive officer of such entity, (b) by mail, certified or registered, return receipt requested, postage prepaid, (c) by prepaid telegram, telex, cable, telecopy, or similar means (with signed confirmed copy to follow by mail in the same manner as prescribed by clause (b) above) or (d) by expedited delivery service (charges prepaid) with proof of delivery. For purposes of the foregoing, any notice required or permitted to be given shall be deemed to be delivered and given on the date actually delivered.

**Section 11.2 Waiver of Notice.** Whenever any notice is required to be given to any Member or Manager of the Company under the provisions of the Act, the Certificate of Formation or this Agreement, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance by a Member or Manager at a meeting of the Members or the Manager, as appropriate, shall constitute a waiver of notice of such meeting, except where a Member or Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 11.3 Waiver.** No failure or delay on the part of a Member in exercising any right, power or privilege hereunder, and no course of dealing between the Members or between a Member and the Company shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which a Member would otherwise have at law or in equity.

**Section 11.4 Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 11.5 Binding Agreement.** Subject to the restrictions on transfers set forth herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, executors, legal representatives, successors and assigns. None of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party; provided, however, that the provisions of Article X shall inure to the benefit of the heirs of any indemnified Person. Whenever, in this Agreement, a reference to any party or Member is made, such reference shall be deemed to include a reference to the permitted heirs, executors, legal representatives, successors and assigns of such party or Member.

**Section 11.6 Gender, Etc.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

**Section 11.7 Further Actions.** Each Member hereby agrees to hereafter execute and deliver such further instruments and do such further acts and things as may be required or appropriate to carry out the intent and purpose of this Agreement and which are consistent with the terms hereof.

**Section 11.8 Counterparts.** This Agreement may be executed in one or more counterparts with each such counterpart deemed to be an original hereof and all of such counterparts deemed to be one and the same Agreement.

**Section 11.9 Entire Agreement.** This Agreement contains the entire agreement among the parties hereto with respect to the Company. Except as otherwise provided herein, no variations, modifications or changes herein nor any waiver of any provision hereof shall be binding unless set forth in a document duly executed by or on behalf of each of the Members.

**Section 11.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to any conflict of law provision.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound have executed this instrument as of the day and year first above written.

MEMBER SIGNATURE PAGE

The undersigned hereby executes a counterpart of this Limited Liability Company Agreement of Harmonix, LLC as a Member of the Company as of the date first above written.



Member's Signature

DANIEL E. RINALDI

Member's Name

(please print or type)

Member's Address:

10895 BRUNSON DRIVE

DULUTH, GA 30097

## Exhibit "C"

THIS UNSECURED CONVERTIBLE PROMISSORY NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD, OFFERED FOR SALE, OR OTHERWISE TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OR SOME OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACTS AND LAWS, TOGETHER WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

### NIGHTWISE, LLC UNSECURED CONVERTIBLE PROMISSORY NOTE

May 1, 2023  
Atlanta, Georgia

NightWise, LLC, a Georgia limited liability company (the "**Company**"), the principal office of which is located at 10895 Brunson Drive Duluth, GA 30097, for value received, hereby promises to pay to the order of \_\_\_\_\_ (the "**Holder**"), the principal sum of \_\_\_\_\_, (\$\_\_\_\_\_), together with interest thereon as hereinafter provided from the date of this Note.

1. **Interest.** Interest shall accrue on the principal balance hereof at the annual rate of eight percent (8%). Interest shall compound annually on the principal of this Note outstanding during the period beginning on the date hereof and ending on the date of payment or conversion of this Note. Notwithstanding anything in this Note to the contrary, the interest rate charged hereon shall not exceed the maximum rate allowable by applicable law.

2. **Maturity Date; Prepayment.** Unless earlier paid or converted, if this Note has not been converted by \_\_\_\_\_, (the "**Maturity Date**"), then all outstanding principal and accrued interest under this Note shall, in the Holder's sole discretion be immediately become due and payable to the Holder. All payments shall be made in lawful money of the United States of America shall be made by mail to the Holder at the address of the Holder as set forth on the signature page to the Agreement, or at such other place as the holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to accrued interest due and payable and the remainder applied to principal. The Notes may not be prepaid without the written consent of the Holder.

3. **Events of Default.** Any of the following events shall be deemed an "**Event of Default**":

(a) Failure of the Company to pay or convert the principal and unpaid accrued interest under any Note in accordance with the terms of the Notes;

(b) Any failure of the Company to perform, comply with or observe any other term, covenant or agreement set forth in this Note, if such default shall continue without remedy for a period of twenty (20) days after the delivery of written notice thereof by the Holder to the Company;

(c) The Company shall commence any case, proceeding, or other action relating to bankruptcy, insolvency, reorganization, or similar relief of debtors seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, winding-up, dissolution, composition, or other similar relief with respect to it or its debts or seeking the appointment of a receiver or seeking an assignment or trust for the benefit of creditors; or

(d) If, within sixty (60) days after the commencement of any action against the Company (and service of process in connection therewith on the Company) seeking any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been resolved in favor of the Company or all orders or proceedings hereunder affecting the operations or the business of the Company stayed, or if the stay of any such order or proceeding shall thereafter be set aside, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Company of any trustee, receiver or liquidator of the Company or of all or any substantial part of the properties of the Company.

If any Event of Default occurs, the Holder of this Note may, so long as such condition exists, declare the entire outstanding principal amount of, and all accrued but unpaid interest on, this Note immediately due and payable, by notice in writing to the Company.

#### **4. Conversion.**

##### **(a) Conversion Events.**

(i) Optional Conversion at Time of Qualified Financing. The entire outstanding principal amount of and all accrued but unpaid interest on this Note, or any portion thereof, may be converted into membership interests (the “**Membership Units**”) issued by the Company in a capital raise resulting in new money (i.e., excluding the converted amount of the Notes) for the Company of not less than Two Million Dollars (\$2,000,000) (a “**Qualified Financing**”), excluding any issuance of Membership Units to the Founder or any affiliate or family member of the Founder. Such principal and interest will be converted into Membership Units at a price per share equal to (the “**Conversion Price**”) a discount of twenty-five percent (25%) applied to the per unit price of such Membership Units in such Qualified Financing. At least five (5) days prior to the closing of the Qualified Financing, the Company shall notify the Holders in writing of the terms under which the Membership Units will be sold in such financing. The conversion of this Note into Membership Units, if elected by the Holder, shall be on the same terms, except as otherwise set forth herein, and shall occur on the closing date of such Qualified Financing.

(ii) Other Conversion. At any time prior to or at maturity, the Holder may convert all or a portion of the outstanding principal amount of and all accrued but unpaid interest on the Note into membership interests of the Company as a price per share equal to any price at which the Holder could have so converted pursuant to Section 4(a)(i).

(iii) Sale of the Company. If a Sale of the Company (as defined below) occurs prior to maturity or to a conversion of this Note, then upon the closing of such Sale of the Company, in the Holder’s sole discretion: (x) the principal balance and all accrued and unpaid interest under the Note shall be immediately due and payable; or (y) the Note shall be converted immediately prior to such Sale of the Company into membership interests of the Company of such authorized series or class determined appropriate by the Holder at a conversion price equal to any price at which the Holder could have so converted pursuant to Section 4(a)(i). As used herein, “**Sale of the Company**” means a transaction or series of related transactions (whether by merger, consolidation or otherwise) in which a Person, or a group of related Persons, acquires from members of the Company Units representing more than fifty percent (50%) of the outstanding voting power of the Company or a sale, lease or other disposition of all or substantially all of the assets of the Company.

##### **(b) Conversion Mechanics.**

(i) Return of the Note. As promptly as practicable after the conversion of the entire Note, the Holder shall deliver to the Company the original copy of this Note or of an affidavit evidencing its loss and indemnifying the Company therefore. In the event of a conversion of less



than the full value of the Note, the Holder shall provide the Company, at the time of conversion, a document in a form acceptable to the Company evidencing a partial satisfaction of the Note.

(ii) *Effect of Conversion; Fractional Units.* Upon conversion or payment in cash of the entire outstanding principal amount of and all accrued interest on this Note, the Company shall be forever released from all its obligations and liabilities under this Note. Upon the conversion of this Note, that portion of principal amount and accrued interest attributable to any fraction of a Unit may be paid in cash in lieu of the Company issuing a fractional Unit at the Company's discretion.

5. **Assignment.** Subject to the restrictions on transfer herein, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties; provided, however, that this Note may not be assigned or otherwise transferred by the Company without the prior written consent of the Holder. This Note may not be transferred by the Holder without the prior written consent of the Company.

6. **Amendment and Waiver.** This Note may not be amended, waived or modified without the written consent of the Holder and the Company.

7. **Legends.** All securities issued upon conversion hereof shall be stamped or imprinted with the legends required by any member agreements, and may also include any legend required by the Company's organizational documents or state securities laws.

8. **Notices.**

(a) All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by electronic mail or otherwise delivered by hand, messenger or courier service addressed:

(i) if to the Holder, to the Holder's address or electronic mail address as shown in the signature page to the Agreement, as may be updated in accordance with the provisions hereof;

(ii) if to the Company, to the Company's address or electronic mail address as shown in the signature page to the Agreement, as may be updated in accordance with the provisions hereof, with a copy (which shall not constitute notice) to Parker MacIntyre, 2987 Clairmont Road, #200, Atlanta, GA 30329 Attention: Robert Terry.

(b) All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address set forth on the signature page hereof or at such other address or electronic mail address as the Company may designate by ten (10) days' advance written notice to the Holder and the Holder at the address set forth on the signature page to the Agreement or at such other address or electronic mail address as the Holder may designate by ten (10) days' advance written notice to the Company.

9. **Waivers by Company; Expenses.** The Company hereby waives presentment, demand, protest and notice of dishonor and protest, and also waives all other exemptions; and agrees that extension or extensions of the time of payment of this Note or any installment or part thereof may be made before, at or after maturity by agreement by the Holder. In the event that the Holder brings any action or suit to collect

amounts payable pursuant to this Note, the Company agrees to pay, in addition to all principal and interest otherwise payable pursuant to this Note, the reasonable attorneys' fees and costs of collection incurred by the Holder in connection with such action or suit pursuant to O.C.G.A. Sec. 13-1-11(a)(2)..

10. **Titles and Subtitles.** The titles and subtitles used in this Note are used for convenience only and are not to be considered in construing or interpreting this Note.

11. **Conversion to Corporation.** In the event the Company converts its form from a limited liability company to a corporation during the term of this Note, references to "Units" or "Membership Units" used herein shall be deemed to refer to the common stock of the corporation in a manner designed to effectuate the intent hereof and preserve the parties' rights and obligations relative to each other.

12. **Governing Law.** This Note shall be governed by, subject to, and construed in accordance with the laws of the State of Georgia without regard to conflict of law principles.

IN WITNESS WHEREOF, the Company has caused this Unsecured Convertible Promissory Note to be executed by an officer thereunto duly authorized as of the date first written above.

[Signatures on the following page]

**NIGHTWISE, LLC**



By: \_\_\_\_\_  
Name: Daniel E. Rinaldi  
Title: Manager

Accepted by Holder: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit “D”

IMPORTANT NOTICES AND LEGENDS

THE NOTES OFFERED PURSUANT HERETO ARE SECURITIES, AND AS SUCH THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE OR ANY OTHER JURISDICTION. THERE ARE FURTHER RESTRICTIONS ON THE TRANSFERABILITY OF THE MEMBERSHIP INTERESTS DESCRIBED HEREIN AND IN THE OPERATING AGREEMENT (EXHIBIT “B” TO THE PRIVATE PLACEMENT MEMORANDUM).

AN INVESTMENT IN THE NOTES OFFERED HEREBY IS SUITABLE ONLY FOR ACCREDITED INVESTORS. AN INVESTMENT IN THE SECURITIES IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK. A PROSPECTIVE INVESTOR MUST BE ABLE TO BEAR THE ECONOMIC RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND BE ABLE TO SUSTAIN A LOSS OF THEIR ENTIRE INVESTMENT. SEE “RISK FACTORS” IN ITEM TWO OF THE PRIVATE PLACEMENT MEMORANDUM FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED IN CONNECTION WITH A PURCHASE OF THE NOTES. INVESTORS WILL BE REQUIRED TO MAKE REPRESENTATIONS WITH RESPECT TO THEIR NET WORTH OR INCOME AND THEIR AUTHORITY TO MAKE SUCH INVESTMENT AND TO REPRESENT, AMONG OTHER THINGS, THAT THEY ARE FAMILIAR WITH AND UNDERSTAND THE TERMS OF THIS OFFERING.

PROSPECTIVE SUBSCRIBERS ARE NOT TO CONSTRUE THE CONTENTS OF THIS SUBSCRIPTION AGREEMENT OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM NIGHTWISE, LLC (THE “COMPANY”) OR ANY OF ITS OFFICERS, EMPLOYEES OR AGENTS AS INVESTMENT, LEGAL OR TAX ADVICE. EACH PROSPECTIVE SUBSCRIBER SHOULD CONSULT THE SUBSCRIBER'S OWN COUNSEL, ACCOUNTANT AND OTHER PROFESSIONAL ADVISORS AS TO INVESTMENT, LEGAL, TAX AND OTHER RELATED MATTERS CONCERNING THE SUBSCRIBER'S PROPOSED INVESTMENT.

THE COMPANY EXTENDS TO EACH PROSPECTIVE INVESTOR THE OPPORTUNITY, PRIOR TO THE CONSUMMATION OF THE SALE OF THE SECURITIES, TO ASK QUESTIONS OF, AND RECEIVE ANSWERS FROM, REPRESENTATIVES OF THE COMPANY CONCERNING THE SECURITIES AND THE TERMS OF THIS OFFERING, AND TO OBTAIN ANY ADDITIONAL INFORMATION HE OR SHE MAY CONSIDER NECESSARY IN MAKING AN INFORMED INVESTMENT DECISION OR IN ORDER TO VERIFY THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

Unsecured Convertible Promissory Note

SUBSCRIPTION AGREEMENT

Date: \_\_\_\_\_

To: NightWise, LLC  
10895 Brunson Way  
Duluth, GA 30097

1. Subscription. The undersigned (“Subscriber”) irrevocably subscribes for and agrees to a promissory note (the “Note”) of NightWise, LLC, a Georgia limited liability company (the “Company”), as set forth on the Signature Page of this Subscription Agreement (the “Agreement”), for the amount of \_\_\_\_\_ (\$ \_\_\_\_\_).

By executing this Agreement, Subscriber acknowledges that Subscriber has been informed of various matters relating to the Company, including, without limitation, the matters set forth in the “Risk Factors” Section of the Private Placement Memorandum dated May 1, 2023 (the “Memorandum”) relating to the offering, the receipt of which Subscriber hereby acknowledges.

2. Purchase Procedures. The Subscriber shall indicate his or her intent to acquire the Note by completing, dating, executing, and delivering to the Company the following:

(a) Cash or a personal, certified or cashier’s check, payable to NightWise, LLC in the amount of \$ \_\_\_\_\_ representing the purchase price for the Note;

(b) This Agreement fully executed; and

(c) The completed Investor Qualification Questionnaire attached as Exhibit “E” to the Memorandum.

Representations and Warranties of the Company.

(a) The Company is formed as a Georgia limited liability company, founded on January 19, 2011 for the purposes of marketing, distributing and selling a brand of sleep-inducing beverages and to engage in any other lawful business permitted by the Act or the laws of any jurisdiction in which the Company may conduct its business.

(b) The Company is validly existing under the laws of Georgia, with full power and authority to conduct its business as it is currently being conducted and to own its assets; and has secured any other authorizations, approvals, permits and orders required by law for the conduct by the Company of its business as it is currently being conducted.

3. Use of Proceeds. The Company plans to use the proceeds derived from the sale of the Note as further described in the Memorandum.

4. Risk Factors. The purchase of the Note involves a number of significant risks. Prospective subscribers, prior to making an investment decision, should consider the following risk factors, in addition to those set forth in Item Two of the Memorandum:

(a) Limited Operating History. The Company was incorporated in January of 2011 and has a limited operating history. The Company's operations are subject to the problems, expenses, difficulties, complications and delays frequently encountered in connection with developing a new business, including a competitive environment that includes several competitors and extensive regulatory oversight.

(b) History of Losses and Accumulated Deficit. Although the Company expects to generate revenues from operations, the Company continues to experience operating losses. The Company has had operating losses since its inception and expects such losses to continue, at least in the near future, as it continues to produce new products, and increase marketing of its products. No assurance can be given that the Company will ever achieve profitable operations.

(c) Highly Competitive Markets. The sleep aid is rapidly evolving and competitive. The Company expects competition to intensify in the future. Although the Company believes there is a need for the products being offered by the Company, its management is unable to guarantee (i) the level of market acceptance the products will achieve and (ii) the number of customers willing to pay for the Company's products.

(d) Need for Continued Growth of Sleep Aid Market and Perception of Product; New Formulation. The Company's success will depend on continued growth of the sleep aid market and the perceived effectiveness of its product.

(e) Need for Additional Capital. The Company plans to raise additional capital to meet the Company's planned operations in the coming months and years. Additional funds shall be required before such time, if ever, as the Company achieves positive cash flow from operations. Future capital requirements (and profitability) depend on many factors, including the timely success of existing and planned product research and development, timeliness and the success of implementing its marketing plan and distribution strategy, and the market acceptance of the Company's products. There can be no assurance that the additional funds needed will be available when needed or, if available, that such funds may be obtained on terms acceptable to the Company. Additional equity financing, if obtained, could result in substantial dilution to subscribers participating in this offering.

(f) Dependence on Key Personnel. The Company's success depends, in part, upon its ability to attract and retain highly qualified sales and marketing, and management personnel. Such individuals are in high demand and are often subject to competing offers. The Company faces competition for such personnel from other companies, research and academic institutions, government entities, and other organizations. The loss of such personnel or the failure of the Company to attract and retain other key personnel could have a material adverse effect on the Company. There can be no assurance that the Company will be able to attract and retain other qualified personnel needed for its business.

(g) Limited Transferability and Illiquidity of the Note. Purchase of the Note should be considered an illiquid investment. The Note being subscribed hereby will not be registered under the Securities Act of 1933, as amended (the “Act”), but are being offered in reliance upon an exemption from the registration requirements of the Act. Therefore, the Note will constitute a “restricted security” and cannot be resold without registration under the Act or an exemption therefrom. In addition, the Note will not be registered under any state securities laws that would permit its transfer. Because of these restrictions and the absence of an active public market for the Note, the Subscriber may be unable to liquidate his or her investment even through his or her other personal financial circumstances would dictate such a liquidation.

(h) Distributions. To date, the Company has not made any distributions to its members and no assurance exists or can be given that the Company will make any distributions in the foreseeable future. The Company currently intends to retain future earnings for use in its business and, therefore, does not anticipate making any distributions in the foreseeable future. Future distributions, if any, will depend, among other things, on the Company’s results of operations, capital requirements and financial condition and on such other factors as the Company’s Board of Managers may, in its discretion, consider relevant.

(i) Projections. Any financial projections of the Company and projections relating to the future market for the Company’s potential products provided by the Company are based upon current assumptions as to future events and conditions which the Company believes to be reasonable as of the date thereof, but which are inherently uncertain and unpredictable. The projections have been prepared by officers of the Company and no independent expert rendered on opinion as to the reasonableness of the projections or the assumption on which they are based. The assumptions may prove to be incomplete or incorrect, and unanticipated events and circumstances may occur. Because of such uncertainties, and the other risks outlined herein, the actual results of the Company’s future operations can be expected to be different from those projected, and such difference may be material and adverse. Potential investors should consider the projections in light of the underlying assumptions, reach their own conclusions as to the reasonableness of those assumptions and evaluate the projections on the basis of that analysis.

(j) Offering Price Determined Based Upon Needs. The price of the Notes has been determined by the Company based upon the requirements of the Company’s current situation. The price of the Notes should not be assumed to bear any relationship to the Company’s valuation, and the Company makes no representation in that regard.

(k) Indemnification. The Operating Agreement of the Company provides generally that the managers and officers will be indemnified and held harmless by the Company from any loss, damage, fine, penalty, expense (including reasonable attorneys’ fees), judgment, or amount paid in settlement by the officers or managers of the Company by reason of any act performed by them or omitted to be performed by them in connection with the business of the Company, or in furtherance of its interests, including without limitation, all such liabilities under Federal and State securities laws, as and to the extent permitted by law, except that the managers and officers shall expressly not be indemnified and held harmless for liability attributable to the foregoing indemnification provisions will be paid out of the assets of the Company. The Company’s indemnification could substantially reduce the assets of the Company available for operations, and reduce distributions to creditors, including members.

(l) Control by Founder. Daniel Rinaldi controls a majority of the membership interests of the Company and expects to do so for the foreseeable future. As a result, Daniel Rinaldi can presently make most of the decisions with respect to the Company without seeking or obtaining any input or approval of owners of other membership interests.

5. Representations, Warranties and Covenants of Subscriber. By executing this Agreement, the Subscriber makes the following representations, declarations, warranties and covenants to the Company, with the intent and understanding that the Company will rely thereon:

(a) the Subscriber agrees not to transfer the Notes to a transferee that the Company, in its reasonable judgment, would consider not to be in the Company's best interests. Subject to any other applicable transfer limitations contained herein or in the Company's operating agreement, any transfer by a Subscriber is conditioned upon such reasonable approvals.

(b) The subscriber acknowledges that this security has not been registered with the United States Securities and Exchange Commission ("SEC") in reliance upon an exemption from such registration from the Act, contained in Section 4(2) of the Act, nor has it been registered with any state regulatory authorities. In addition to the exemption from registration under the Act, the Notes are offered pursuant to a claim of exemption under the securities laws of certain states. Neither the SEC nor any state securities authority has passed on the merits of this Offering, or the Notes, any offering material or any other aspect of this investment.

(c) The Subscriber is investing in the Note for the Subscriber's own account as principal for investment and not with a view toward resale or distribution; the Subscriber understands that such Subscriber must bear the economic risk of an investment in the Note for an indefinite period. The Subscriber is an "accredited investor" as defined in Rule 501(a) under the Act. In addition to the Investor Qualification Questionnaire attached as Exhibit "E" to the Memorandum which the Subscriber will complete and return with this Agreement, the undersigned agrees to furnish any additional information requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Securities, including a third party to verify the status as an accredited investor.

(d) The Subscriber understands that any financial information provided him has not been audited. With respect to any financial projections, the Subscriber understands that there can be no assurance that the Company's actual operating results will not be materially adverse as compared to the results set forth in such projections.

(e) The Subscriber acknowledges that Subscriber has read, understood and is familiar with the Risk Factors contained herein and the Memorandum, is familiar with the nature of risks attending investments of this type, and has determined that a purchase of the Note is consistent with Subscriber's investment objectives.

(f) The Subscriber has had the opportunity to review the financial statements of the Company and any other books and records of the Company. The Subscriber acknowledges that Subscriber has been given the opportunity to ask questions of, and receive answers from, representatives of the Company regarding the business and current plans of the Company and to inspect such documents and obtain any additional information as the Subscriber has required so as more fully to understand the nature of the investment and to verify the accuracy of the information supplied to such Subscriber. The Subscriber acknowledges that, except as set forth herein, no representations or warranties have been made to Subscriber, or to Subscriber's advisors or representatives, by the Company or others with respect to the business of the Company and its financial condition.

(g) The Subscriber, if an individual, is at least 21 years of age. The Subscriber maintains his or her domicile (if an individual) or its principal offices (if not an individual) at the address shown on the Signature Page of this Agreement.

(h) The Subscriber can bear the economic risks of this investment and can afford the loss of Subscriber's entire investment in the Note. The Subscriber has sufficient liquid assets to pay the purchase price for the Note subscribed for hereby, has adequate means of providing for such Subscriber's current needs and possible personal contingencies, and has no present or anticipated need for liquidity of an investment in the Company. The investment of the Subscriber in the Note is reasonable in relation to such Subscriber's net worth and financial needs.

(i) The undersigned Subscriber has such knowledge and experience in financial, tax and business matters of newly organized companies that will enable him or her to evaluate the merits and risks of the prospective investment in the Note and make an informed investment decision with respect thereto.

(j) The Subscriber understands the meaning and legal consequences of the foregoing representations and warranties. The Subscriber certifies that each of the representations and warranties set forth in this Section 5 is true and correct as of the date hereof and shall survive such date.

(k) The Subscriber acknowledges that neither the Company nor any other person offered to sell the Note to it by means of any form of general solicitation or advertising, including but not limited to: (A) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees were invited by any general solicitation or general advertising.

6. Acceptance or Rejection of Subscription. This Agreement shall not be binding on the Company until it shall be accepted by the Company, such acceptance to be indicated by the execution of this Agreement by the Company in the place provided on the Signature Page. If this Agreement shall not be accepted, then this Agreement shall be deemed to be rejected and canceled, and all monies received, without interest, along with the executed Signature Page, shall be promptly returned to the Subscriber. THE SUBSCRIBER UNDERSTANDS AND AGREES THAT THIS SUBSCRIPTION IS MADE SUBJECT TO THE CONDITION THAT THE



COMPANY SHALL HAVE THE RIGHT TO ACCEPT OR REJECT IT IN WHOLE OR IN PART.

7. Indemnity. The representations, warranties and agreements made by the Subscriber herein shall survive the Closing. The Subscriber hereby agrees to indemnify and hold harmless the Company from and against any and all loss, liability, claim, damage and expense (including, without limitation, attorneys' fees and disbursements) suffered or incurred as a result of a misrepresentation or breach of any warranty or agreement made by the Subscriber in this Agreement or in any other document furnished by the Subscriber in connection with this transaction.

8. Confidentiality. The undersigned acknowledges that all information contained in the Subscription Agreement and all other information that he has received or will receive from or as a member of the Company will be held by him in the strictest confidence. Such information will not be used by the undersigned for any purpose other than as a member in the Company and will not be disclosed to any other person by the undersigned.

9. Governing Law, Etc. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia. All captions of Sections are for convenience only. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons or entity or entities may require. This Agreement is not transferable or assignable by the Subscriber. The representations, warranties and agreements contained herein shall be deemed to be made by and be binding upon the Subscriber and such Subscriber's heirs, executors, administrators and successors and shall inure to the benefit of the Company and their respective successors and assigns. None of the provisions of this Agreement may be waived, changed or terminated except by a writing signed by the Company and the Subscriber.

**Subscription Agreement Signature Page**

Subscriber, hereby executes, adopts and agrees to all terms, conditions and representations of this Subscription Agreement, and agrees to purchase Note as described above for the consideration as described herein. Subscriber will execute and deliver to the Company two (2) copies of the Subscription Agreement at the address set forth above. The Company will execute both copies of the Subscription Agreement and return one copy to you for your records.

Subscriber either encloses Subscriber's check for the aggregate purchase price or warrants that Subscriber has previously delivered such check to the Company and herein encloses all other documents required by Section 2 of the Subscription Agreement.

Date: \_\_\_\_\_, 20\_\_

Signature of Subscriber: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Address:

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Tax Identification or Social Security No.:

The Subscription is accepted on \_\_\_\_\_, 20\_\_.

NIGHTWISE, LLC

By: \_\_\_\_\_  
Daniel Rinaldi  
President

Exhibit "E"

INVESTOR QUALIFICATION QUESTIONNAIRE

The Subscriber hereby represents and warrants, pursuant to paragraph 5(c) of the attached Subscription Agreement, that he, she or it is correctly and in all respects described by the category or categories set forth below directly under which the Subscriber has signed his, her or its name.

[SIGN BELOW THE CATEGORY OR CATEGORIES WHICH DESCRIBES YOU]

1. The Subscriber is a natural person who has individual net worth, or joint net worth with the Subscriber's spouse, that exceeds \$1 million at the time of the purchase, excluding the value of Subscriber's primary residence.

\_\_\_\_\_

2. The Subscriber is a natural person who had individual income in excess of \$200,000, or joint income with that person's spouse in excess of \$300,000, in each of the two most recent years, and reasonably expects to reach the same income level in the current year.

\_\_\_\_\_

3. The Subscriber is a corporation, partnership or organization described in Section 501(c)(3) of the Internal Revenue Code, or Massachusetts or similar business trust, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000.

\_\_\_\_\_

4. The Subscriber is an entity which falls within one of the following categories of accredited investors set forth in Rule 501(a) of Regulation D under the Securities Act ("Regulation D"):

\_\_\_\_\_

A. A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or a fiduciary capacity.

\_\_\_\_\_

B. A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.

\_\_\_\_\_

C. An insurance company as defined in Section 2(13) of the Securities Act.

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D. An investment company registered under the Investment Company Act of 1940 or as a business development company as defined in Section 2(a)(48) of that Act.

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E. A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

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F. Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such a plan has total assets in excess of \$5,000,000.

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G. Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940.

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H. An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company or registered investment adviser or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

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I. A trust, with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the securities offered, whose purpose is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D.

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5. The Subscriber is an entity in which all of the equity owners are accredited investors and described in one or more of the categories set forth in paragraphs 1 through 4 above.

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