

**Company Agreement, Operating agreement of a limited liability company.**

**PREVIEW**

1. The affairs of a limited liability company are governed by its Company Agreement or operating agreement. The term regulations has been replaced by the terms Company Agreement and operating agreement . The Company Agreement may contain any provisions for the regulation and management of the company not inconsistent with law or the Certificate of Formation.

2. The power to adopt, alter, amend, or repeal the Company Agreement is vested in the members of the company unless vested in whole or part in the manager or managers of the company by the Certificate of Formation or Company Agreement.

3. The following form may be used as a Company Agreement for a limited liability company. These are similar to bylaws used in a corporation.

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4. Meetings may be conducted by telephone.

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Form: Company Agreement for a limited liability company

**PREVIEW**  
COMPANY AGREEMENT FOR  
[LLC'S NAME], A LIMITED LIABILITY COMPANY

**ARTICLE 1.**  
**OFFICES**

1.1 Registered Office and Agent. The registered office and registered agent of the Limited Liability Company shall be as designated with the Secretary of State of the State of Texas, as they may be changed from time to time.

1.2 Principal Office. The principal office of the Limited Liability Company shall be at:  
[Client's address] [Client's city], [Client's state] [Client's zip code].

provided that the Managers shall have power to change the location of the principal office in their discretion.

1.3 Other Offices. The Limited Liability Company may also maintain other offices at such places within or without the State of Texas as the Managers may from time to time appoint or as the business of the Limited Liability Company may require.

**ARTICLE 2.**  
**MEMBERS**

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2.1 Admission of Members.

A. In connection with the formation of this Limited Liability Company, a person acquiring an interest as a member becomes a member on the latter of:

(1) the date of formation of this Limited Liability Company; or

(2) the date stated in the records of this Limited Liability Company as the date that the person becomes a member or, if no date is stated in the records, on the date that the person's admission is first reflected in the records of this Limited Liability Company.

B. After the formation of this Limited Liability Company, a person becomes a new member:

(1) in the case of a person acquiring a membership interest directly from this Limited Liability Company, on compliance with the provisions of this Company Agreement governing admission of new members or, if this Company Agreement contains no relevant admission provisions, on the written consent of all members; and

(2) in the case of an assignee of a membership interest as provided by law.

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C. Any person may be a member unless the person lacks the legal capacity to become a member of the LLC.

2.2 Classes and Voting. Unless the Certificate of Formation state to the contrary or as provided by this Company Agreement, two or more classes or groups of one or more members is established, there shall be one class of members. The Certificate of Formation or any amendments thereof or by a two-thirds vote of the Members of this Limited Liability Company at a duly authorized annual or special meeting may elect to establish two or more classes or groups of one or more Members. In the event of the establishment of two or more classes or groups of one or more Members, then the following provisions shall apply:

A. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of members.

B. If two or more classes or groups of one or more Members are established, then each class or group of Members, as far as waiver of notices, action by consent without a meeting, establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote, shall be governed by the same provisions of this Company Agreement as pertain to one class or group of members.

C. Prompt notice of the taking of an action under this Company Agreement that require less than unanimous written consent of the Members and that may be taken without a meeting shall be given to the Members who have not consented in writing to the taking of the action.

D. For the purposes of this section, the taking of an action includes amending this Company Agreement or creating, under provisions of this Company Agreement, a class of membership interests that was not previously outstanding.

2.3 Place and Manner of Meeting. All meetings of the Members shall be held at such time and place, within or without the State of Texas, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the 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.

2.4 Annual Meeting. The annual meeting of the Members for the election of Managers and for the transaction of all other business which may come before the meeting shall be held in March of each year at the hour specified in the notice of the meeting. If the annual meeting is not held on the date above specified, or if the election of Managers shall not be held on that date, the Managers shall cause a special meeting of the Members in lieu thereof to be held as soon thereafter as is practicable, and any business transacted in election held at that meetings shall be as

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valid as if held at the annual meeting. Failure to hold the annual meeting at the designated time shall not work a dissolution of the Limited Liability Company.

**PREVIEW**

2.5 Voting Lists. The officer or agent having charge of the records reflecting the membership interest of each member of each class, if more than one class, shall make, at least ten (10) days before each meeting of Members, a complete list of the Members, entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and percentage of membership interest of each member of each class, if more than one class, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Limited Liability Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original records reflecting the membership interest of each member of each class, if more than one class, shall be original evidence as to who are the Members entitled to examine such list of records or to vote any meeting of Members.

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Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

2.6 Special Meetings. Special meetings of the Members may be called at any time by the President or the Managers. Special meetings of Members may also be called by the Secretary upon the written request of the holders of at least ten percent (10%) of the membership interest entitled to be voted at such meeting. Such request shall state the purpose or purposes of such meeting and the proposed matters upon which actions are to be taken.

2.7 Notice. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each Member entitled to vote at the meeting, provided that such notice may be waived as provided in this Company Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Limited Liability Company, with postage thereon prepaid. Any notice required to be given to any Member hereunder or under the Certificate of Formation need not be given to the Member if: (A) notice of two consecutive annual meetings of the Limited Liability Company and all notices of meetings held during the period between those annual meetings, if any, or (B) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve-month period have been mailed to that person, addressed at his address as shown on the records of the Limited Liability Company, and have been returned undeliverable. Any action or meeting taken or held without notice to such person shall have the same force and effect as if the notice had been duly given.

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2.8 Quorum of Members. Unless otherwise provided in the Certificate of Formation, the holders of a majority of the membership interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members, but in no event shall a quorum consist of the holders of less than one-third (1/3) of the membership interest entitled to vote for each

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class, if more than one class, and thus represented at such meeting. The vote of the holders of a majority of the membership interest entitled to vote for each class, if more than one class, and thus represented at a meeting at which a quorum is present shall be the act of the Members' meeting, unless the vote of a greater number is required by law, the Certificate of Formation or this Company Agreement.

2.9 Majority Vote; Withdrawal of Quorum. With respect to any matter when a quorum is present at any meeting, the vote of the holders of a majority of the membership interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Certificate of Formation or this Company Agreement, or by an express provision of the statutes which is applicable to such vote unless overridden by the Certificate of Formation, a different vote is required, in which case such express provision shall govern and control the decision of such matter. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

2.10 Voting Of Membership Interest. Each outstanding membership interest, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of Members, except to the extent that the voting rights of the membership interest of any class or classes are limited or denied by the Certificate of Formation or by law.

Membership interest owned by another Limited Liability Company or corporation, the majority of the membership interest or voting stock of which is owned or controlled by this Limited Liability Company, and membership interest held by this Limited Liability Company in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total membership interest in any given time.

A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (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.

At each election for Managers every Member entitled to vote at such election shall have the right to vote, in person or by proxy, the percentage of membership interest owned by him for as many persons as there are Managers to be elected and for whose election he has a right to vote, or unless prohibited by the Certificate of Formation to cumulate his votes by giving one candidate as many votes as the number of such Managers multiplied by the percentage of his membership interest shall equal, or by distributing such votes on the same principal among any number of such candidates. Any member who intends to cumulate his votes as herein authorized shall give written notice of such intention to the Secretary of the Limited Liability Company on or before the day preceding the election at which such Member intends to cumulate his votes. All members may cumulate their votes if any Member gives the written notice provided for herein.

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2.11 Closing Record Books and Fixing Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or entitled to distribution or in order to make a determination of Members for any other proper purpose, the Managers may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, this Company Agreement or in the absence of an applicable Company Agreement, the Managers may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed, or the date on which the resolution of the Managers declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

2.12 Fixing Record Dates for Consents to Action. Unless a record date shall have previously been fixed or determined herein, whenever action by Members is proposed to be taken by consent in writing without a meeting of Members, if provided for by the Certificate of Formation, the Managers may fix a record date for purposes of determining Members entitled to consent to that action, which record date shall not precede, and shall not be more than ten days after, the date upon which the resolution fixing the record date is adopted by the Managers. If no record date has been fixed by the Managers and the prior action of the Managers is not required by the Texas Limited Liability Company Act, and any amendments thereto, the record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Limited Liability Company by delivery to its registered office, its principal place of business, or an officer of the Limited Liability Company having custody of the books in which proceedings of meetings of Members are recorded. Delivery shall be by hand or by certified or registered mail, return receipt requested. Delivery to the Limited Liability Company's principal place of business shall be addressed to the president or the principal executive officer of the Limited Liability Company. If no record date has been fixed by the Managers and prior action of the Managers is required by the statute, the record date for determining Members entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the Managers adopt a resolution taking such prior action.

2.13 Action Without Meeting. Any action required by the Texas Limited Liability Company Act, as amended, to be taken at a meeting of the Members, or any action which may be taken at a meeting of the 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 have been signed by the holder of not less than a certain percentage of the shares for each class of more than one class, entitled to vote with respect to the action that is the subject matter of the consent, and such

consent shall have the same force and effect as a unanimous vote of the Members. If the Certificate of Formation of the Limited Liability Company so provide, any action required by the Texas Limited Liability Company Act, and any amendments thereto, to be taken at any annual or special meeting of 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 holder or holders of membership interest of each class, if more than one class, having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all membership interest of each class, if more than one class, entitled to vote on the action were present and voted. Every written consent pursuant to this Section shall be signed, dated and delivered in the manner required by, and shall become effective at the time and remain effective for the period specified by, the Texas Limited Liability Company Act, and any amendments thereto. A Telegram, telex, cablegram, or similar transmission by a Member, or a photographic, Photostat, facsimile, or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

For purposes of this section, the taking of an action includes amending this Company Agreement or creating, under provisions of these this Company Agreement, a class of membership interest that was not previously outstanding.

#### 2.14 Assignment of Membership Interest.

A. Unless otherwise provided by these this Company Agreement:

- (1) a membership interest is assignable in whole or in part,
- (2) an assignment of a membership interest does not entitle the assignee to become, or to exercise rights or powers of, a member;
- (3) an assignment entitles the assignee to receive distributions, to which the assignor was entitled, to the extent those items are assigned; and
- (4) until the assignee becomes a member, the assignor member continues to be a member and to have the power to exercise any rights or powers of a member, except to the extent those rights or powers are assigned.

B. This Company Agreement provides that a Member's membership interest may be evidenced by a certificate of membership interest issued by this Limited Liability Company, provide for the assignment or transfer of membership interests represented by a certificate, and make other provisions with respect to the certificate.

#### 2.15 Right Of Assignee to Become Member

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A. An assignee of a membership interest may become a Member if and to the extent that all Members consent. It is the intent of this Company Agreement that the tax status of this Limited Liability Company be the same as for a partnership, and except as allowed by the Internal Revenue Code and any corresponding rules and regulations, it is intended that this Limited Liability Company shall not allow free transferability of interests, and to the extent possible, this Company Agreement shall be read and interpreted to prohibit the free transferability of interests of any Member.

B. An assignee who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under this Company Agreement and the Texas Limited Liability Company Act, as amended from time to time. Unless otherwise provided by this Company Agreement, an assignee who becomes a Member also is liable for the obligations of the assignor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Company Agreement.

C. Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to this Limited Liability Company.

2.16 Death, Resignations, Expulsion, Bankruptcy or Dissolution of a Member. Any Member may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, then at the time of its receipt by the President or Chairman. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any Member may be expelled from this Limited Liability Company by an affirmative vote of at least 67% of the Members of each class or group to which the Member belongs at any initial or special meeting of the Member. This Limited Liability Company shall be dissolved upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or upon the occurrence of any other event that terminates the continued membership of a Member in this Limited Liability Company, unless the remaining Members consent unanimously, within ninety (90) days after an event of dissolution, to continue this Limited Liability Company. It is the intent of this Company Agreement that the tax status of this Limited Liability Company be the same as for a partnership, and except as allowed by the Internal Revenue Code and any corresponding rules and regulations, it is intended that this Limited Liability Company shall not have continuity of life and shall be read and interpreted as to prohibit continuity of life.

2.17 Distribution On Withdrawal. Except as otherwise provided by the Texas Limited Liability Company Act, as amended from time to time, the Certificate of Formation or this Company Agreement, on withdrawal, any withdrawing member is entitled to receive, within a reasonable time after withdrawal, the fair value of that Member's interest in this Limited Liability Company as of the date of withdrawal.

2.18 Distribution in Kind. Except as provided by the Certificate of Formation or this Company Agreement, a Member, regardless of the nature of the Member's contribution, may not demand or require a distribution from this Limited Liability Company in any form other than cash.



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2.19 Right to Distribution. Subject to the Texas Limited Liability Company Act, as amended from time to time, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Limited Liability Company.

2.20 Limitation on Distribution.

A. This Limited Liability Company may not make a distribution to its Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Limited Liability Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Limited Liability Company, exceed the fair value of this Limited Liability Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Limited Liability Company assets only to the extent that the fair value of that property exceeds that liability.

B. A Member who receives a distribution that is not permitted under this Company Agreement has no liability under the Texas Limited Liability Company Act, as amended from time to time, to return the distribution unless the Member knew that the distribution violated the prohibition of the Texas Limited Liability Company Act, as amended from time to time. This does not affect any obligation of the Members under this Company Agreement or other applicable law to return the distribution.

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2.21 Capital Accounts of the Members. A capital account will be established for each Member and maintained in such a manner to correspond with the capital of the Members as reported for federal income tax purposes. Each Member's capital account shall be credited with the value of a Member's contribution of cash or other property to the Limited Liability Company, and shall be credited or charged annually with the Member's distributive share of items of income, gain, loss, deduction and credit for federal income tax purposes. Distributions of cash or other property to Members shall be charged against their respective capital accounts as withdrawal of capital. The federal income tax basis of a Member's interest in the Limited Liability Company, of property contributed to the Limited Liability Company by a Member, and all other matters pertaining to the distributive share and taxation of items of income, gain, loss, deduction and credit will be as otherwise prescribed by Subchapter K of the Internal Revenue Code. The capital accounts will not bear interest.

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ARTICLE 3.  
MANAGERS

3.1 Managers. The business and affairs of the Limited Liability Company shall be managed by a Manager or Managers. At anytime, upon written consent by the Managers, the Managers may assign the management of the Limited Liability Company to the Members. Managers need not be residents of the State of Texas or Members in the Limited Liability Company.

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3.2 Number; Qualification; Election; Term. The number of Managers shall be not less than one nor more than ten. The number of initial Managers shall be the number fixed by the Certificate of Formation. Thereafter, within the limits above specified, the number of Managers shall be determined by resolution of the Managers.

3.3 Classification of Managers. At any time by affirmative vote of the Managers at an annual Managers' meeting or by affirmative vote of the holders of a majority of membership interest at an annual Members' meeting, this Company Agreement may provide that the Managers shall be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of Managers of the first class to expire at the first annual meeting of Members after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. If this classification of Managers is implemented, (1) the whole number of Managers of this Limited Liability Company need not be elected annually and (2) at each annual meeting after such classification, the number of Managers equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes.

3.4 Powers of Managers. Every Manager is an agent of this Limited Liability Company for the purpose of its business and the act of a Manager, including the execution in the name of the Limited Liability Company of any instrument for apparently carrying on in the usual way the business of this Limited Liability Company, binds the Limited Liability Company unless the Manager so acting otherwise lacks the authority to act for this Limited Liability Company and the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

3.5 Removal. Any and all Managers may be removed, either for or without cause, at any special meeting of Members by the affirmative vote of a majority of the membership interest entitled to vote at elections of Managers. The notice calling such meeting shall give notice of the intention to act upon such matter, and if the notice so provides, the vacancy caused by such removal may be filled at such meeting by vote of a majority of the membership interest represented at such meeting and entitled to vote for the election of Managers.

3.6 Resignations. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the President or Chairman. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

3.7 Vacancies. Any vacancy occurring in the Managers may be filled by the affirmative vote of a majority of the remaining Managers, though less than a quorum of the Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Manager position to be filled by reason of an increase in the number of Managers shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

3.8 Election of Managers. Unless otherwise provided by the Certificate of Formation, Managers shall be elected by plurality of the votes cast by the holders of membership interest entitled to vote in the election of Managers at a meeting of Members at which a quorum is present. Cumulative voting shall not be permitted.

3.9 Place and Manner of Meetings. Meetings of the Managers, regular or special, may be held either within or without the State of Texas. Managers may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the 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.

3.10 First Meetings. The first meeting of the newly elected Managers shall be held without further notice immediately following the annual meeting of Members, and at the same place, unless by unanimous consent of the Managers then elected and serving, such time or place shall be changed.

3.11 Regular Meeting of Managers. A regular meeting of the Managers may be held at such time as shall be determined from time to time by resolution of the Managers.

3.12 Special Meeting of Managers. The Secretary shall call a special meeting of the Managers whenever requested to do so by the President or by any two Managers. Such special meeting shall be held at the time specified in the notice of meeting. Except as otherwise expressly provided by statute or by the Certificate of Formation or by this Company Agreement, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in a notice or waiver of notice.

3.13 Notice Of Managers' Meeting. All meetings of the Managers (annual, regular or special) shall be held upon five (5) days' written notice stating the date, place and hour of meeting delivered to each Manager either personally or by mail or at the direction of the President or the Secretary or the officer or person calling the meeting.

In any case where all of the Managers execute a waiver of notice of the time and place of meeting, no notice thereof shall be required, and any such meeting (whether annual, regular or special) shall be held at the time and at the place (either within or without the State of Texas) specified in the waiver of notice. Attendance of Managers at any meeting shall constitute a waiver of notice of such meeting, except where the Managers attend 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.

Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Managers need be specified in the notice or waiver of notice of such meeting.

3.14 Action Without Meeting. Any action required by law to be taken at a meeting of the Managers, or any action which may be taken at a meeting of the Managers, may be taken without

a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Managers. Such consent shall have the same force and effect as a unanimous vote at a meeting.

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3.15 **Quorum; Majority Vote.** At all meetings of the Managers a majority of the number of Managers fixed by this Company Agreement shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Certificate of Formation. The act of a majority of the Managers present at any meeting at which a quorum is present shall be the act of the Managers unless the act of a greater number is required by statute, by the Certificate of Formation or by this Company Agreement. If a quorum shall not be present at any meeting of the Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.16 **Compensation.** By resolution of the Managers, the Managers may be paid their expenses, if any, of attendance at each meeting of the Managers, and may be paid a fixed sum for attendance at each meeting of the Managers or a stated salary as Manager. No such payment shall preclude any Manager from serving the Limited Liability Company in any other capacity and receiving appropriate compensation. Members of any special or standing committees may, by resolution of the Managers, be allowed like compensation for attending committee meetings.

3.17 **Procedure.** The Managers shall keep regular minutes of its proceedings. The minutes shall be placed in the minute book of the Limited Liability Company.

3.18 **Interested Managers, Officers and Members.**

A. **Interested Managers.** No contract or transaction between this Limited Liability Company and one or more of its Managers or officers or between this Limited Liability Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its Managers or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the Manager or officer is present at or participates in the meeting of Managers or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers or the committee, and the Managers or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Managers, even though the disinterested Managers be less than a quorum; or

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(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Limited Liability Company as of the time it is authorized, approved, or ratified by the Manager, a committee thereof, or the Members.

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B. Common or interested Managers may be counted in determining the presence of a quorum at a meeting of the managers or of a committee which authorizes the contract or transaction.

C. Non-Exclusive. This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

#### **ARTICLE 4. COMMITTEES OF THE MANAGERS**

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4.1 Designation. The Managers may, by resolution adopted by a majority of the Managers, designate from the Managers one or more committees, each of which shall be comprised of one or more of its Managers and may designate one or more of its Managers as alternate members of any committee, who may, subject to any limitations imposed by the Managers, replace absent or disqualified Managers at any meeting of that committee.

4.2 Authority. Any such committee, to the extent provided in such resolution or the Certificate of Formation or by this Company Agreement, shall have and may exercise all of the authority of the Managers in the management of the business and affairs of the Limited Liability Company, subject to the limitations set forth in the Texas Limited Liability Company Act, and all amendments thereto.

4.3 Procedure. Each such committee shall keep regular minutes of its proceedings and report the same to the Managers when required.

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4.4 Removal. Any members of any such committee may be removed by the Managers by the affirmative vote of a majority of the Managers, whenever in their judgment the best interests of the Limited Liability Company will be served thereby.

4.5 Responsibility. The designation of one or more committees and the delegation of authority to any such committee shall not operate to relieve the Managers of any responsibility imposed upon them by law.

#### **ARTICLE 5. OFFICERS**

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5.1 Number. The officers of the Limited Liability Company shall consist of a president and a secretary, each of whom shall be elected by the Managers. Such offices may be held by the same person.

5.2 Election. The Managers, at their first meeting after each annual meeting of Members, shall choose a president and a secretary. No officers need be a Manager, a Member, or a resident of Texas.

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5.3 Other Officers. The Managers may elect or appoint such other officers and agents as they shall deem necessary, who shall be appointed for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Managers. Any two or more offices may be held by the same person.

5.4 Term. Each officer of the Limited Liability Company shall hold office until his successor is chosen and qualified in his stead or until his death or until his resignation or removal from office.

5.5 Removal. Any officer or agent or member of a committee elected or appointed by the Managers may be removed by the Managers whenever in their judgment the best interest of the Limited Liability Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent or member of a committee shall not of itself create contract rights.

5.6 Vacancies. If any office becomes vacant for any reason, the vacancy may be filled by the Managers. The officer so elected shall be elected for the unexpired term of his predecessor in office.

5.7 Compensation. The compensation of all officers and agents shall be fixed by the Managers.

5.8 Power Of Officers.

A. The Managers may designate one or more persons as officers of the Limited Liability Company who are not Managers. Every officer is an agent of the Limited Liability Company for the purpose of its business and the act of an officer, including the execution in the name of the Limited Liability Company of any instrument for apparently carrying on in the usual way the business of the Limited Liability Company, binds the Limited Liability Company unless the officer so acting otherwise lacks the authority to act for the Limited Liability Company and the person with whom the officer is dealing has knowledge of the fact that the officer has no such authority.

B. Each officer shall have, subject to this Company Agreement, in addition to the duties and powers specifically set forth herein, such powers and duties as are commonly incident to his office and such duties and powers as the Managers shall from time to time designate. All officers shall perform their duties subject to the directions and under the supervision of the Managers. The president may secure the fidelity of any officers by bond or otherwise.

5.9 Chairman. The Chairman, if there shall be such an officer, shall, if present, preside at all meetings of the Managers and exercise and perform such other powers and duties as may from time to time be assigned to the Chairman or prescribed by this Company Agreement.

5.10 President. Subject to the supervisory powers, if any, as may be given by the Managers to the Chairman, if there be such an officer, the President shall be the chief executive officer of the Limited Liability Company, and subject to the control of the Managers, shall, in general,

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supervise and control all of the business and affairs of the Limited Liability Company. He shall see that all orders and resolutions of the Managers are carried out, subject however, to the right of the Managers to delegate specific powers, to any other officer of the Limited Liability Company, except as may be by statute exclusively conferred on the President. The President shall preside at all meetings of the Members and the Managers in the absence of the Chairman. The President or any Vice President together with the Secretary or any Assistant Secretary may execute certificates of membership of the Limited Liability Company, any deeds, mortgages, bonds, contract or other instrument, in the name of the Limited Liability Company, which the Managers have authorized to be executed, except in cases where the signing and execution thereof shall be delegated by the Managers or by this Company Agreement to some other officer or agent of the Limited Liability Company, or shall be required by law to be otherwise signed and executed. If in accordance with this Company Agreement, the Limited Liability Company seal is to be affixed to an instrument, the President shall affix the Limited Liability Company seal to such instrument and the seal when so affixed shall be attested by the signature of the Secretary. The President shall be an ex-officio member of all standing committees, including the executive committee, if any. The President shall submit a report of the operations of the Limited Liability Company for the year to the Managers at their meeting next preceding the annual meeting of the Members and to the Members at their annual meeting. The President shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Managers and this Company Agreement.

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5.11 Vice Presidents. In the absence or disability of the President, the Vice President shall perform all the duties of the President. If there is more than one Vice President, the Senior Vice President (in order of their rank as fixed by the Managers, or if not ranked, the Vice President designated by the Managers) shall perform all the duties of the President. When so acting such person shall have all the powers of and be subject to all the instructions upon the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Managers or this Company Agreement.

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5.12 The Secretary and Assistant Secretaries. The Secretary shall attend all meetings of the Managers and all meetings of the Members and shall record all votes and the minutes of all proceedings in a book suitable for that purpose, and shall perform like duties for the standing committees when required. He shall give or cause to be given notice of all meetings of the Members and all meetings of the Managers required by this Company Agreement or law to be given. If for any reason the Secretary shall fail to give notice of any special meeting of the Managers called by one or more of the persons identified in this Company Agreement, or if he shall fail to give notice of any special meeting of the Members called by one or more of the persons identified in this Company Agreement, then any such person or persons may give notice of any such special meeting. It shall also be the duty of the Secretary to execute together with the President all certificates of membership issued by the Limited Liability Company. The Secretary shall also keep or cause to be kept, a certificate of membership book in which shall be correctly recorded all transactions pertaining to the membership interest of the Limited Liability Company. If in accordance with this Company Agreement the Limited Liability Company seal is to be affixed to an instrument, the Secretary shall attest with his or her signature after such seal has been affixed by the President in accordance with this Company Agreement. The Secretary shall keep in safe custody the seal of the Limited Liability Company. The Secretary shall have

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such other powers and perform such other duties as from time to time may be prescribed by him by the Managers or this Company Agreement. The Assistant Secretaries in order of their seniority shall, in absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary. The Assistant Secretaries shall perform such other duties as the Managers shall prescribe or as provided in this Company Agreement. In the absence of the Secretary or an Assistant Secretary, the minutes of all meetings of the Managers and Members shall be recorded by such person as shall be designated by the President or by the Managers.

5.13 The Treasurer and Assistant Treasurers. The Treasurer shall have the custody of the Limited Liability Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Limited Liability Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Limited Liability Company in such depositories as may be designated by the Managers. The Treasurer shall disburse the funds of the Limited Liability Company as may be ordered by the Managers, taking proper vouchers for such disbursements. He shall keep and maintain or cause to be kept and maintained, the Limited Liability Company's books of account and shall render to the President and Managers an account of all his transactions as Treasurer and of the financial condition of the Limited Liability Company and exhibit his books, records and accounts to the President or Managers at any reasonable time. He shall disburse funds for capital expenditures as authorized by the Managers and in accordance with the orders of the President, and present to the President for his attention any requests for disbursing funds if in the judgment of the Treasurer any such request is not properly authorized. He shall make a detailed annual report of the entire business and financial condition of the Limited Liability Company. If required by the Managers, he shall give the Limited Liability Company a bond in such sum and with such surety or sureties as shall be satisfactory to the Managers for the faithful performance of the duties of his office and for the restoration to the Limited Liability Company, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Limited Liability Company. The Treasurer shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Managers or this Company Agreement. The Assistant Treasurers in the order of their seniority shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. When so acting such person shall have all the powers of and be subject to all the restrictions upon the Treasurer. The Assistant Treasurers shall perform such other duties and have such powers as the Managers shall prescribe or as provided in this Company Agreement.

5.14 Delegation of Authority. In the case of the absence of any officer of the Limited Liability Company or any other reason that the Managers may deem sufficient, the Managers may delegate some or all of the powers or duties of such officer to any other officer or to any Manager, employee, Member or agent for whatever period of time seems desirable, providing that a majority of the Managers concurs therein.

5.15 Filling of Offices. The Managers of the Limited Liability Company shall not be required to fill the offices of Vice President, Assistant Secretary, and Assistant Treasurer, or to name an executive committee or any other committee until, in the opinion of the Managers, there is a need for such offices, committees or any of them, to be filled.



5.16 Resignations. Any officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

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## ARTICLE 6. INDEMNIFICATION

6.1 Definitions. For purposes of this Article VI:

A. "Limited Liability Company" includes any domestic or foreign predecessor entity of the Limited Liability Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Limited Liability Company by operation of law and in any other transaction in which the Limited Liability Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

B. "Manager" means any person who is or was a Manager of the Limited Liability Company and any person who, while a Manager of the Limited Liability Company, is or was serving at the request of the Limited Liability Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

C. "Expenses" include court costs and attorneys' fees.

D. "Official capacity" means:

(1) when sued with respect to a Manager, the office of Manager in the Limited Liability Company; and

(2) when used with respect to a person other than a Manager, the elective or appointive office in the Limited Liability Company held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the Limited Liability Company; provided, however, that in each case described in paragraphs (1) and (2) of this Subsection (d), "official capacity" does not include service for any other foreign or domestic Limited Liability Company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

E. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitative, or investigative, any appeal in such an action, suit, or proceeding, any inquiry or investigation that could lead to such an action, or proceeding.

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6.2 Standard For Indemnification. The Limited Liability Company shall indemnify a person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a Manager of the Limited Liability Company only if it is determined in accordance with this Article that the person:

- A. conducted himself in good faith;
- B. reasonably believed:

(1) in the case of conduct in his official capacity as a Manager of the Limited Liability Company, that his conduct was in the Limited Liability Company's best interests; and

(2) in all other cases, that his conduct was at least not opposed to the Limited Liability Company's best interests; and

C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

6.3 Prohibited Indemnification. Except to the extent permitted by this Article, a Manager may not be indemnified under any section of this Article in respect of a proceeding:

A. in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

B. in which the person is found liable to the Limited Liability Company.

6.4 Effect of Termination of Proceeding. The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in any section of this article. A person shall be deemed to have been found liable in respect of any claim, issue or matter only after the person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom.

6.5 Extent of Indemnification. A person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the Limited Liability Company or is found liable on the basis that personal benefit was improperly received by the person, the indemnification shall:

- A. be limited to reasonable expenses actually incurred, and
- B. not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of such person's duty to the Limited Liability Company.

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6.6 Determination of Indemnification. A determination of indemnification under any section of this Article must be made:

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A. by a majority vote of a quorum consisting of Managers who at the time of the vote are not named defendants or respondents in the proceeding;

B. if such a quorum cannot be obtained, by a majority vote of a committee of the Managers, designated to act in the matter by a majority vote of all Managers, consisting solely of two or more Managers who at the time of the vote are not named defendants or respondents in the proceeding;

C. by a special legal counsel selected by the Managers or a committee of the Managers by vote as set forth in Subsection (A) and (B) of this Section, or if such a quorum cannot be obtained, and such a committee cannot be established, by a majority vote of all Managers; or

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D. by the Members in a vote that excludes the membership interest held by Managers who are named defendants or respondents in the proceeding.

6.7 Authorization of Indemnification. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to the reasonableness of expenses must be made in the manner specified by the foregoing section for the selection of special legal counsel, and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

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6.8 Successful Defense of Proceedings. Except as provided otherwise by law or by this Company Agreement, the Limited Liability Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a Manager if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

6.9 Court Order in Suit For Indemnification. If, in a suit for indemnification required by the foregoing Section, a court of competent jurisdiction determines that the Manager is entitled to indemnification under that section, the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

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6.10 Court Determination of Indemnification. If, upon application of a Manager, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article, the court may order indemnification if the court determines it is proper and equitable; but, if the person is found liable to the Limited Liability Company or is found liable on the basis that personal

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benefit was improperly received by the person, the indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding.

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6.11 **Advancement of Expenses.** Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Limited Liability Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Limited Liability Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which must be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Certificate of Formation, this Company Agreement, a resolution of Members or Managers, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

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6.12 **Expenses Of Witness.** Notwithstanding any other provision of this Article, the Limited Liability Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Limited Liability Company.

6.13 **Indemnification of Officers.** The Limited Liability Company shall indemnify and advance or reimburse expenses to a person who is or was an officer of the Limited Liability Company to the same extent that it shall indemnify and advance or reimburse expenses to Managers under this Article.

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6.14 **Indemnification of other Persons.** The Limited Liability Company may indemnify and advance expenses to any person who is not or was not an officer, employee, or agent of the Limited Liability Company but who is or was serving at the request of the Limited Liability Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Managers under this Article.

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6.15 **Advancement of Expenses to Officers And Others.** The Limited Liability Company shall indemnify and advance to an officer, and may indemnify and advance expenses to an employee or agent of the Limited Liability Company, or other person who is identified in the foregoing Section and who is not a Manager, to such further extent as such person may be entitled by law, agreement, vote of Members or otherwise.

6.16 **Continuation of Indemnification.** The indemnification and advance payments provided by this Article shall continue as to a person who has ceased to hold his position as a Manager,

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officer, employee or agent, or other person described in any section of this Article, and shall inure to his heirs, executors and administrators.

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6.17 **Liability Insurance.** The Limited Liability Company may purchase and maintain insurance or another arrangement on behalf of any person who is or was a Manager, officer, employee, or agent of the Limited Liability Company or who is or was serving at the request of the Limited Liability Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Limited Liability Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or other arrangement may provide for payment of a liability with respect to which the Limited Liability Company would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the Members of the Limited Liability Company. Without limiting the power of the Limited Liability Company to procure or maintain any kind of insurance or other arrangement, the Limited Liability Company may, for the benefit of persons indemnified by the Limited Liability Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Limited Liability Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Limited Liability Company or with any insurer or other person deemed appropriate by the Managers regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the Limited Liability Company. In the absence of fraud, the judgment of the Managers as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Managers approving the insurance or arrangement to liability, on any ground, regardless of whether Managers participating in the approval are beneficiaries of the insurance or arrangement.

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6.18 **Report To Members.** Any indemnification of or advance of expenses to a manager in accordance with this Article shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting pursuant to Section A, Article 9.10, of the Texas Business Corporation Act, as amended from time to time, and as authorized by the Texas Limited Liability Company Act as amended from time to time, and in any case, within the twelve-month period immediately following the date of the indemnification or advance.

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6.19 **Service To Employee Benefit Plan.** For purposes of this Article, the Limited Liability Company is deemed to have requested a Manager to serve an employee benefit plan whenever the performance by him of his duties to the Limited Liability Company also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a Manager with respect to an employee benefit plan pursuant to applicable law are deemed fines. Action taken or omitted by him with respect to an employee benefit plan in

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the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the Plan is deemed to be for a purpose which is not opposed to the best interests of the Limited Liability Company.

## ARTICLE 7. CERTIFICATES AND MEMBERS

7.1 Certificates. Certificates in the form determined by the Managers shall be delivered representing all membership interest to which Members are entitled. Such certificates shall be consecutively numbered, and shall be entered in the books of the Limited Liability Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the membership interest, and such other matters as may be required by the laws of the State of Texas. They shall be signed by an officer of the Limited Liability Company, and may be sealed with the seal of the Limited Liability Company or a facsimile thereof if adopted. The signature of such officer upon the certificates may be facsimile.

7.2 Replacement of Lost or Destroyed Certificate. The Managers may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Limited Liability Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof, or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Managers in their discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such a manner as it shall require or to give the Limited Liability Company a bond with surety and in form satisfactory to the Limited Liability Company (whose bond shall also name the Limited Liability Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Limited Liability Company or other obligees with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

7.3 Transfer Of Membership Interest. Upon surrender to the Limited Liability Company or the transfer agent of the Limited Liability Company of a certificate for membership interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Limited Liability Company to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

7.4 Registered Members. The Limited Liability Company shall be entitled to treat the holder of record of any certificate or certificate of membership interest of the Limited Liability Company as the owner thereof for all purposes and, accordingly shall not be bound to recognize any equitable or other claim to or interest in such membership interest or any rights deriving from such membership interest on the part of any other person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other person becomes the holder of record of such membership interest, whether or not the Limited Liability Company shall have either actual or constructive notice of the interest of such person, except as otherwise provided by law.

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7.5 Preemptive Rights. No Member or any other person shall have any preemptive right whatsoever.

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7.6 Form Of Contribution. The contribution of a member may be in cash, property, or services rendered, or a promissory note or other obligation to pay cash or transfer property to the Limited Liability Company.

7.7 Liability for Contribution Obligations.

A. A promise by a member to make a contribution to, or otherwise pay cash or transfer property to, a limited liability company is not enforceable unless set out in writing and signed by the member.

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Except as otherwise provided by the Certificate of Formation or this Company Agreement, a member or the member's representative or successor is obligated to the Limited Liability Company to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to the Limited Liability Company, notwithstanding the member's death, disability, or other change in circumstances. If a member's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that member or the member's legal representative or successor is obligated, at the option of the Limited Liability Company, to pay to the Limited Liability Company an amount of cash equal to that portion of the agreed value, as stated in this Company Agreement or in the Limited Liability Company records required to be kept under the Texas Limited Liability Company Act, as amended from time to time, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

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C. The interest of a Member who fails to make a payment of cash or transfer of property to the Limited Liability Company, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences. A consequence may take the form of a reduction of the defaulting Member's percentage or other interest in the Limited Liability Company, subordination of the Member's interest to that of non defaulting members, a forced sale of the Member's interest, forfeiture of the Member's interest, the lending of money to the defaulting member by other Members of the amount necessary to meet the defaulting Member's commitment, a determination of the value of the defaulting Member's interest by appraisal or by formula and redemption or sale of the interest at that value, or other penalty or consequence. The exercise of any of the foregoing consequences shall be at the exclusive option of the Manager.

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D. Unless otherwise provided by this Company Agreement, the obligation of a Member or a Member's legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Member if violation of the Texas Limited Liability Company Act, as amended from time to time, or this Company Agreement may be compromised or released only by consent of all of the Members.

Notwithstanding the compromise or release, credit of the Limited Liability Company who extends credit or otherwise acts in reasonable reliance on that obligation, after the Member signs

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a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation.

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E. The Limited Liability Company, by and through the Managers, will have the authority to ask (but not require) the Members to contribute additional capital when: (1) additional capital is reasonably needed to pay existing or anticipated expenses of operation and administration; debt service for any amounts borrowed by the Limited Liability Company; insurance and tax payments; the cost of acquiring, maintaining and selling property of the Limited Liability Company; and (2) the calls for capital are not discriminatory, that is, when all Members are permitted to contribute capital to the extent of each Member's percentage interest in the Limited Liability Company. Failure to make the requested capital contribution may result in the consequences as otherwise provided in this Company Agreement.

7.8 **PLEASE DO NOT COPY** Restriction Upon Ownership And Transfer of Ownership Interest. The membership interest and transferability of membership interest in the Limited Liability Company are substantially restricted. Neither record title nor beneficial ownership of a membership interest may be transferred or encumbered without the consent of the Managers and the consent of at least of the membership interest of the Members. This Limited Liability Company is formed by a closely-held group who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Limited Liability Company and its federal tax status. An unauthorized transfer of a membership interest could create a substantial hardship to the Limited Liability Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Limited Liability Company's capital and its financial ability to continue.

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The ownership and transfer of a membership interest is further subject to the following disclosure and condition:

**THE MEMBERSHIP INTEREST OF THE LIMITED LIABILITY COMPANY HAS NOT NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE MEMBERSHIP INTEREST OF THE LIMITED LIABILITY COMPANY MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR QUALIFIED, OR UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER THEREOF, WHICH OPINION AND COUNSEL MUST BE REASONABLY SATISFACTORY TO THE LIMITED LIABILITY COMPANY.**

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Notwithstanding the foregoing restriction upon a transfer and ownership, the following transfers are permitted.

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Death of a Member. The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all or the decedent's rights and powers as a Member, and the decedent's membership interest in the Limited Liability Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that person's membership interest, and his or her written designation will be binding upon the Limited Liability Company if delivered to the President before or within at least 60 days after the death of the Member.

Incapacity of a Member. The personal representative of an incapacitated member, acting under a durable power of attorney or Letters of Guardianship, may exercise all of a Member's rights and powers and will be entitled to receive distributions of cash or other property from the Limited Liability Company. Neither the Limited Liability Company nor any officer or Manager will have a duty to inquire as to the application or use of funds delivered to a personal representative.

Estate Planning Transfers. A Member will also have the right to make estate planning transfers of all or any part of his or her membership interest in the Limited Liability Company. The term "estate planning interest" will mean any transfer made during the life of a Member without value, or for less than full consideration by way of a marital partition agreement and/or transfer of all or any part of a membership interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under Section 170(c) of the Internal Revenue Code. The Certificate of Formation and this Company Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Certificate of Formation and this Company Agreement.

The Limited Liability Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the membership interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a membership interest, the Limited Liability Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

If any person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Limited Liability Company is required to recognize, or if a Member makes an unauthorized transfer of a membership interest which the Limited Liability Company is required to recognize, the interest of the transferee may then be acquired by the Limited Liability Company upon the following terms and conditions:

(a) The Limited Liability Company will have the option to acquire the membership interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Limited Liability Company is required to recognize the transfer.

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(b) The Limited Liability Company will have 180 days from the first day of the month following the month in which it delivers notice (or, in its option to purchase the membership interest. The valuation date for the membership interest will be the first day of the month following the month in which notice is delivered.

(c) Unless the Limited Liability Company and the transferee agree otherwise, the fair market value of a Member's membership interest is to be determined by the written appraisal of a person or firm qualified to value this type of business. The appraiser selected by the Limited Liability Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, P.O. Box 17265, Washington, DC 20041 to perform appraisals.

(d) Closing of the sale will occur at the registered office of the Limited Liability Company at 10 o'clock A.M. on the first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the closing date). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the membership interest is resolved. The transferee will be considered a non-voting owner of the membership interest, and entitled to all items of income, deduction, gain or loss from the membership interest, plus any additions or subtraction's therefrom until closing.

(e) In order to reduce the burden upon the resources of the Limited Liability Company, the Limited Liability Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Limited Liability Company if less than 10 years) with interest thereon at market rates, adjusted annually on the first day of each calendar year at the option of the Managers. The term "market rates" will mean the rate of interest prescribed as its "prime rate" by Bank of America, Dallas, Texas, as of the first day of the calendar year. If Internal Revenue Code Sections 483 and 1274A apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Limited Liability Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(f) The Managers may assign the Limited Liability Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 67% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Limited Liability Company will instead become, by substitution, the rights and obligations of the Members who are assignees.

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(g) Neither the transferee of an unauthorized transfer nor the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

## ARTICLE 8. NOTICE

8.1 Method. Whenever by statute or the Certificate of Formation or this Company Agreement, notice is required to be given to any Member or Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Limited Liability Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is first deposited in the United States mails.

8.2 Waiver. Whenever, by statute or the Certificate of Formation or this Company Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

8.3 Dissolution.

A. This Limited Liability Company shall be dissolved on the first of the following to occur:

- (1) When the period fixed for the duration of this Limited Liability Company expires.
- (2) On the occurrence of events specified in the Certificate of Formation or this Company Agreement to cause dissolution.
- (3) Written consent of all Members to dissolution.
- (4) Entry of a decree of judicial dissolution under the Texas Limited Liability Company Act.

B. Judicial Dissolution. On application by or for a Member, a court of competent jurisdiction may decree dissolution of this Limited Liability Company if it is not reasonably practicable to carry on the business of this Limited Liability Company in conformity with its Certificate of Formation and this Company Agreement.

C. Winding Up. On the dissolution of this Limited Liability Company, this Limited Liability Company's affairs shall be wound up as soon as reasonably practicable. The winding up shall be accomplished by the Managers or Members. In addition, a court of competent

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jurisdiction, on cause shown, may wind up the Limited Liability Company's affairs on application of any Member or the Member's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

D. Transfer of Assets. On the winding up of the Limited Liability Company, its assets shall be paid or transferred as follows:

(1) To the extent otherwise permitted by law, to creditors, including Members who are creditors in satisfaction of liabilities (other than for distributions) of the Limited Liability Company, whether by payment or by establishment of reserves;

(2) Unless otherwise provided by the Certificate of Formation or this Company Agreement, to Members and former Members in satisfaction of the Limited Liability Company's liability for distributions; and

(3) Unless otherwise provided by the Certificate of Formation or this Company Agreement, to Members in the manner provided in this Company Agreement.

E. Distributions Upon Termination and Dissolution of the Limited Liability Company. Upon termination and dissolution of the Limited Liability Company, the Managers will proceed to wind up the affairs of the Limited Liability Company. The liabilities and obligations to creditors and all expenses incurred in its liquidation and dissolution will be paid and will have first priority in winding up as otherwise provided in this Company Agreement. The Managers may retain from available cash and other assets of the Limited Liability Company sufficient reserves for anticipated and contingent liabilities. In its distributable cash, and other property valued at its fair market value on the date of distribution, will be distributed to the Members in the following order:

(1) Distributions will first be made to repay any loans to the Limited Liability Company by a Member, including the amount of any deferred payment obligation to a Member or a Member's personal representative as the result of a buy-out by the Limited Liability Company of a Member's interest.

(2) Distributions will then be made to the Members in an amount equal to the credit balances in their capital accounts so that the capital account of each Member shall be brought to zero. For the purpose of determining distributions in liquidation, a negative capital account balance will be considered to be a loan from the Limited Liability Company to a Member.

(3) The balance, if any, will be made to the Members in an amount equal to each Member's percentage interest in the Limited Liability Company as determined immediately prior to the distribution of the credit balances of the Member's capital accounts.

The Managers, in making or preparing to make a partial or final distribution will have the authority to (1) partition any set of class of assets and deliver, wind and segregate interests to Members, (2) sell any asset or class of assets (whether or not susceptible to partition in kind),

and deliver to the Members a divided interest in the proceeds of sale and/or divided or undivided interests in any note and security arrangement taken as part of the purchase price; and/or (3) deliver undivided interests in an asset or class of assets to the Members subject to any indebtedness which may be secured by the property.

The Limited Liability Company may continue beyond its scheduled termination date for a time reasonably necessary to conclude the administration of the Limited Liability Company, pay expenses of termination and to distribute property to those entitled thereto.

## ARTICLE 9. GENERAL PROVISIONS

### 9.1 Distributions and Reserves

A. **Declaration and Payment.** Subject to statute and the Certificate of Formation, distributions to the Members may be authorized by the Managers at any regular or special meeting and made by the Limited Liability Company. Distributions may be paid in cash or in property of the Limited Liability Company. The authorization and payment of distributions shall be at the discretion of the Managers. Distributions shall be made on the basis of the agreed value, as stated in the records required to be kept under the Texas Limited Liability Company Act, as amended from time to time, of the contributions made by each Member.

B. **Interim Distributions.** Except as otherwise provided by this Company Agreement, a Member is entitled to receive distributions from a Limited Liability Company before the Member's withdrawal from the Limited Liability Company and before the winding up of the Limited Liability Company to the extent and at the times or on the occurrence of the events specified in this Company Agreement.

C. **Record Date.** The Managers may fix in advance a record date for the purpose of determining Members entitled to receive any distribution by the Limited Liability Company, such record date to be not more than sixty days prior to the payment of such distribution. In the absence of any action by the Managers, the date upon which the Managers adopt the resolution authorizing the distribution shall be the record date.

D. **Reserves.** By resolution the Managers may create such reserve or reserves out of the surplus of the Limited Liability Company or designate or allocate any part or all of the surplus of the Limited Liability Company in any manner for any proper purpose or purposes, and may increase, decrease or abolish any such reserve, designation or allocation in the same manner.

E. **Determination of a Member's Membership Interest in the Limited Liability Company as an Entity and the Allocation and Distribution of Income, Gain, Loss, Deduction and Credit, Including Liquidating Distributions.** The percentage of membership interest of each Member will be determined by dividing the balance of the Member's capital account by the total of all of the capital accounts of all Members. A Member's percentage of membership interest will be determined by: (1) the Member's membership interest in the Limited Liability

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Company as an entity; (2) a Member's membership interest in the distribution of available cash; (3) a Member's allocable share of the items of income, gain, loss, deduction and credit; and (4) a Member's distributive share of cash and other property upon dissolution of the Limited Liability Company.

All income realized by the Limited Liability Company from the service of a Member is to be allocated to the Member whose service generates the income. That Member will have the affirmative obligation to report all items of income, gain, loss, deduction and credit in strict compliance with Section 704(e) of the Internal Revenue Code.

## 9.2 Books and Records.

The Limited Liability Company shall maintain those books and records as provided by statute and as it may deem necessary or advisable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute, and not otherwise. The Managers may examine all such books and records at all reasonable times. The Limited Liability Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Texas Limited Liability Company Act, as amended from time to time:

- (1) a current list that states:
  - (a) the name and mailing address of each member;
  - (b) the percentage or other interest in the Limited Liability Company owned by each member; and
  - (c) if one or more classes or groups are established in or under the Certificate of Formation or this Company Agreement, the names of the Members who are Members of each specified class or group;
- (2) copies of the federal, state, and local information or income tax returns for the Limited Liability Company's six most recent tax years.
- (3) a copy of the Certificate of Formation and this Company Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the manner provided by the Certificate of Formation or this Company Agreement, classes or groups of members,
- (4) unless contained in the Certificate of Formation or this Company Agreement, a written statement of:
  - (a) the amount of the cash contribution and a description and statement of the agreed value of any property contributed in a taxable year by each member and the amount of the cash

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contribution and a description and statement of the agreed value of any other contribution that the member has agreed to make in the future as an additional contribution;

**PREVIEW**

(b) the times at which additional contributions are to be made or events requiring additional contributions to be made;

(c) events requiring the Limited Liability Company to be dissolved and its affairs wound up; and

(d) the date on which each member in the Limited Liability Company became a member.

(5) correct and complete books and records of account of the Limited Liability Company.

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B. The Limited Liability Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

C. The Limited Liability Company shall keep in its registered office in Texas and make available to Members on reasonable request the street address of its principal United States office in which the records required by this section are maintained or will be available.

D. A member or an assignee of a membership interest, on written request stating the purpose, may examine and copy, in person or by the Member's or assignee's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this section and other information regarding the business, affairs, and financial condition of the Limited Liability Company as is just and reasonable for the person to examine and copy.

**THIS DOCUMENT**

E. On the written request by any Member or an assignee of a membership interest made to the person and address designated in this Company Agreement, the Limited Liability Company shall provide to the requesting Member or assignee without charge true copies of:

(1) the Certificate of Formation and this Company Agreement and all amendments or restatements; and

(2) any of the tax returns described in the Texas Limited Liability Company Act, as amended from time to time.

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9.3 Checks, Notes, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Limited Liability Company shall be signed or endorsed by such officer or officers or such other person or persons as the Managers may from time to time designate.

9.4 Fiscal Year. The fiscal year of the Limited Liability Company shall end on September 30 in each year.

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9.5 Seal. The Limited Liability Company seal shall be circular in form and shall contain the name of the Limited Liability Company, the year of its organization and the state of organization (Texas). Such seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced. The Limited Liability Company seal may be altered by an order of the Managers at any time. The use of the Limited Liability Company seal is not required but may be used at the discretion of the President. Failure to use the Limited Liability Company seal shall not affect the validity of any transaction.

9.6 Resignation. Any Manager, officer or agent may resign by giving written notice to the president or the secretary. The resignation shall take effect at the time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.7 Amendments. This Company Agreement may be altered or repealed at any annual meeting of the Members or at any special meeting of the Members at which a quorum is present or represented, provided that notice of the proposed alteration or repeal is contained in the notice of such special meeting, by the affirmative vote of a majority of the membership interest entitled to vote at such meeting and present or represented thereat. This Company Agreement may also be amended or repealed at any annual or regular meeting of the Managers or at any special meeting of the affirmative vote of a majority of the Managers, provided that notice of the proposed alteration or repeal is contained in the notice of such special meeting, except that the Managers shall not alter, amend or repeal any provision of the Company Agreement adopted by the Members which expressly provides that the Managers may not amend or repeal that provision.

9.8 Management by Members. If the Certificate of Formation of the Limited Liability Company and each certificate representing its issued and outstanding membership interests states that the business and affairs of the Limited Liability Company shall be managed by the Members of the Limited Liability Company rather than Managers, then, whenever the context so requires the Members of the Limited Liability Company shall be deemed the Managers of the Limited Liability Company for purposes of applying any provision of this Company Agreement. If the Certificate of Formation reserve the management of the Limited Liability Company to its Members, then this Company Agreement shall be interpreted as follows: the tax status of this Limited Liability Company will be the same as for a partnership, and except as allowed by the Internal Revenue Code and any corresponding rules and regulations, it is intended that this Limited Liability Company shall not allow centralization of management, and to the extent possible, this Company Agreement shall be read and interpreted to prohibit centralization of management.

9.9 Insurance. The Limited Liability Company may purchase and maintain insurance on behalf of any person who is or was a Manager, officer, employee, or agent of the Limited Liability Company or who is or was serving at the request of the Limited Liability Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary or another for any or more of the limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, other enterprise, or employee benefit plan, against any liability.



# PREVIEW

9.10 Headings. The headings used in this Company Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

9.11 Construction. Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion of this Company Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

A. The remainder of this Company Agreement shall be considered valid and operative; and

B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

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9.12 Taxable as a Partnership. The Limited Liability Company will constitute a partnership for federal income tax purposes, and the Limited Liability Company will report all items of income, gain, loss, deduction and credit as a partnership. The Limited Liability Company is to see to the preparation of all necessary tax reports and other information required by the Internal Revenue Service and a report for income tax purposes to each member of his, her, or its distributive share of items of income, gain, loss, deduction and credit.

9.13 Retention of Distributable Income as Capital Reserves. The Limited Liability Company may retain from distributions of available cash amounts needed, in the Managers' judgment, to provide capital reserves and working capital for anticipated investments and operating expenses.

# THIS DOCUMENT

The undersigned, being all the initial members as specified in the Certificate of Formation, hereby certify that the foregoing Company Agreement were unanimously adopted by the Managers effective Wednesday, February 14, 2007.

\_\_\_\_\_  
Director

\_\_\_\_\_  
President

# THANK YOU

\_\_\_\_\_  
Secretary

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