

**AGREEMENT FOR CONTRACTOR SERVICES BETWEEN  
TEMECULA COMMUNITY SERVICES DISTRICT AND SEASIDE ICE, LLC DBA ICE-  
AMERICA**

**OLD TOWN TEMECULA OUTDOOR ICE SKATING RINK**

**THIS AGREEMENT** is made and effective as of **June 22, 2021** between the **Temecula Community Services District**, a **community services district** (hereinafter referred to as "City"), and **Seaside Ice LLC dba Ice-America, a Corporation**, (hereinafter referred to as "Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on **July 1, 2021** and shall remain and continue in effect until tasks described herein are completed, but in no event later than **January 31, 2026** unless sooner terminated pursuant to the provisions of this Agreement.

**2. SERVICES**

Contractor shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

**3. PERFORMANCE**

Contractor shall faithfully and competently exercise the ordinary skill and competence of members of their profession. Contractor shall employ all generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

**4. PAYMENT**

a. The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B, other than the payment rates and schedule of payment, are null and void. This amount shall not exceed **Seventy-Two Thousand Five Hundred Dollars and No Cents (\$72,500.00) for the 2021-2022 season; Seventy-Four Thousand Three Hundred Ten Dollars and No Cents (\$74,310.00) for the 2022-2023 season; Seventy-Six Thousand One Hundred Seventy Dollars and No Cents (\$76,170.00) for the 2023-2024 season; Seventy-Eight Thousand Seventy-Five Dollars and No Cents (\$78,075.00) for the 2024-2025 season; and Eighty Thousand Dollars and No Cents (\$80,000.00) for the 2025-2026 season for a total Agreement amount of Three Hundred Eighty-One Thousand Fifty-Five Dollars and No Cents (\$381,055.00) for the total term of the agreement** unless additional payment is approved as provided in this Agreement.

b. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the General Manager.

Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by General Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

c. Contractor will submit invoices monthly for actual services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees.

If the City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Contractor shall provide receipts on all reimbursable expenses in excess of fifty dollars (\$50) in such form as approved by the Director of Finance.

## **5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City, pursuant to Section entitled "**PAYMENT**" herein.

## **6. DEFAULT OF CONTRACTOR**

a. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

b. If the General Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## **7. OWNERSHIP OF DOCUMENTS**

a. Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be

maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files containing data generated for the work, Contractor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## **8. INDEMNIFICATION**

The Contractor agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Contractor's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

## **9. INSURANCE REQUIREMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Contractor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

b. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1) General Liability: General Liability: One Million (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: One Million (\$1,000,000) per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty Five Thousand Dollars and No Cents (\$25,000).

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as insured's, as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City of Temecula, Temecula Community Services District, and/or Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Temecula, the Temecula Community Services District, and the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this agreement shall be endorsed to state in substantial conformance to the following: If the policy will be canceled before the expiration date the insurer will notify in writing to the City of such cancellation not less than thirty (30) days' prior to the cancellation effective date.

6) If insurance coverage is canceled or, reduced in coverage or in limits the Contractor shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Contractor shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

## **10. INDEPENDENT CONTRACTOR**

a. Contractor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

## **11. LEGAL RESPONSIBILITIES**

The Contractor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

## **12. RELEASE OF INFORMATION**

a. All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents or subcontractors, shall not without written authorization from the General Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

b. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice

of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **13. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

**Mailing Address:** City of Temecula  
Attn: General Manager  
41000 Main Street  
Temecula, CA 92590

**To Contractor:** Seaside Ice, LLC dba Ice-America  
Attn: Scott Williams  
807 Sprucelake Drive  
Harbor City, CA 90710

### **14. ASSIGNMENT**

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

### **15. LICENSES**

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

### **16. GOVERNING LAW**

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**17. PROHIBITED INTEREST**

No officer, or employee of the City of Temecula that has participated in the development of this agreement or its approval shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-contractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Temecula that has participated in the development of this agreement or its approval has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds thereof, or in the business of the Contractor or Contractor's sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**18. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**19. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder. The General Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TEMECULA COMMUNITY SERVICES  
DISTRICT


SEASIDE ICE, LLC dba ICE-AMERICA

*(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)*

By: \_\_\_\_\_

Zak Schwank, TCSD President

By: \_\_\_\_\_



Scott Williams, Managing Member

ATTEST:

By: \_\_\_\_\_

Randi Johl, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Peter M. Thorson, General  
Counsel

CONTRACTOR

Seaside Ice, LLC dba Ice-America

Attn: Scott Williams

807 Sprucelake Drive

Harbor City, CA 90710

swilliams@ice-america.com

City Purchasing Mgr.

Initials and Date:

MSV

05-19-2021



# EXHIBIT A

## Tasks to be Performed

### A. General Requirements for Outdoor Ice Rink:

The ice skating rink shall be a turnkey installation/removal with turnkey management and operation of an outdoor ice skating rink, as a holiday season special event for the City of Temecula. Skating rink shall be open to the general public for recreational ice skating from mid-December through early January, depending on the school calendar.

### B. Ice Skating Rink Specifications:

Outdoor ice rink shall be located at 41902 Main Street, Temecula, CA, in the Town Square Park. The rink shall be approximately 50' X 70' with the capacity of approximately 125 skaters.

### C. Contractor shall provide the following:

- i. Design and build a substructure for ice rink
- ii. Air-cooled refrigeration system/pumps/hoses/expansion tank
- iii. Generator to power above refrigeration
- iv. Fuel for generator
- v. Insulation and vapor barriers (including insulation to level the site)
- vi. Modular railing system (clear Plexiglas facing towards rink with room to display signage upon approval from City of Temecula)
- vii. Ice rink maintenance equipment- mini Zamboni electric re-surfacer used daily or as needed
- viii. Rink freezer plate system (50 X 70)
- ix. All tools, equipment and supplies for set-up, strike and maintenance. All Professional Supervision and General Labor, for set-up and strike.
- x. Refrigeration Technician on-call 24 hours during entire term
- xi. General set-up and finish-out metal-frame covering over rink wall header. Clear Plexiglas sides with smooth inside finish of rink perimeter. Optional turf/carpet to finish rink perimeter/edge (covering substructure)
- xii. Sound/public address for announcements and playback of holiday music.
- xiii. Rink Manager during entire term; trained and experienced in liability protection.
- xiv. Two (2) ADA Compliant portable restrooms available during entire term
- xv. All equipment and amenities installed and ready for test of equipment and facilities, twenty-four (24) hours in advance of grand opening, date to be determined.
- xvi. Operation of public skate sessions. Hours of operation to be at Contractor's discretion. Proposed times 10:00am until 10:00pm Sunday through Thursday with extended hours until 11:30pm on Friday and Saturday for those 18 and over only.
- xvii. Special Hours for New Year's Eve: 10:00am on December 31<sup>st</sup> until 1:00am on January 1<sup>st</sup> each year.
- xviii. Liability-related signage and written waiver release forms, preferably accessible online

- xix. Professional Support Services/ Consultation for Event Planning and execution.
- xx. Rental ice skates (approximate 220 pair of various size), sharpened, ready-to-skate, sharpening services on site as needed during run of event
- xxi. Skate change area with benches and rubber floor covering (40' X 24' approximate)
- xxii. Skate trailer or modular unit for ticket sales, storing and distribution of skates and office
- xxiii. Cash register equipment with ability to accept credit card payments
- xxiv. All sponsorship opportunities must be approved by City staff
- xxv. Proponent shall provide the City with attendance statistics. Within forty- five (45) days after the closure of the ice rink, the Proponent shall provide the City with ticket sales statistics (including those tickets that were sold, donated and/or given away).

**D. Turnkey Management and Day-to-Day Operations:**

Contractor shall provide professional, on-site management (experienced in customer service, liability-prevention and public safety); staffing to include cashier(s), ticket sales, skate rental attendant(s), safety monitor(s) and maintenance personnel to be on-site during entire term of the event, including but not limited to:

- i. Employee uniforms
- ii. Cash register equipment with ability to accept credit cards
- iii. Coordination of group sales and special events
- iv. Sound/public address for announcements and playback of holiday music
- v. All revenues associated with the ice rink venue will be distributed to contractor and its vendors

## EXHIBIT B

### Payment Rates and Schedule

The contractor agrees to submit invoices each year and agrees to the following rates and schedule:

YEAR 1	2021-2022 Season	\$72,500.00 50% Deposit- \$36,250.00 due November 4, 2021 25% Payment- \$18,125.00 due December 9, 2021 25% Final- \$18,125.00 due January 13, 2022
YEAR 2	2022-2023 Season	\$74,310.00 50% Deposit- \$37,155.00 due November 3, 2022 25% Payment- \$18,578.00 due December 8, 2022 25% Final- \$18,577.00 due January 12, 2023
YEAR 3	2023-2024 Season	\$76,170.00 50% Deposit- \$38,085.00 due November 2, 2023 25% Payment- \$19,043.00 due December 14, 2023 25% Final- \$19,042.00 due January 1, 2024
YEAR 4	2024-2025 Season	\$78,075.00 50% Deposit- \$39,037.50 due November 7, 2024 25% Payment- \$19,518.75 due December 12, 2024 25% Final- \$19,518.75 due January 9, 2025
YEAR 5	2025-2026 Season	\$80,000.00 50% Deposit- \$40,000.00 due November 6, 2025 25% Payment- \$20,000.00 due December 11, 2025 25% Final- \$20,000.00 due January 8, 2026

## OPERATING AGREEMENT

Seaside ice, LLC  
a California Limited Liability Company

The undersigned members, desiring to form a limited liability company under the California Limited Liability Company Act (the "Act"), hereby agree as follows:

### ARTICLE 1 FORMATION

1.1 Name. The name of the limited liability company (the "Company") is "Seaside Ice, LLC."

1.2 Articles of Organization. Articles of organization were filed with the California Secretary of State on 09/16/2008.

1.3 Purpose. The Company is formed for the purpose of producing seasonal ice skating activity and entertainment throughout the United States, the installation and/or sale of permanent ice skating equipment facilities, and the productions of ice shows together with any other lawful activities in which a limited liability company may engage under the Act.

1.4 Duration. The Company shall exist perpetually, unless dissolved as provided herein.

1.5 Principal Place of Business. The principal office of the Company shall initially be at 501 Herondo Street, Suite 56, Hermosa Beach, CA 90254. The manager(s) may relocate the principal office or establish additional offices from time to time.

1.6 Registered Office and Registered Agent. The Company's initial registered office shall be at 501 Herondo Street, Suite 56, Hermosa Beach, CA 90254, and the name of its initial registered agent at such address shall be Scott W. Williams.

### ARTICLE 2 MEMBERS, CONTRIBUTIONS, AND INTERESTS

2.1 Names and Addresses. The names and addresses of the members of the Company and their percentage ownership interests are:

<u>Name and address</u>	<u>Percentage Interest</u>
Turtle Island Productions, Inc. 501 Herondo Street, Suite 56	100%

Hermosa Beach, CA 90254		

2.2 Ownership Interests. Each member's percentage ownership interest at any time shall be the ratio of that member's shares of interests to all issued and outstanding members' share of interests in capital account balances ("Ownership Interest").

2.3 Contributions. Each member shall contribute to the Company as its initial capital contribution the cash and/or property described on Exhibit A attached hereto.

2.4 Other Business of Members. Any member may engage independently or with others in other business and investment ventures of every nature and description and shall have no obligation to account to the Company for such business or investments or for business or investment opportunities.

2.5 Additional Contributions. Additional capital contributions shall be accepted from existing members only if the manager(s) unanimously approve and set the maximum total amount of the additional capital contributions. If the manager(s) do so, the members shall have the opportunity (but not the obligation) to make such additional capital contributions on a pro rata basis in accordance with their Ownership Interests. If any member elects to make less than the member's pro rata share of any additional capital contributions, the others may contribute the difference on a pro rata basis in accordance with their Ownership Interests or on any other basis upon which the manager(s) may designate, in which case the Ownership Interests shall be adjusted accordingly.

2.6 No Interest on Capital Contributions. No interest shall be paid on capital contributions and no member shall have the right to withdraw his capital contribution.

2.7 Capital Accounts. A capital account ("Capital Account") shall be determined and maintained for each member. Each member's Capital Account shall be (i) credited with all capital contributions by such member and the member's distributive share of all income and gain (including any income exempt from federal income tax); and (ii) charged with the amount of all distributions to such member and the member's distributive share of losses and deductions. Capital Accounts shall be maintained in accordance with federal income tax accounting principles as set forth in Treas. Reg. § 1.704-1(b) at all times throughout the full term of the Company. In the event of a permitted sale or assignment of all or any part of a member's interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Company interest. *See* Treas. Reg. § 1.704-1(b)(2)(iv) or any successor provision.

2.8 No Withdrawal or Transfer of Member's Interest. No member shall voluntarily withdraw from the Company without the consent of all the other members except as provided in this Section 2.8. A withdrawal in violation of this Section 2.8 shall constitute a breach of this Agreement for which the Company and other members shall have the remedies

provided under applicable law. However, the initial members may sell or transfer all or part of ones ownership interest to the other.

2.9 No Encumbrance. Except in accordance with Article 8, no member shall assign, encumber, sell or otherwise transfer all or any portion of the member's interest in the Company, or enter into any agreement as a result of which any person shall acquire an economic or beneficial interest in the Company or the member's interest in the Company.

### ARTICLE 3 MEMBER MEETINGS

3.1 Meetings. The annual meeting shall be held at the principal office of the Company or at such other location and at the date and time as the manager(s) shall specify. Written notice of the annual meeting shall be required.

3.2 Special Meetings. A special meeting of members shall be held (a) if it is called by the manager(s); or (b) if members holding at least twenty percent (20%) of the Ownership Interests sign, date, and deliver to the Company's principal office a written demand for the meeting, describing the purpose or purposes for which it is to be held. Special meetings shall be held at the principal office of the Company unless otherwise determined by the managers.

3.3 Notice of Meeting. Notice of the date, time, and place of each annual or special members' meeting shall be given to each member not earlier than sixty (60) days nor less than ten (10) days before the meeting date. For a special meeting, the notice must include a description of the purpose or purposes for which the meeting is called. A statement of purpose is not required in a notice of an annual meeting. Written notice may be delivered personally, given by facsimile or other form of wire communication, or by mail or private carrier, to each members' business or home address. Written notice shall be effective at the earliest of the following: (a) when received; (b) when sent by facsimile, email, or other form of wire communication; or (c) two (2) business days after being mailed.

3.4 Record Date. The persons entitled to notice of and to vote at a members' meeting, and their respective Ownership Interests shall be determined as of the record date for the meeting. The record date shall be a date not earlier than seventy (70) days nor less than ten (10) days before the meeting, selected by the manager(s). If the manager(s) do not specify a record date, the record date shall be the date on which notice of the meeting was first mailed or otherwise delivered.

3.5 Quorum. The presence, in person or by proxy, of members owning 60% of the Ownership Interests shall constitute a quorum.

3.6 Proxies. A member may be represented at a meeting in person or by written proxy.

3.7 Voting. On each matter requiring action by the members, each member shall be entitled to vote the member's Ownership Interest. Except where a greater percentage is

required elsewhere in this Agreement, all decisions of the Company shall be approved upon the affirmative vote of members owning 60% in interest of the Ownership Interests of the Company.

3.8 Meeting of all Members. Notwithstanding any other provision of this Agreement, if all of the members hold a meeting at any time and place, such meeting shall be valid without call or notice, and any lawful action taken at such meeting shall be the action of the members.

3.9 Waiver of Notice. When any notice is required to be given to any member, a waiver thereof in writing signed by the member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. Attendance at a meeting shall constitute waiver of notice of the meeting unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

3.10 Action Without Meeting. Any action required or permitted to be taken by the members at a meeting may be taken without a meeting if a consent in writing, describing the action taken, is signed by members owning sufficient interests to approve such action at a duly called meeting and is included in the minutes of the Company's records of meetings.

3.11 Meetings by Telephone. Meetings of the members may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

## ARTICLE 4 MANAGEMENT

4.1 Number and Qualifications of Manager(s). As provided in the articles of organization, the Company shall be managed by manager members(s). The number of manager(s) shall be the number elected by the members and acting as such from time to time, but shall not be less than one (1) nor more than four (4). Manager(s) may be individuals or entities, and need not be members of the Company.

4.2 Election of Manager(s). Manager(s) shall be elected at the annual meeting of members or at a special meeting called for the purpose of electing manager(s); if a special meeting, the meeting notice must state that the purpose, or one of the purposes, of the meeting is election of manager(s). A manager shall serve a term of two (2) years from appointment or election and ending when the members next hold a meeting at which manager(s) are elected, or until the manager's earlier death, resignation, or removal. The number of managers as of the date of this Operating Agreement shall be one (1) and the current manager shall be Scott Williams and he shall serve until his successor(s) are elected and qualified.

4.3 Authority. Subject to restrictions that may be imposed from time to time by the manager(s) or members, each manager shall be an agent of the Company with authority to bind the Company in the ordinary course of its business. However, the manager(s) shall have no authority to bind the Company as to the following matters without first obtaining approval by the

members:

4.3.1 Additional Capital Contributions. Approve any additional capital contributions by the members beyond the initial contributions set forth in Section 2.3; and authorize issuance of additional shares of interests to new members upon approval of majority interests of existing members;

4.3.2 Transactions With Members and Their Affiliates. Approve any transaction between the Company and any of the members or any affiliates of any of the members, including modifying or terminating any existing employment or consulting agreement with any member or any affiliate of a member;

4.3.3 Exercise of Company Rights. Exercise any rights of the Company under this Agreement, including its rights to purchase Ownership Interests, except to the extent that members have the right to require the Company to purchase the Ownership Interests of the other member(s) as provided in ARTICLE 7 of this Agreement;

4.3.4 Acquisition of Equity Interest. Purchase or obtain an equity interest in another entity or business;

4.3.5 Loans. Make any material loans to any party, including any loan from the Company to a member of any amount;

4.3.6 Sale of Assets. Sell, or otherwise dispose of, any material assets of the Company, outside the ordinary course of its business;

4.3.7 Reorganization. Make any decision to engage or not engage in the proposed dissolution, liquidation, merger, consolidation, or reorganization of the Company.

4.4 Other Activities. Manager(s) may have other business interests and may engage in other activities in addition to those relating to the Company. This Section 4.4 does not change each manager's duty to act in a manner that the manager reasonably believes to be in the best interests of the Company.

#### 4.5 Manager Meetings

4.5.1 Meetings; Notices; Quorum; Voting. Meetings of the manager(s) may be called by any manager. Meetings shall be held at the place fixed by the manager(s) or, if no such place has been fixed, at the principal office of the Company. Oral or written notice of the date, time, and place of any meeting shall be given at least twenty-four (24) hours in advance. Written notice may be delivered personally, given by email, facsimile, or other form of wire communication, or by mail or private carrier, to each manager(s)' business or home address. Written notice shall be effective at the earliest of the following: (a) when received; (b) when sent by facsimile, email, or other form of wire communication; or (c) two (2) business days after being mailed. A majority of the manager(s) shall constitute a quorum. Each



manager shall be entitled to one vote. A matter submitted to a vote of the manager(s) shall be deemed approved if the votes in favor exceed those against the matter.

4.5.2 Meeting of all Manager(s). Notwithstanding any other provision of this Section 4, if all of the manager(s) shall hold a meeting at any time and place, such meeting shall be valid without call or notice, and any lawful action taken at such meeting shall be the action of the manager(s).

4.5.3 Action Without Meeting. Any action required or permitted to be taken by the manager(s) at a meeting may be taken without a meeting if a consent in writing, describing the action taken, is signed by all of the manager(s) and is included in the minutes of the Company's records of meetings.

4.5.4 Meetings by Telephone. Meetings of the manager(s) may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

4.6 Resignation. A manager may resign at any time by delivering written notice to the other manager or to the members. The resignation is effective when the notice is effective under the Act, unless the notice specifies a later effective date. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the remaining manager(s) or an affirmative vote of the members. The resignation of a manager who is also a member shall not affect the manager's rights as a member and shall not constitute a withdrawal of the member.

4.7 Removal of Manager by Members. The members may remove one or more manager(s) with or without cause. A manager may be removed by the members only at a meeting called for the purpose of removing the manager and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the manager.

4.8 Salaries. The salaries and other compensation of the manager(s) shall be fixed from time to time by vote of the members. A manager shall not be precluded from receiving a salary because the manager is also a member.

4.9 Other Agents. The manager(s) may, by mutual agreement, authorize any agent to enter into any lawful contract or to otherwise act on behalf of the Company. Such authority may be general or be confined to specific instances.

## ARTICLE 5 ACCOUNTING AND RECORDS

5.1 Books of Account. The Company's books and records shall be maintained by the manager(s) at its principal place of business or at its registered office as required by the Act. These shall include financial statements, tax returns, a register showing the names, addresses and Ownership Interests of the members, copies of minutes of all meetings of the members and a copy of this Agreement, including all amendments hereto. Each member shall have access to the books and records at all reasonable times. The manager(s) shall keep such

additional books and records of the operation of the Company which are appropriate and adequate for the Company's business and for carrying out this Agreement.

5.2 Fiscal Year. The fiscal year of the Company shall be the calendar year end August 31.

5.3 Accounting Reports. Within ninety (90) days after the close of each fiscal year, the manager(s) shall cause each member to receive an unaudited report of the activities of the Company for the preceding fiscal year, including a copy of a balance sheet of the Company as of the end of such year and a statement of income or loss for such year.

5.4 Tax Returns. The manager(s) shall cause all required federal and state income tax returns for the Company to be prepared and timely filed with the appropriate authorities. Within ninety (90) days after the end of each fiscal year, each member shall be furnished a statement suitable for use in the preparation of the member's income tax return, showing the amounts of any distributions, contributions, gains, losses, profits, or credits allocated to the member during such fiscal year.

The Company has elected to be treated as a C corporation for tax reporting and filing purposes.

5.5 Tax Matters Member. The manager(s) shall designate among themselves who shall be the "Tax Matters Member" for the Company in compliance with I.R.C. § 6231(a)(7) (unified audit procedures). Scott Williams shall be the initial Tax Matters Member.

## ARTICLE 6 ALLOCATIONS AND DISTRIBUTIONS

### 6.1 Allocation of Net Profit and Loss - In General.

6.1.1 Allocation of Net Profit or Loss. After giving effect to the special allocations set forth in Sections 6.2 and 6.3, the net profit or net loss of the Company for any fiscal year shall be allocated among the members in accordance with their respective Ownership Interests.

6.1.2 Limitation. The net loss allocated to each member for any Company fiscal year pursuant to Section 6.1.1 shall not exceed the maximum amount of net loss that can be so allocated without causing such member to have a deficit Capital Account at the end of the fiscal year. All net losses in excess of the limitation set forth in this Section 6.1.2 shall be allocated to the other members who do not have deficit Capital Accounts in proportion to their respective Ownership Interests.

6.2 Special Allocations. The following special allocations shall be made for any fiscal year of the Company in the following order:

6.2.1 Minimum Gain Chargeback. If there is a decrease in the Company's "partnership minimum gain," as defined by and determined under Treas. Reg. §§

1.704-2(b)(2) and 1.704-2(d), the minimum gain chargeback provisions of Treas. Reg. § 1.704-2(f), which are incorporated into this Agreement by this reference, shall be applied.

6.2.2 Member Minimum Gain Chargeback. If there is a decrease in any member's share of "partner nonrecourse debt minimum gain," as defined by and determined under Treas. Reg. § 1.704-2(i), the partner nonrecourse debt minimum gain chargeback provisions of Treas. Reg. § 1.704-2(i)(4), which are incorporated into this Agreement by this reference, shall be applied.

6.2.3 Qualified Income Offset. In the event that any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such member in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(d).

6.2.4 Nonrecourse Deductions. "Nonrecourse deductions," as defined in and determined under Treas. Reg. §§ 1.704-2(b)(1) and (c), shall be allocated among the members in accordance with their respective Ownership Interests.

6.2.5 Member Nonrecourse Deductions. "Partner nonrecourse deductions," as defined in and determined under Treas. Reg. §§ 1.704-2(i)(1) and (2), shall be specially allocated among the members in accordance with Treas. Reg. § 1.704-2(i).

6.3 Corrective Allocations. The allocations set forth in the last sentence of Section 6.1.2 and in Section 6.2 are intended to comply with certain regulatory requirements under Section 704(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The members intend that, to the extent possible, all allocations made pursuant to such Sections will, over the term of the Company, be offset either with other allocations pursuant to Section 6.2 or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 6.3. Accordingly, the manager(s) are hereby authorized and directed to make offsetting allocations of Company income, gain, loss or deduction under this Section 6.3 in whatever manner the manager(s) determine is appropriate so that, after such offsetting special allocations are made, the Capital Accounts of the members are, to the extent possible, equal to the Capital Accounts each would have if the provisions of Section 6.2 were not contained in this Agreement and all income, gain, loss and deduction of the Company were instead allocated pursuant to Section 6.1.1.

#### 6.4 Other Allocation Rules.

6.4.1 General. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, or credit and any other allocations not otherwise provided for shall be divided among the members in the same proportions as they share net profits or net losses, as the case may be, for the year.

6.4.2 Allocation of Recapture Items. In making any allocation among the members of income or gain from the sale or other disposition of a Company asset, the ordinary income portion, if any, of such income and gain resulting from the recapture of cost

recovery or other deductions shall be allocated among those members who were previously allocated (or whose predecessors-in-interest were previously allocated) the cost recovery deductions or other deductions resulting in the recapture items, in proportion to the amount of such cost recovery deductions or other deductions previously allocated to them.

#### **6.4.3 [Reserved]**

6.4.4 Allocations in Connection with Varying Interests. If, during a Company fiscal year, there is (i) a permitted transfer of a member's interest in the Company under this Agreement or (ii) the admission of a member or additional members, net profit, net loss, each item thereof, and all other tax items of the Company for such period shall be divided and allocated among the members by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d) and using any conventions permitted by law and selected by the manager(s).

### **6.5 Determination of Net Profit or Loss.**

6.5.1 Computation of Net Profit or Loss. The net profit or net loss of the Company, for each fiscal year or other period, shall be an amount equal to the Company's taxable income or loss for such period, determined in accordance with Code Section 703(a) (and, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1), including income and gain exempt from federal income tax, shall be included in taxable income or loss).

6.5.2 Adjustments to Net Profit or Loss. For purposes of computing taxable income or loss on the disposition of an item of Company property or for purposes of determining the cost recovery, depreciation, or amortization deduction with respect to any property, the Company shall use such property's book value determined in accordance with Treas. Reg. § 1.704-1(b).

6.5.3 Items Specially Allocated. Notwithstanding any other provision of this Section 6.5, any items that are specially allocated pursuant to Sections 6.2 or 6.3 shall not be taken into account in computing the Company's net profit or net loss.

6.6 Mandatory Tax Allocations Under Code Section 704(c). In accordance with Code Section 704(c) and Treas. Reg. § 1.704-3, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial book value computed in accordance with Section 6.5.2. Prior to the contribution of any property to the Company that has a fair market value that differs from its adjusted tax basis in the hands of the contributing member on the date of contribution, the contributing member and the manager(s) shall agree upon the allocation method to be applied with respect to that property under Treas. Reg. § 1.704-3, as amended from time to time. Allocations pursuant to this Section 6.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing any member's Capital Account or share of the Company's net profit,

net loss, or other items as computed for book purposes, or distributions pursuant to any provision of this Agreement.

**6.7 Distributions.** The Company may make distributions to the members from time to time of any monies or property in excess of that needed to properly carry on the business of the Company. Each distribution shall be made to all members, and divided among the members in proportion to their respective Ownership Interests. All distributions shall be subject to the limitations described in the Act.

**6.8 Distributions to Pay Tax Liabilities.** Within ninety (90) days after the end of each fiscal year, the Company shall make a distribution in an amount equal to at least (a) the Company's net taxable income during the fiscal year multiplied by (b) the lesser of (i) forty-five (45) percent or (ii) the sum of the maximum federal and state individual income tax rates of any member in effect for the fiscal year (taking into account the deductibility of state taxes for federal income tax purposes), less (c) the amount of any distributions made by the Company during the fiscal year (other than distributions made during the fiscal year that were required to be made under the provisions of this Section with respect to a prior fiscal year). For purposes of this Section, the Company's net taxable income shall be the net excess of items of recognized income and gain over the items of recognized loss and deduction reported on the Company's federal income tax return for the taxable year with respect to which the distribution is being made. The Company's obligation to make such distribution is subject to the restrictions governing distributions under the Act.

## ARTICLE 7 WITHDRAWAL AND DISSOLUTION

**7.1 Events of Dissolution.** Except as otherwise provided in this Agreement, the Company may dissolve upon the earlier of:

- (a) The death, withdrawal, expulsion, bankruptcy or dissolution of any member;
- (b) the incompetence of a member. For purposes of this Agreement, the term "incompetence" shall mean and refer to a person (i) who is a minor, (ii) who is judicially determined to be incompetent, or (iii) who is for any reason certified by his or her attending physician to be a person whose ability to receive and evaluate information effectively or communicate decisions is impaired to such extent that he or she presently lacks the capacity to meet the essential requirements for his or her physical health or safety or to manage financial resources;
- (c) approval of dissolution by a vote of the members; or
- (d) a change in control of an entity that is a member, the merger, change of organization, consolidation or reorganization of an entity that is a member, or the sale or transfer of a controlling interest of an entity that is a member. For purposes of this Section, "control" shall mean the ability to direct the operation of the business of such entity.

## 7.2 Effect of Death of a Member.

7.2.1 Upon the death of a member, the remaining members, excluding the decedent's estate and successor in interest, may within one hundred twenty (120) days elect to:

- (a) maintain the deceased member's successor in interest as an assignee of the Ownership Interest of the deceased member;
- (b) admit the deceased member's successor in interest as a member in place of the deceased member; or
- (c) purchase the interest of the deceased member pursuant to Sections 7.7 below.

7.2.2 The election shall be at the sole discretion of the surviving members and shall require the consent of a majority in interest of the surviving members, excluding the decedent's estate or successor in interest. The successor in interest shall be provided the results of the election by written notice. If the surviving members do not so elect, the Company shall dissolve, effective on the date of the event of dissolution.

7.3 Effect of Withdrawal or Other Event of Dissolution. Upon the withdrawal, incompetence, expulsion, bankruptcy or dissolution or change of control of a member, the remaining members may within one hundred twenty (120) days, without waiving any remedies in the case of voluntary withdrawal pursuant to Section 2.8 elect to:

- (a) maintain the member's successor in interest, if any, as an assignee of the affected member's interest;
- (b) admit the member's successor in interest, if any, as a member; or
- (c) purchase the interest of the affected member pursuant to Sections 7.5 below.

The election shall be at the sole discretion of the remaining members, and shall require the consent of a majority in interest of the remaining members. The successor in interest shall be provided the results of the election by written notice. If the remaining members do not so elect, the Company shall dissolve, effective on the date of the event of dissolution.

7.4 Liquidation Upon Dissolution and Winding Up. Upon the dissolution of the Company, the manager(s) shall wind up the affairs of the Company. A full account of the assets and liabilities of the Company shall be taken. The assets shall be promptly liquidated and the proceeds thereof applied as required by the Act. Upon discharging all debts, liabilities and preference distributions, all remaining assets shall be distributed to the members or their representatives by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation) in proportion to the positive balances of their respective Capital Accounts, as determined after taking into account all Capital Account adjustments for the taxable year during which the liquidation occurs (other than those made

pursuant to Section 7.11) until such balances are reduced to zero, and then in proportion to their Ownership Interests. With the approval of the members, the Company may, in the process of winding up the Company, distribute property in kind, in which case the members' Capital Account balances shall be adjusted in accordance with Treas. Reg. § 1.704-1(b)(2)(e).

7.5 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), no member shall have any obligation to make any capital contribution to the Company to eliminate the negative balance, if any, of such member's Capital Account and such negative balance shall not be considered a debt owed by such member to the Company or to any other person for any purpose whatsoever.

7.6 Valuation of Member's Interest. If the Company elects to purchase the interest of a member pursuant to Section 7.2 or 7.3 above, the value of the affected member's interest shall be determined by multiplying the member's Ownership Interest by the net fair market value of all Company assets. The net fair market value of the Company assets shall be determined by agreement between the remaining members and the affected member or the affected member's legal representative. If agreement as to such value cannot be obtained, the value of the affected member's interest shall be determined by the firm of accountants then servicing the Company, utilizing the following criteria:

(a) All accounts of the Company shall be valued at their stated book value as shown on the Company's books of account, and as adjusted at the end of the fiscal year immediately preceding the event giving rise to the purchase;

(b) No value shall be attributable to goodwill or to the Company's name;

(c) The excess of the current market value of all assets over their stated book value, including those assets not having a cost basis for Federal income tax purposes, or the deficiency of the current market value of all assets under their stated book value, shall be added or subtracted, as the case may be, to the book value to determine the adjusted book value;

(d) All debts of the Company shall be deducted from the adjusted book value to reach the net adjusted book value;

(e) The member's Ownership Interest shall be multiplied by the final value of the Company as determined above to reach the net value of the member's Ownership Interest for purposes of this Section 7.6, and

(f) The valuation of the affected member's Ownership Interest, when made, shall be final and binding upon all parties affected thereby. The accountants shall be entitled to obtain, at the Company's expense, such appraisals and other professional advice in determining net adjusted book value or to complete the Company's books of account as they deem necessary or advisable.

**7.7 Payment for Member's Interest.** The purchase price for a member's interest purchased pursuant to Section 7.2 or 7.3 shall be paid in substantially equal, consecutive monthly payments, including principal and interest. Interest shall accrue at the Longterm Applicable Federal Rate as published in the Wall Street Journal in effect on the date of the purchase. The first payment shall be made not later than thirty (30) days following the date on which the valuation of the affected member's Ownership Interest is determined. The Company may prepay the remaining amount of the purchase price at any time without penalty.

**7.8 Effect of Purchase of Member's Interest.** A member shall cease to be a member upon the Company's election to purchase the member's interest pursuant to Section 7.2 or 7.3. During the period in which the Company is making payments to the former member, the former member shall have no rights as a member in the Company.

**7.9 Failure to Exercise Purchase Option.** If the Company does not exercise the purchase option under Sections 7.2 and 7.3 and the business of the Company is continued as provided in Sections 7.2 and 7.3, then each of the persons who succeed to the affected member's interest shall be an assignee of such affected member, but shall not be a member unless admitted as a member in accordance with Section 2.8.

**7.10 Assignee of Member's Interest.** Upon any transfer of a member's Ownership Interest, either voluntary or involuntary and during life or at death, the successor in interest shall be an assignee of such Ownership Interest as described in the Act. An assignee of a member's interest shall have no rights as a member in the Company until the remaining or surviving members unanimously elect to admit such successor in interest as a member.

**7.11 Expulsion.**

**7.11.1 For Cause.** A member may be expelled from the Company for cause upon a vote of a majority in interest of the members, pursuant to the Act. Such expulsion shall be effective as of the date of the vote of the members to expel.

**7.11.2 For No Cause.** A member may be expelled from the Company for no cause upon a vote of at least 60% of the interest of the members. Such expulsion shall be effective as of the date of the vote of the members to expel. Upon such expulsion, the Company shall purchase the member's interest as provided in Sections 7.6, 7.7 and 7.8 above.

**7.12 Liquidation Upon Dissolution and Winding Up.** Upon the dissolution of the Company, the manager(s) shall wind up the affairs of the Company. A full account of the assets and liabilities of the Company shall be taken. The assets shall be promptly liquidated and the proceeds thereof applied as required by the Act. Upon discharging all debts, liabilities and preference distributions, all remaining assets shall be distributed to the members or their representatives by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation) in proportion to the positive balances of their respective Capital Accounts, as determined after taking into account all Capital Account



adjustments for the taxable year during which the liquidation occurs (other than those made pursuant to this Section 7.11) until such accounts have a balance of zero, and then in proportion to their Ownership Interests. With the approval of the members, the Company may, in the process of winding up the Company, distribute property in kind, in which case the members' Capital Account balances shall be adjusted in accordance with Treas. Reg. § 1.704-1(b)(2)(e).

## ARTICLE 8 TRANSFER OF COMPANY INTERESTS AND ADMISSION OF MEMBERS

8.1 General Prohibition. No member may voluntarily or involuntarily, directly or indirectly, sell, transfer, assign, pledge or otherwise dispose of, or mortgage, pledge, hypothecate or otherwise encumber, or permit or suffer any encumbrance of, all or any part of such member's interest in the Company, except as provided in this ARTICLE 8. Any other purported sale, transfer, assignment, pledge or encumbrance shall be null and void and of no force or effect whatsoever.

8.2 Permitted Transfers by Members. Subject to any conditions and restrictions on transferability required by law or contained in this Agreement, specifically including but not limited to the conditions set forth in Section 8.3, a member may transfer such member's entire interest in the Company to any of the following:

- (a) Any other member;
- (b) (i) a limited liability company, corporation or partnership, so long as the transferor retains control of such entity and such interest remains subject to the terms of this Agreement, (ii) the transferor's spouse and/or children, (iii) a living trust over which the transferor retains the right of revocation (provided such interest shall continue to be subject to the terms of this Agreement in the hands of the trustee of the trust); or
- (c) Any purchaser in accordance with Section 8.4.

8.3 Conditions on Transfer. No transfer of a member's interest shall be effective unless and until the following conditions are satisfied:

- (a) The transferor and transferee shall have executed and acknowledged such reasonable and customary instruments as shall be necessary or desirable, in the opinion of the manager(s), to effect such transfer;
- (b) The transfer shall not violate any applicable law or governmental rule or regulation, including without limitation the Act and any federal or state securities laws; and
- (c) Unless otherwise approved by the manager(s), the transfer, when aggregated with all other transfers within a twelve (12) month period, shall not cause the termination of the Company as a partnership for federal income tax purposes

pursuant to § 708 of the Code.

#### 8.4 Sale of Interest.

(a) Subject to compliance with the conditions of Section 8.3, a member shall be entitled to sell the member's interest in the Company only in strict accordance with the provisions of this Section 8.4. If a member elects to sell the member's interest in the Company, the member shall first give written notice of the member's intention to do so (the "Sale Notice") to the all other members (the "Remaining Member(s)"). Such notice, which shall be based on a bona fide offer to purchase by the designated prospective purchaser, shall set forth the purchase price (which shall be a cash amount and not the exchange of property or other value), the terms of payment and the other terms of sale and the identity of the proposed transferee. The Remaining Member(s) shall have a period of sixty (60) days after the Sale Notice is given to elect to acquire such interest at the price and upon the same terms (other than the closing date) designated in the Sale Notice, less the difference, if any, in commissions and costs of closing payable in the event of the proposed sale as opposed to a sale to the Remaining Member(s). If the Remaining Member(s) do not elect to acquire such interests on such terms within the time provided herein or if the Remaining Member(s) give written notice of rejection thereof before the expiration of the sixty (60) day period, the member giving the Sale Notice shall have the right to sell and close the sale of such interest to the same person and upon substantially the same terms as set forth in the Sale Notice for a period of fortyfive (45) days following notice of rejection or following the expiration of the sixty (60) day period, whichever is earlier. After the expiration of the forty-five (45) day period within which to complete the sale, the member giving the notice of intention to sell shall not sell or transfer such interest without again complying with the terms of this Section 8.4(a). Any sale hereunder to the Remaining Member(s) shall be closed within sixty (60) days of the acceptance of the offer to sell.

(b) If the Remaining Member(s) elect to acquire such interest as above provided above, they must acquire all and not part of such interest. Each Remaining Member electing to purchase shall have the right to acquire the interest offered proportionate to such Remaining Member's respective Ownership Interest; that is, each such Remaining Member may acquire such portion of the offered interest that the Remaining Member's Ownership Interest bears to all Ownership Interests of Remaining Member(s) electing to purchase (unless the purchasing Remaining Members agree to divide the interest other than as set forth above). If any Remaining Member does not elect to acquire such Remaining Member's full proportionate share of such interest, the other Remaining Member(s) desiring to acquire the same may acquire such share proportionate to their respective Ownership Interests (unless the purchasing Remaining Members agree to divide the remaining interest other than as set forth above).

8.5 Effect of Transfer Generally. At the time of a transfer of any member's interest, whether or not such transfer is made in accordance with this ARTICLE 8, all the rights

possessed as a member in connection with the transferred interest, which rights otherwise would be held either by the transferor or the transferee, shall terminate against the Company unless the transferee is admitted to the Company as a Substitute Member pursuant to the provisions of Section 8.6; provided, however, that if the transfer is made in accordance with this ARTICLE 8, such transferee shall be entitled to receive distributions to which such transferor would otherwise be entitled from and after the effective date of such transfer, which date shall be specified by the manager(s) and shall be no later than the last day of the calendar month following the first calendar month during which the manager(s) received notice of the transfer and all conditions precedent to such transfer provided for in this Agreement have been satisfied. The Company and the manager(s) shall be entitled to treat the transferor as the recognized owner of such interests until such effective date and shall incur no liability for distributions made in good faith to the transferor prior to the effective date.

#### 8.6 Admission of Transferee as Substitute Member.

(a) No transferee of a member shall be admitted as a member unless all of the following conditions have been satisfied:

- (i) The transfer complies with Sections 8.2 and 8.3, and Section 8.4 (if applicable);
  - (ii) All Company members consent to transferee's admittance;
  - (iii) The prospective transferee has executed instruments, in form and substance satisfactory to the managers, accepting and agreeing to be bound by all the terms and conditions of this Agreement and any member admission agreement required by the manager and has paid all expenses of the Company in effecting the transfer;
  - (iv) All requirements of the Act regarding the admission of a member have been complied with by the transferee, the transferring member and the Company; and
  - (v) Such transfer is effected in compliance with all applicable state and federal securities laws.
- (b) In the event of a transfer complying with all the requirements of Sections 8.2 and 8.3, and Section 8.4 (if applicable), and the transferee being admitted as a member pursuant to this Section 8.6, the transferee shall execute a member admission agreement acceptable to the manager(s), in which the transferee agrees to be bound by the terms of this Agreement.

### ARTICLE 9 LIMITATION OF LIABILITY/INDEMNIFICATION

9.1 Indemnification. The Company shall indemnify each of its manager(s) to

the fullest extent not prohibited by California law, as the same exists or may hereafter be amended or interpreted, against all liability, loss and costs (including, without limitation, attorney's fees) incurred or suffered by the manager by reason of or arising from the fact that such person is or was a manager of the Company, or is or was serving at the request of the Company as a manager, director, officer, partner, trustee, employee, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, trust, benefit plan, or other enterprise. The Company may, by action of the members or manager(s), provide indemnification to employees and agents of the Company who are not manager(s). The indemnification provided in this Section shall not be exclusive of any other rights to which any person may be entitled under any statute, bylaw, agreement, resolution of members or manager(s), contract, or otherwise.

9.2 Limitation of Liability. Manager(s) of the Company shall not be liable to the Company or its members for monetary damages for conduct as manager(s) except to the extent that the Act, as it now exists or may hereafter be amended, prohibits elimination or limitation of manager liability. No repeal or amendment of this Section or of the Act shall adversely affect any right or protection of a manager for actions or omissions prior to the repeal or amendment.

## ARTICLE 10 AMENDMENTS

10.1 By Members. The members may amend or repeal the provisions of this Agreement by unanimous agreement set forth in writing or by action taken at a meeting of members called for that purpose. This Agreement may not be amended or repealed by oral agreement of the members.

10.2 By Manager(s). The manager(s) may not amend or repeal the provisions of this Agreement.

## ARTICLE 11 MISCELLANEOUS

11.1 Additional Documents. Each member shall execute such additional documents and take such actions as are reasonably requested by the manager(s) in order to complete or confirm the transactions contemplated by this Agreement.

11.2 Arbitration and Mediation. Any dispute among the members or among the members and the Company concerning this Agreement shall be resolved by arbitration before a single arbitrator, in accordance with the then-effective commercial arbitration rules of the American Arbitration Association. Arbitration shall occur in Los Angeles County, CA. Judgment upon the arbitration award may be entered in any court having jurisdiction. The parties acknowledge that mediation may help resolve any dispute. Therefore, any party may propose mediation whenever appropriate through the American Arbitration Association, or any other mediator or mediation process the parties may agree on. Nothing herein, however, shall prevent a member from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

11.3 Attorney's Fees. In the event arbitration is instituted to enforce or determine the parties' rights or duties arising out of the terms of this Agreement, or injunctive relief is sought in a court of competent jurisdiction, the party substantially prevailing shall be entitled to recover such amount for its cost and attorney's fees incurred in connection with the arbitration or other proceeding as shall be determined by the arbitrator or judge.

11.4 Counterparts. This Agreement may be executed in two or more counterparts, which together shall constitute one agreement.

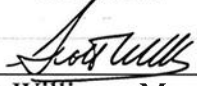
11.5 Governing Law. This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of California (without regard to principles of conflicts of law).

11.6 Headings. Headings in this Agreement are for convenience only and shall not affect the meaning.

11.7 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

11.8 Third-Party Beneficiaries. The provisions of this Agreement are intended solely for the benefit of the members and shall create no rights or obligations enforceable by any third party, including creditors of the Company, except as otherwise provided by applicable law.

ADOPTED & REVISED as of August 31, 2018 by the undersigned, constituting all of the members.

By 
Scott Williams, Manager and Member for
Turtle Island Productions, Inc.

**EXHIBIT A**

**Initial Issuance of Shares & Capital Contribution**

	<b>Number of Shares</b>	<b>Capital Contributed</b>
<b>Turtle Island Productions</b>	<b>1,000</b>	<b>\$1,000</b>