

**NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE MONTANA UNIFORM ARBITRATION ACT, TITLE 27, CHAPTER 5, MONTANA CODE ANNOTATED**

**OPERATING AGREEMENT  
OF  
\_\_\_\_\_, LLC  
A MONTANA LIMITED LIABILITY COMPANY  
EFFECTIVE \_\_\_\_\_ 20\_\_**

**SECTION 1  
Organization**

**1.1 Agreement.** The Members hereby enter into this Operating Agreement (“Agreement”) to regulate the affairs of the Company and the conduct of its business, and to govern relations among the Members and the Company upon the terms and conditions set forth herein, subject to the provisions of the Montana Limited Liability Company Act (the “Act”), Title 35, Chapter 8 of the Montana Code Annotated, as amended from time to time.

**1.2 Formation.** The Members formed a limited liability company on February 15, 2011 upon the terms and conditions provided in this Agreement, subject to the provisions of the Montana Limited Liability Company Act (the “Act”), Title 35, Chapter 8 of the Montana Code Annotated as amended from time to time.

**1.3 Name.** The name of the Limited Liability Company is \_\_\_\_\_, LLC (“Company”). It is a manager managed limited liability company.

**1.4 Principal Place of Business.** The principal place of business of the Company is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**1.5 Term.** The Company shall begin on the date of filing its Articles of Organization with the Secretary of State, and shall be perpetual, or until otherwise dissolved in accordance with this Agreement.

**1.6 Managers and Members.** The Managers of the Company are \_\_\_\_\_ (“\_\_\_\_\_” herein) and \_\_\_\_\_ (“\_\_\_\_\_” herein). The Members of the Company are \_\_\_\_\_ and \_\_\_\_\_ of, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (“\_\_\_\_\_” herein).

**SECTION 2**  
**Purposes of the Business**

The Company will engage in any lawful business which the Members owning the majority of the Company Ownership Units may agree.

**SECTION 3**  
**Contributions and Capital Accounts**

**3.1 Contributions.** Upon execution of this Agreement, the Members have contributed or will contribute the property more particularly described on Exhibit A and shall receive the initial Ownership Units as set forth in Section 4.1. No member shall have any further obligation to contribute cash, property, or services to the Company except as otherwise expressly provided in this Agreement.

**3.2 Additional Contributions.** The Members may, but are not required, to contribute additional capital deemed necessary by a vote of a majority of the Ownership Unit holders of the Company. After receiving Thirty (30) days written notice, in the event that any Member fails to contribute their proportionate share of any or all of the additional capital requested by a majority of Ownership Unit holders, then other Members, or any one of them, may contribute the additional capital not paid in by such refusing Member, and shall receive an increase in the proportionate share of the Ownership Units in the entire Company in direct proportion to the additional capital contributed. The right to make up additional capital contributions of a refusing Member and the consequent right to an increase in Ownership Units shall be available in the same order as the right to share in distributions of the remaining Members on a pro-rata basis. Any reallocation of capital accounts necessary as a result of additional capital contributions shall be made on the books within One Hundred Eighty (180) days of the additional contribution.

**SECTION 4**  
**Profits and Losses**

**4.1 Determination and Allocation.** Profits and Losses shall be determined annually. Except as provided in Section 5, Profits and Losses shall be allocated and shared between or among the Members in accordance with the following Ownership Units:

<b>Member</b>	<b>Initial Ownership Percentage</b>	<b>Ownership Units</b>

**SECTION 5**  
**Tax Matters**

**5.1 General.** For income tax purposes, except as provided in this Section 5, all items of Company income, gain, loss and deduction shall be allocated and shared between or among

the Members in the same manner that Profits and Losses are allocated and shared pursuant to Section 4.1.

## **SECTION 6 Distributions**

**6.1 Non-Liquidating Distributions.** Except as prohibited by the Act, distributions of the Company (other than distributions specified in Sections 6.2, 6.3 and 4.1) shall be made between or among the Members in accordance with the Ownership Units and shall be distributed at least annually.

**6.2 Liquidating Distributions.** All distributions made in connection with a winding up of the Company shall be made in the following order of priority:

- A. To Company creditors, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, whether by payment or by the making of reasonable provision for payment, other than liabilities to Members for distributions under Sections 35-8-605 of the Act;
- B. To Members and former Members of the Company in satisfaction of liabilities for distributions under Sections 35-8-605 of the Act; and
- C. Between or among the Members in accordance with the relative balances of their positive Capital Accounts until the Capital Accounts of all of the Members have been reduced to zero under this Section 6.2(C).

Notwithstanding the foregoing sentence, such distributions shall in all events be made in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(b)(2). For purposes of this Section 6.2, the Capital Accounts shall be determined after allocating all Profits and Losses under Section 4 through the date of the distribution.

**6.3 Tax Payment Distributions.** The Company shall make distributions to Members in an amount sufficient to pay the maximum estimated state and federal tax liability of each Member calculated as the product of: (a) the amount of the maximum estimated, projected distributions reportable on each Member's respective K-1 attachments to their respective tax returns for the current tax year (b) multiplied by an imputed tax rate of Forty Percent (40%). In addition, because the Company has elected to be categorized as a partnership for both federal and state tax purposes, the Members will be taxed on a share of items of profit or loss of the Company. The Members desire that the Company make tax distributions in order to provide all Members the cash necessary to avoid the imposition of penalties by federal and state taxing authorities. The Company shall make tax distributions to all Members on or before March 15, June 1, September 1, and December 1 of each year in proportion to their Ownership Units. The amount of the tax distribution shall be determined by the Company, but shall be in an amount reasonably calculated to ensure each Member (or if any Member is a limited liability company, the members of such constituent limited liability company, as the case may be) shall be able to make quarterly estimated tax payments on the estimated income derived from the Company in an

amount equal to the lowest amount required to be paid by an individual pursuant to Code Section 6654 to avoid the assessment of any penalty. For the purpose of computing the tax distributions, it shall be assumed that all income deemed to be received by all Members is taxable at the highest marginal tax rate imposed on the ordinary income of individuals under the Federal Income Tax laws.

## **SECTION 7 Management**

### **7.1 Management of Company by Manager.**

**A. Manager.** \_\_\_\_\_ and \_\_\_\_\_ (collectively referred to as “the Managers”) shall manage the Company. The Managers shall have such rights, duties and powers as are specified in this Agreement, or conferred upon the Managers by the Members. The Members acknowledge and agree that, except as expressly provided in Section 7.2, it is the intention of the Members to confer upon the Managers full, complete and absolute power and authority to manage and conduct the business and affairs of the Company to the maximum extent permitted by the Act. A Member, unless also appointed (or hired) as a Manager, officer or other employee, shall not participate in the day-to-day operations of the business affairs of the Company and, if so appointed (or hired), shall participate only within the scope of authority of such position as set forth in the Agreement or elsewhere. A Manager need not be a Member.

**B. Duties of Manager.** The Managers shall have the general supervision, direction, and control of the business of the Company. They shall preside at all meetings of the Members. The Manager shall have the general powers and duties of management typically vested in the office of president and vice president of a corporation, and such other powers and duties as may be prescribed by the Members. Subject to the limitations and restrictions set forth in this Agreement, they shall act on behalf of the Company in all matters affecting the day-to-day management and supervision of the Company and its business affairs, and shall have all rights and powers generally conferred by law or otherwise necessary, advisable or consistent therewith.

**C. Election.** Upon the removal, resignation, or other event causing \_\_\_\_\_ or \_\_\_\_\_ to cease to be the Manager, a successor Manager may be chosen by an affirmative vote of the Members who own more than fifty percent (50%) of the total Voting Ownership Units of the Company as set forth in Section 4.1. A Manager shall hold office until the Manager resigns or shall be removed or otherwise disqualified to serve, or the Manager’s successor is elected and qualified.

**D. Removal and Resignation.** Any Manager may be removed, with or without cause, by an affirmative vote of the Members who own more than fifty percent (50%) of the total Voting Ownership Units of the Company as set forth in Section 4.1.

**E. Powers of Manager.** Without limiting the generality of Section 7.1, but subject to Section 8.4 and to the express limitations set forth elsewhere in this Agreement, the Manager shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the

name of the Company all of the powers a Manager of a limited liability company is authorized to exercise under Montana law.

**F. Fees and Costs.** The Company shall pay to the Manager only such compensation for services performed for the Company as may be approved by a Majority Interest. The Company shall reimburse the Manager for any expense paid by the Manager that the Company properly should bear.

#### **7.4 Officers.**

**A. Appointment of Officers.** The Managers may appoint officers at any time with such duties and powers as set forth in this Section 7.4 or as otherwise determined by the Managers. The officers of the Company shall serve at the pleasure of the Managers, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Manager. The Manager may appoint himself to fill one or more offices.

**B. Removal, Resignation and Filling of Vacancy of Officers.** Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by either Manager at any time. A vacancy in any office because of death, resignation, removal, disqualification or any other cause may be filled by the Manager.

**C. Salaries.** The Company may pay such compensation to an officer or employee of the Company pursuant to an employment agreement or other arrangement as may be determined by the Manager.

**D. Signing Authority of Officers; termination of Authority.** The Managers, or either of them, may authorize any officer or officers to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company. Such officer or officers may sign all checks, drafts, and other instruments obligating the Company to pay money. Any officer, acting alone, shall be authorized to sign contracts and obligations on behalf of the Company, if authority to do so is granted by either of the Managers. Such authority may be terminated by either of the Managers without advance notice to the officer, but the Manager terminating the authority shall give notice to other Manager within 24 hours after such termination.

**7.5 Performance of Duties, Limited Liability to Company, Members and Assignees.** Neither Manager shall be liable to the Company or to any Member or Assignee for any loss or damage sustained by the Company or any Member or Assignee, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Manager or officer. The Manager shall perform his or her duties in good faith, in a manner it reasonably believes to be in the best interests of the Company and its Members and Assignees, and with such care, including reasonable inquiry, as an ordinarily prudent Person in a like position would use under similar circumstances. If the Manager or officer so performs his or her duties as the Manager or officer, as the case may be,

the Manager or officer shall not have any liability by reason of being or having been the Manager or an officer.

In performing his or her duties, the Manager and each officer shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following Persons or groups unless the Manager or officer has knowledge concerning the matter in question that would cause such reliance to be unwarranted and provided that the Manager or officer acts in good faith and after reasonable inquiry when the need therefor is indicated by the circumstances:

**A.** One or more officers, employees or other agents of the Company whom the Manager or officer reasonably believes to be reliable and competent in the matters presented; or

**B.** Any attorney, independent accountant, or other Person as to matters which the Manager or officer reasonably believes to be within such Person's professional or expert competence.

#### **7.6 Indemnification of the Manager.**

**A.** Unless otherwise provided in Section 7.6(d), the Company, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of Company Property) shall indemnify, save harmless, and pay all judgments and claims against any Manager relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any Manager in connection with the Business, including reasonable attorneys' fees incurred by the Manager in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred.

**B.** Unless otherwise provided in Section 7.6(d), in the event of any action by a Member against any Manager, including a Company derivative suit, the Company shall indemnify, save harmless, and pay all expenses of such Manager, including reasonable attorneys' fees incurred in the defense of such action.

**C.** Unless otherwise provided in Section 7.6(d), the Company shall indemnify, save harmless, and pay all expenses, costs, or liabilities of any Manager, if for the benefit of the Company and in accordance with this Agreement said Manager makes any deposit or makes any other similar payment or assumes any obligation in connection with any Property proposed to be acquired by the Company and suffers any financial loss as the result of such action.

**D.** Notwithstanding the provisions of Sections 7.6(a), 7.6(b) and 7.6(c) above, such Sections shall be enforced only to the maximum extent permitted by law and no Manager shall be indemnified from any liability for the fraud, intentional misconduct, gross negligence or a knowing violation of the law which was material to the cause of action.

**E.** The obligations of the Company set forth in this Section 7.6 are expressly intended to create third party beneficiary rights of each of the Managers and any Member is

authorized, on behalf of the Company, to give written confirmation to any Manager of the existence and extent of the Company's obligations to such Manager hereunder.

## **SECTION 8**

### **Role of Members**

**8.1 Rights or Powers.** The Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.

**8.2 Voting Rights.** No Member has any voting right except with respect to those matters specifically reserved for a Member vote which are set forth in this Agreement and as required in the Act.

#### **8.3 Meetings of the Members.**

**A.** Meetings of the Members may be called upon the written request of any Member. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting shall be given to all Members not less than seven (7) business days nor more than thirty (30) days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at such meeting and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 8.4. Except as otherwise expressly provided in the Agreement, an affirmative vote of the Members who own more than Fifty percent (50%) of the total Voting Ownership Units of the Company shall be required to constitute the act of the Members.

**B.** For the purpose of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment, the Manager or the Member requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) Business Days before any such meeting.

**C.** Each Member may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. The Member or its attorney-in-fact must sign every proxy. No proxy shall be valid after the expiration of eleven (11) months from the date unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

**D.** Each meeting of Members shall be conducted by the Manager or such other individual Person as the Manager deems appropriate.

**E.** Notwithstanding this Section 8.3, the Company may take any action contemplated under this Agreement as approved by the consent of the Members, such consent to be provided in writing, or by telephone or facsimile, if such telephone conversation or facsimile is followed by a written summary of the telephone conversation or facsimile communication sent by registered or certified mail, postage and charges prepaid, to such address as such Person may from time to time specify by notice to the Members and the Manager.

**8.4 Required Member Consents.** Notwithstanding any other provision of this Agreement, no action may be taken by the Company (whether by the Managers or otherwise) in connection with any of the following matters without the written consent of the Members who own more than Seventy-Five (75%) of the total Voting Ownership Units of the Company as set forth in Section 4.1

**A.** Confession of a judgment against the Company;

**B.** Any sale of assets of the Company involving total consideration in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00);

**C.** Any transaction by the Company involving the incurrence of any indebtedness for borrowed money in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or the issuance of any equity or any equity-based security by the Company;

**D.** Any capital expenditures in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00);

**E.** Any transaction to liquidate or dissolve the Company;

**F.** Any transaction involving the sale of all or substantially all or the Company's assets; and

**G.** Any transaction by the Company to merge, consolidates, or reorganize its business.

**8.5 Withdrawal/Resignation.** Except as otherwise provided in Sections 6 and 11, no Member shall demand or receive a return on or of its Capital Contributions or withdraw from the Company without the consent of all Members.

**8.6 Member Compensation.** No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company, or otherwise, in its capacity as a Member, except as otherwise provided in this Agreement.

**8.7 Members Liability.** No Member shall be liable under a judgment, decree or order of a court, or in any other manner for the Debts or any other obligations or liabilities of the Company. A Member shall be liable only to make its Capital Contributions and shall not be required to restore a deficit balance in its Capital Account or to lend any funds to the Company



or, after its Capital Contributions have been made, to make any additional contributions, assessments or payments to the Company. The Manager shall not have any personal liability for the repayment of any Capital Contributions of any Member.

**8.8 Partition.** While the Company remains in effect or is continued, each Member agrees and waives its rights to have any Company Property partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company Property partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

**8.9 Transactions Between a Member and the Company.** Except as otherwise provided by applicable law, any Member may, but shall not be obligated to, lend money to the Company, act as surety for the Company and transact other business with the Company and has the same rights and obligations when transacting business with the Company as a person or entity who is not a Member. A Member, any Affiliate or an employee, stockholder, agent, director or officer of a Member or any Affiliate, may also be an employee or be retained as an agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member.

**8.10 Other Instruments.** Each Member hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefore, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Manager deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

## **SECTION 9 Banking, Books**

**9.1 Banking.** All funds of the Company shall be deposited in the name of the Company in such checking or savings account(s) as the Managers shall designate. Withdrawals therefrom shall be as designated by the Managers.

**9.2 Books.** The Company books shall be maintained at the principal office of the Company, and each Member shall at all times have access thereto.

## **SECTION 10 Non-Transferability of Members Interest**

**10.1 Non-Transferability of Members Interest.** No Member shall assign, encumber, mortgage, pledge, transfer or dispose of any or all of its Ownership Units in the Company, now owned or hereafter acquired except in connection with the following:

**A.** An inter vivos or testamentary transfer of the Ownership Units to a surviving spouse, lineal descendant or other heir, pursuant to a natural person's Member's estate planning;  
or

**B.** With the express written consent of Seventy-Five Percent (75%) of the members of this company.

Any assignment, transfer or attempted transfer, of an Ownership Unit in violation of this Agreement shall be void.

**10.2 Consent of Transferee.** Any proposed Transferee of any Membership Interest must agree, in writing, to be bound by the terms of this Operating Agreement.

## **SECTION 11**

### **Events Triggering Option or Obligation to Purchase**

**11.1 Events of Dissociation.** The following shall be considered events of dissociation:

- A.** A Member's filing a voluntary petition in bankruptcy;
- B.** A forced levy or attachment against a Member's Interest;
- C.** An individual natural person Member's death;
- D.** The appointment of a guardian or general conservator for an individual natural person Member;
- E.** A determination by two licensed physicians that an individual natural person Member is disabled and unable to perform their duties under the Operating Agreement;
- F.** The Member seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of all or substantially all of the Member's property;
- G.** A Member giving the Company notice of the Member's express will to withdraw;
- H.** The Member's expulsion, pursuant to this Operating Agreement;
- I.** The Member's expulsion by judicial determination that the Member:
  - i. Engaged in wrongful conduct that adversely and materially affected the Company's business;
  - ii. Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the Company or other Members under 35-8-310; or
  - iii. Engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.

**J.** In the case of a Member that is a Trust or is acting as a Member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the Company, except in the case of the substitution of a successor trustee;

**K.** In the case a Member that is an estate or is acting as a Member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the Company, except in the case of the substitution of a successor personal representative;

**L.** Any other event of dissociation under Mont. Code Ann § 35-8-803.

The Member or its successor which is affected by any of the events set forth in the preceding sentence shall give written notice to the Company within thirty (30) days of the event causing dissociation; but failure to give such notice shall not avoid the dissociation event, however.

**11.2 Effect of Dissociation.** If a Member becomes dissociated (except by a transfer of their Ownership Units under Section 10.1(a) or (b)), the Company shall have the option to purchase the dissociated Member's Ownership Units for the price and on the terms as set forth in Section 12, herein.

**11.3 Closing.** If the Company elects to purchase the dissociated Member's interest, the closing of such purchase and sale shall take place at the office of the Company at a date designated by the Company which shall not be more than one hundred twenty (120) days following the date of dissociation.

**11.4 Terms of Payment.** A minimum of Twenty Five Percent (25%) of the purchase price shall be paid to the dissociated Member or his or her representative in cash at closing. Any balance shall be paid in cash in equal monthly payments over a period of five (5) years, the first such monthly payment to be due and payable one (1) month from the date of the down payment, with interest on the unpaid balance at the prime rate as published in the money rates section of *The Wall Street Journal* on the date of closing (or the first immediately preceding business day, if the date of closing is not a business day) (the "Prime Rate"); provided, however, that this interest rate shall not exceed the maximum rate allowed by the laws of the State of Montana. The Company shall have full prepayment privileges to pay the outstanding balance in full or in part at any time.

**11.5 Promissory Note.** The obligation set forth in Section 11.4 shall be represented by a Promissory Note made by the Company which shall be delivered to the dissociated Member or his or her representative at the time of the down payment. Such Note shall, at the option of the dissociated Member or his or her representative, carry the personal guaranty of the remaining Members or shall be secured by Company property, and shall require that the entire unpaid balance may, at the election of the obligee, become immediately due and payable in the event that the obligor is late in making a payment and has not made such payment after ten days' written notice thereof.

## **SECTION 12**

### **Valuation of Member's Interest**

**12.1 Valuation of Member's Interest upon Involuntary Dissociation.** The dissociated Member's Ownership interest in the Company shall be valued according to its fair market value, if the dissociation is due to a Member's dissolution;

**12.2 Valuation of Member's Interest upon Voluntary Dissociation.** In the event that a Member dissociates for any reason other than those listed in Section 12.1 the value of the Member's Ownership Units will be determined by multiplying the fair market value of the Member's Ownership Units by 1.0.

**12.3 Value of Interest in Certain Events.** In the event a selling or purchasing Member and the Company do not agree upon the valuation of a Members' interest, each party shall select an appraiser. These appraisers, in turn, shall select a third appraiser. The appraisers will be charged with the task of valuing the Membership interest in accordance with Section 12.1 and Section 12.2 above. The parties shall bear the costs of their individual appraisers and shall split the cost of the third appraiser. If the two appraisers are unable to select a third appraiser, the senior district judge in service of the Thirteenth Judicial Court in and for Yellowstone County, Montana shall select the third appraiser. The fair market value shall be the fair market value determined by any two of the three appraisers. If two of the three appraisers are unable to agree upon the fair market value, the fair market value shall be the average of the three appraisers, provided that the lowest appraisal is at least 80% of the highest appraisal. If the lowest appraisal is not at least 80% of the highest appraisal, the fair market value shall be determined by a fourth appraiser appointed by the senior district judge in service for the Thirteenth Judicial Court in and for Yellowstone County, Montana. Any buy-out price of Company property shall be reduced by the amount of indebtedness owed by the Member to the Company.

## **SECTION 13**

### **Dispute Resolution**

No party to this Agreement shall institute a proceeding in any Court to resolve a dispute with any other party to this Agreement concerning the representations, warranties, covenants and agreements contained herein, but agree that any such dispute shall be resolved in accordance with the dispute resolution provisions in this Section. Initially, the parties to the dispute shall attempt to resolve the dispute through direct negotiation. If the dispute is not resolved within two (2) weeks after a demand for direct negotiation, the parties shall attempt to resolve the dispute through mediation, with a mediator jointly chosen by the parties. If the mediator is unable to facilitate a settlement of the dispute within a reasonable period of time, as determined by the mediator, the mediator shall issue a written statement to the parties to that effect and any unresolved dispute arising under or in connection with this Agreement shall be settled exclusively by binding arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association (except as modified below). For this purpose, the dispute shall be referred to a single arbitrator if the parties agree on the selection of a single

arbitrator, or if not, then to a panel of three (3) arbitrators of which one (1) arbitrator shall be selected by each of the parties, with the third arbitrator selected by the two (2) arbitrators chosen by the parties. All arbitration proceedings shall be held in Billings, Montana, or such other location as the parties may agree upon. Montana law shall govern all arbitration proceedings. The arbitration proceeding shall follow the Montana Rules of Evidence and shall follow the provisions of Rules 16, 26, 30, 33, and 34 of the Montana Rules of Civil Procedure governing discovery and the scheduling and ordering of the arbitration hearing. Such Rules shall only be applied in a fashion so as to afford an expedited arbitration proceeding, however. All informal dispute proceedings, demands, hearings, or correspondence and any resulting arbitration or mediation proceedings or settlements or awards shall be kept strictly confidential. Any arbitrator shall have the power to compel the dissolution, distribution in kind, or forced sale or purchase of the membership interests under this agreement.

## **SECTION 14 Dissolution**

**14.1 Events of Dissolution.** The Company is dissolved upon the happening of one of the following events:

- A. At the time or upon the occasion of events specified in the Company's Articles of Organization or this Agreement;
- B. Members owning at least Fifty Percent (50%) of the Ownership Units of the Company consent to a dissolution;
- C. The entry of a decree of judicial dissolution.

**14.2 Articles of Dissolution.** Upon the dissolution and the commencement of winding up of the Company, the Company shall file the required documents with the Secretary of State.

**14.3 Procedure.** Upon dissolution, the affairs of the Company will be wound up, and the assets of the Company distributed, according to the provisions of Section 9 of the Act.

## **SECTION 15 Assignment**

**15.1 General Rules Regarding Assignment.** If an assignment of a Membership Interest has not been consented to by Members owning more than Fifty Percent (50%) of the Ownership Units of the Company, the following rules apply:

- A. An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
- B. An assignment of a Members' interest does not entitle the assignee to participate in the management and affairs of the Company or to become a Member or to exercise any rights of a Member;

- B. Until the assignee becomes a Member, the assignor continues to be a Member and to have the power to exercise rights of a Member, subject to the Members' or Company's right to remove the assignor pursuant to this Operating Agreement;

The foregoing limitations shall not apply the transfer of an individual Member's Membership Units to an inter-vivos or testamentary transfer to a surviving spouse, lineal descendant or other heir of an individual Member, including a trust for the benefit of the surviving spouse or lineal descendants of the individual Member.

## **SECTION 16 Indemnification**

**16.1 Mandatory Indemnification.** Subject to Section 16.2, the Company shall indemnify a Member from judgments, settlements, penalties, fines or expenses incurred in a proceeding to which an individual is a party because the individual is or was Member.

**16.2 Limitations on Indemnification.** The Company may not indemnify a Member from liability for:

- A. The amount of a financial benefit received by a Member to which the Member is not entitled;
- B. An intentional infliction of harm by the Member on the Company or its Members;
- C. An intentional violation of criminal law by the Member;
- D. An unlawful distribution by a Member.

## **SECTION 17 Investment Purpose**

**17.1 Investment Purpose.** In acquiring a membership interest in the Company, each Member represents and warrants that he is acquiring such membership interest for his or her own account for investment and not with a view to its sale or distribution. Each Member recognizes that an investment in a membership interest in the Company is speculative and involves substantial risk. Each Member further represents and warrants that neither the Company nor any other Member has made any guaranty or representation upon which he has relied concerning the possibility or probability of Profits, Losses or distributions as a result of his or her acquisition of a membership interest in the Company.

**17.2 Investment Restriction.** Each Member recognizes that: (a) the membership interest in the Company have not been registered under the Securities Act of 1933, as amended (the "Securities Act") and Montana securities laws, in reliance upon exemptions from such registration, (b) a Member may not sell, offer for sale, or transfer all or any part of his or her membership interest in the Company in the absence of an effective registration statement

covering such membership interest under the Securities Act and Montana securities laws unless such sale, offer for sale, or transfer is exempt from registration under the Securities Act and Montana securities laws, (c) the Company has no obligation to register any Member's interest for sale, or to assist in establishing an exemption from registration for any proposed sale, offer for sale or transfer and (d) the restrictions on transfer under this Agreement may severely effect the liquidity of a Member's investment.

## **SECTION 18** **Miscellaneous**

**18.1 Notices.** All notices required or permitted under this Agreement or related to this Agreement or the Company shall be deemed sufficient if in writing and delivered personally or sent by certified mail, return receipt requested, to the Company or a Member, at their last known address. All notices shall be effective on the date of personal delivery, or in the case of mailing, on the date set forth on the receipt of certified mail. In computing any time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included, and the last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in Montana, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday in Montana.

**18.2 Entire Agreement.** This Agreement embodies the entire understanding and agreement among the Company and the Members concerning the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

**18.3 Amendment.** This Agreement shall not be amended nor shall any rights under this Agreement be waived except by unanimous written consent from the owners of Seventy Five Percent (75%) of the Ownership Units.

**18.4 Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Montana.

**18.5 Construction.** References to a Member, including by use of a pronoun, shall be deemed to include masculine, feminine or neutral, singular or plural, and any Person where applicable. References in this Agreement to capitalized terms shall have the same meaning whether in the singular or plural form.

**18.6 Severability.** The invalidity or unenforceability of any term or condition of this Agreement shall not affect the other terms or conditions of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable terms or conditions were omitted.

**18.7 Headings.** The headings of Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the terms and conditions of such Sections.

**18.8 Further Assurances.** After execution of this Agreement, the Company and the Members shall execute, acknowledge and deliver such further documents and do such further

acts as may be required to carry out the intent and purposes of this Agreement, including such documents and actions as may necessary or advisable to comply with the requirements of law for the formation and operation of limited liability companies wherever the Company carries on its business.

**18.9 Attorney Fees.** In the event of a default by the Company or a Member under this Agreement, the non-defaulting parties under the Agreement shall be entitled to recover from the defaulting party all costs and expenses incurred by the non-defaulting parties by reason of such default, including, without limitation, reasonable attorneys' fees and costs and court costs, whether such amount are incurred with or without legal action.

**18.10 Binding Effect.** This Agreement shall bind, inure to the benefit of and be enforceable by the parties and their respective successors, which for purposes of this Agreement shall include, without limitation, heirs, devisees, personal representatives and assignees.

**18.11 Effective Date.** This Agreement shall become effective when all parties to this Agreement have executed it and once effective shall relate back to the time the Articles of Organization for the Company were filed by the Montana Secretary of State.

**18.12 Counterparts.** The parties to this Agreement may execute it in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement. A facsimile copy of the signature on this Agreement of any party to this Agreement shall have the same force and effect as an original of such signature, the copy of this Agreement to which such facsimile copy of the signature has been attached shall be deemed to have been duly and legally signed and delivered, and such copy of this Agreement to which such facsimile copy of the signature has been attached may be admitted into evidence without the necessity of producing the original of such signature or proving delivery of this Agreement. Notwithstanding the foregoing sentence, the parties to this Agreement shall promptly mail signed originals of this Agreement which have been telecopied to the appropriate parties as soon as possible after signing. This Section shall apply to any amendments or supplements to this Agreement.

## SECTION 19 DEBT ASSUMPTION

The parties acknowledge that the Carter County and Powder River County real estate that will be transferred into the Company is subject to a loan. The parties agree that the Company will assume the loan when the real estate is transferred to the Company.

IN WITNESS WHEREOF, this Operating Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Entity Name)





**EXHIBIT A**

<b>Member</b>	<b>Property Contributed</b>

## **Exhibit B**

### **Additional Tax Matters**

**B.1 Loss Limitations.** Notwithstanding Section 4.1, Losses shall not be allocated to the Members in an amount which is greater than the maximum amount of Losses that can be so allocated without causing any Member to have a deficit Capital Account balance, determined at the end of the Company's tax year, after giving effect to the following adjustments:

- A. Crediting to such Capital Accounts any amounts which each Member is obligated to restore pursuant to this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5); and
- B. Debiting to such Capital Accounts the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

If some, but not all, of the Members would have a deficit Capital Account balance as described in the foregoing sentence, the limitations set forth in this Section B.1 shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Treas. Reg. § 1.704(b)(2)(ii)(d). The foregoing loss limitation is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d), and shall be interpreted consistently with said Regulation.

**B.2 Minimum Gain Chargebacks.** Notwithstanding Section 4.1, Profits (including any gross income or gains) shall be allocated and shared between or among the Members so as to comply with the "minimum gain chargeback" provisions in Treas. Reg. § 1.704-2 (applicable to partnership non-recourse debt or partner non-recourse debt, as the case may be).

**B.3 Qualified Income Offset.** Notwithstanding Section 4.1, Profits (including any gross income or gains) shall be allocated and shared between or among the Members so as to comply with the "qualified income offset" provisions in Treas. Reg. § 1.704-1(b)(2)(ii)(d). Accordingly, if a Member unexpectedly receives an adjustment, allocation or distribution described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such unexpected adjustment, allocation, or distribution puts such Member's Capital Account into a deficit balance or increases such deficit balance, such Member will be specially allocated items of Profits (consisting of a pro rate portion of each item of Partnership income, including gross income and gains for such year) in an amount and manner sufficient to eliminate such deficit balance as quickly as possible.

**B.4 Gross Income Allocation.** Notwithstanding Section 4.1, if any Member has a deficit Capital Account at the end of any tax year which is in excess of the sum of (a) the amount such Member is obligated to restore pursuant to this Agreement, and (b) the amount the Member is deemed to be obligated to restore (pursuant to the penultimate sentences of Treas. Reg. §§ 1.704-2(g)(1) and any gross income and gains) in the amount of such excess as quickly as

possible, provided that an allocation pursuant to this Section 5.5 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Sections 4 and 5 and Exhibit B have been made as if Section B.3 and this Section B.4 were not in the Agreement.

**B.5 Recapture.** For income tax purposes, to the extent of any Recapture Income resulting from the sale or other taxable disposition of Company assets, the amount of any gain from such disposition allocated to a Member shall be deemed to consist of Recapture Income to the extent such Member has been allocated or has claimed any deduction directly or indirectly giving rise to the treatment of such gain as Recapture Income.

**B.6 Section 754.** For income tax purposes, all items of Company income, gain, loss and deduction allocated and shared between or among the Members in accordance with this Exhibit B and all basis allocations to the Members shall first be determined without regard to any election under Section 754 of the Code; provided, however, such allocations, once made, shall be adjusted as necessary or advisable to take into account the adjustments permitted by Sections 732, 734 and 743 of the Internal Revenue Code.

**B.7 Tax Credits.** For income tax purposes, all income tax credits with respect to Company assets or business shall be allocated and shared between or among the Members in the same manner that Losses are allocated and shared between or among the Members pursuant to Section 4.1 and Section B.1.

**B.8 Section 704(c).** The Members recognize that with respect to assets contributed to the Company by a Member and with respect to Company assets revalued in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(f), there may be a difference between the Carrying Value of such assets at the time of contribution or revaluation and the adjusted basis of such assets for income tax purposes at that time. Therefore, all items of Company depreciation, depletion, amortization and gain or loss, as computed for income tax purposes with respect to such assets, shall be allocated and shared between or among the Members to take into account the variation between the book-tax disparities in accordance with the provisions of Sections 704(b) and 704(c) of the Code and the Treasury Regulations under those Sections, all as shall be determined by the Members owning 50 percent of the Ownership Percentages of the Company.

**B.9 Carrying Values.** The Carrying Values of Company assets shall be adjusted in accordance with Treas. Reg. § 1.704-1(b)(2)(iv), as determined by the Members owning 50 percent of the Ownership Units of the Company; provided, however, that if 50 percent of the Ownership Units of the Company make any such adjustments, the Capital Accounts shall also be adjusted to comply with Treas. Reg. § 1.704-1(b)(2)(iv)(f) or (g) and 1.704-1(b)(4). The Carrying Values of Company assets shall be increased or decreased to reflect any adjustments to the adjusted basis of such assets for income tax purposes pursuant to Sections 732, 734 and 743 of the Code, but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m).

**B.10 Curative Allocations.** The allocations set forth in Sections B.2, B.3 and B.4 (the “Regulatory Allocations”) are intended to comply with the requirements of Treas. Reg. §§

1.704–1(b) and 1.704–2. Notwithstanding any other provision of this Exhibit B (other than the Regulatory Allocations), Members shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner and at whatever time they determine to be appropriate so that, after such offsetting allocations are made, each Member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement.