

New folder for
sachuc

THE OPERATING AGREEMENT

OF

BATTLE CREEK LLC

Manager Managed

by

Kathleen A. Evans

Evans, Freeby & Jennings, LLP
Attorneys at Law
280 Court St. NE
Salem, Oregon 97301

Telephone: (503) 588-5670
Fax: (503) 588-5673

Table of Contents
BATTLE CREEK LLC

Disclosure Securities Law Disclosure

Article One Organization of Company

Article Two Members

Article Three Managers

Article Four Conflicts of Interest and
Confidential Information

Article Five Capital Contributions

Article Six Allocations

Article Seven Distributions

Article Eight Additional Members

Article Nine Transfers of Interests

Article Ten Cessation of a Member

Article Eleven Dissolution and Winding Up

Article Twelve Taxes

Article Thirteen Books, Records, and Accountings

Article Fourteen Amendment

Article Fifteen Definitions

Article Sixteen Miscellaneous

Exhibits

Exhibit A Initial Member Contributions

Exhibit B Membership Ledger

Securities Law Disclosure

The percentages of ownership (membership interests) of BATTLE CREEK LLC have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state. The membership interests are offered and sold in reliance on exemptions from the registration requirement of the Securities Act and such laws, and particularly regulations enacted by the Securities and Exchange Commission effective April 15, 1982 pertaining to certain offers and sales of securities without registration under the Securities Act of 1933.

The Company will not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not file reports, proxy statements and other information with the Securities and Exchange Commission, or any state securities commission.

The membership interests of BATTLE CREEK LLC have not been, nor will be, registered or qualified under federal or state securities laws. The membership interests of BATTLE CREEK LLC may not be offered for sale, sold, pledged, or otherwise transferred unless so registered or qualified, or unless an exemption from registration or qualification exists. The availability of any exemption from registration or qualification must be established by an opinion of counsel for the owner thereof, which opinion of counsel must be reasonably satisfactory to BATTLE CREEK LLC.

Article One

Organization of Company

Section 1. The Limited Liability Company

This Operating Agreement is entered into and shall be effective as of the Effective Date, by and among the Company, the persons identified on Exhibit A of this Agreement as Initial Members and Kathleen A. Evans, "*Organizer*."

Section 2. Organization

By executing and filing the Articles, Organizer has created or will create the Company in accordance with and pursuant to the Act. Consistent with the Act and the Articles, the Initial Members hereby provide for the regulation and management of the affairs of the Company.

Section 3. Nature of Business

The Company is organized to accomplish the following purposes:

- A. To provide consolidated management of the assets held by the Company;
- B. To manage and/or develop real estate owned or acquired by the Company;
- C. To provide an orderly buy-sell arrangement between the members of the Evelyn M. Coburn family to keep Company assets in the family;
- D. To promote family harmony by insuring that any disputes will be resolved privately by arbitration rather than publicly through the courts;
- E. To assist in preventing family assets from going through probate upon the death of any family member; or alternatively to simplify any probate proceeding which may be required;
- F. To establish and maintain an order of succession and control of family assets;
- G. To consolidate fractional interests in family-held assets;
- H. To increase family wealth;

- I. To establish a method by which annual gifts can be made without fractionalizing family assets;
- J. To restrict the right of non-family members to acquire interests in family assets;
- K. To prevent the transfer of a family member's interest in the Company as a result of a failed marriage;
- L. To provide protection to family assets from claims of future creditors of members;
- M. To provide flexibility in business planning not available through trusts, corporations, or other business entities; and
- N. To promote knowledge of and communication about the family assets and business among family members.

In order to accomplish its purposes, the Company may conduct any lawful business and investment activity permitted under the laws of the State of Oregon and in any other jurisdiction in which it may have a business or investment interest. The Company may own, acquire, manage, develop, operate, sell, exchange, finance, refinance and otherwise deal with real estate, personal property and any type of business as the Members may from time to time deem to be in the best interest of the Company. The Company may engage in any other activities which are related or incidental to the foregoing purposes. The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business.

Section 4. Defects as to Formalities

A failure to observe any formalities or requirements of this Agreement, the Articles or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

Section 5. No Company Intended for Nontax Purposes

The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Oregon Revised Partnership Act or the Oregon Uniform Limited Partnership Act or a corporation under the Oregon Business Corporation Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

Section 6. Rights of Creditors and Third Parties

This Agreement is entered into among the Company and the Initial Members for the exclusive benefit of the Company, its Members, and their successors and assigns. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under the Agreement or any agreement between the Company and any Member with respect to any Contribution or otherwise.

Section 7. Title to Property

All Company Property shall be owned by the Company as an entity and no Member shall have any ownership interest in such Property in the Member's individual name or right, and each Member's interest in the Company shall be personal property for all purposes. Except as otherwise provided in this Agreement, the Company shall hold all Company Property in the name of the Company and not in the name or names of any Member or Members.

Section 8. Payments of Individual Obligations

The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be Transferred or encumbered for or in payment of any individual obligation of any Member unless otherwise provided for herein.

Notwithstanding the foregoing, the Manager may help facilitate the satisfaction of any death or estate tax obligations owed by a member or by a member's estate. For example, the Manager may elect to make any distributions authorized under this Agreement either directly to the appropriate persons or institutions or to the trustee of any deceased member's trust or to the personal representative of the deceased member's probate estate. The Manager may rely upon the written statements of the deceased member's fiduciary (be that a trustee or a personal representative) as to all material facts relating to these payments; the Manager shall not have any duty to see to the application of such payments. Further, the Manager is authorized to purchase and retain in the form received, as an asset of the Company, any property which is a part of the deceased member's trust or probate estate. In addition, the Manager may make loans, with or without security, to the deceased member's trust or probate estate. The Manager shall not be liable for any loss suffered by the Company as a result of the exercise of the powers granted in this Section.

Article Two

Members

Section 1. Authority to Act

No Member shall have the power or authority to bind the Company unless the Member is a Manager or the Member has been authorized by the Managers to act as an agent of the Company in accordance with this Agreement.

Section 2. Two Classes of Members

There shall be two classes of members.

- A. Members of Class A shall have both Economic Rights and Management Rights and shall have the ability to vote on all matters and to elect the Managers of the Company. Whenever this Agreement requires a certain percentage vote to act, that percentage shall always refer to Class A membership interests; Class B membership interests shall be referred to only for those matters specifically listed in paragraph C below. All Class A Members shall be entitled to vote on or consent to any matter submitted to a vote or consent of the Members. In addition to any other actions which, by virtue of the Act, the Articles or this Agreement require a certain consent of the Members, the following actions require the consent of a Majority of the Class A Members:
1. Fixing the number of Managers;
 2. Electing the Managers;
 3. Setting or adjusting the compensation or benefits of Managers;
 4. Removing any Manager without cause;
 5. Removing any Manager for cause;
 6. Filling any vacancy created by the resignation, removal or death of a Manager;
 7. Filling any vacancy created by the increase in the number of Managers;
 8. Approving any transaction involving an actual or potential conflict of interest between a Member or a Manager and the Company;

9. Determining the amount, if any, and timing of any guaranteed payments to Members;
 10. Approving any transaction involving an actual or potential conflict of interest between a Member and the Company;
 11. Changing the nature of the business of the Company;
 12. Incurring a Company debt other than in the ordinary course of business; or
 13. Taking or approving any action or transaction which is reserved to the Members by the Act, the Articles or this Agreement without any express statement of the extent of Member action required.
- B.** In addition to any other actions which, by virtue of the Act, the Articles or this Agreement, require the unanimous consent of the Members, the following actions require the consent of 80% of the Class A Members:
1. Compromising any Contribution obligation;
 2. Amending or restating the Articles;
 3. Amending or restating this Agreement;
 4. Approving any action to sell, lease, exchange, mortgage, pledge or other transfer or disposition of all or substantially all of the Company Property, other than in the ordinary course of business;
 5. Merging the Company with another Entity;
 6. Dissolving the Company; or
 7. Admitting an Additional Member.
- C.** Members of Class B shall have only Economic Rights and the ability to vote on those specific items listed below. They shall have no other Management Rights; they do not have the power to vote to elect the Managers; and they have no power to bind the Company. In addition to consent of 80% of the Class A Members, the following actions also require the consent of 80% of the Class B Members:
1. Amending or restating the Articles;
 2. Amending or restating this Agreement;

3. Approving any action to sell, lease, exchange, mortgage, pledge or other transfer or disposition of all or substantially all of the Company Property, other than in the ordinary course of business;
4. Merging the Company with another Entity;
5. Dissolving the Company; or
6. Admitting an Additional Member.

Section 3. Limitation of Liability.

Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law. A Member will not be personally liable, merely as a Member, for any debts or losses of the Company beyond the Member's respective Contributions and any obligation of the Member under Article Five to make Contributions, except as otherwise provided by law.

Section 4. Indemnification

The Company shall indemnify the Members, for all costs, losses, liabilities, and damages paid or accrued by such Member, and advance expenses incurred by the Member, in connection with the business of the Company, to the fullest extent provided or allowed by the laws of Oregon except that this provision shall not provide indemnification for:

- A. Any breach of a Member's duty of loyalty to the Company or its Members as described in this Agreement;
- B. Acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;
- C. Any unlawful distribution under the Act; or
- D. Any transaction from which the Member derives an improper personal benefit.

Section 5. Actions of Members

- A. **Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Class A Member or Members holding at least 10% of the Class A Capital Interests.

- B. Place of Meetings.** The Class A Members may designate any place, either within or outside of Oregon, as the location for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in Oregon.
- C. Notice of Meetings.** Except as provided below, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the person calling the meeting, to each Member entitled to vote at the meeting to be called. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at the Member's address, as it appears on the books of the Company, postage prepaid.
- D. Meeting of All Members.** If all of the Members entitled to vote shall meet at any time and place, either within or outside of Oregon, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.
- E. Record Date.** For the purpose of determining the Members for any purpose, the date on which any required notice is mailed shall be the record date for such determination of the Members.
- F. Quorum.** Members entitled to vote, represented in person or by proxy, with aggregate Sharing Ratios in excess of 50% shall constitute a quorum at any meeting of the Members. In the absence of a quorum at any such meeting, the Members so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members entitled to vote present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the departure during such meeting of Members whose absence would cause less than a quorum to remain. In the event an action requires the consent of the remaining Members or some portion thereof, the foregoing quorum rules of this Section shall be applied by substituting "remaining Members" for "Members" therein.
- G. Manner of Acting.** If a quorum is present, a Majority of those Members entitled to vote shall act for the Members, unless the vote of a different proportion or number or both classes is otherwise required by the Act, the Articles, or this Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Capital Interest, Sharing Ratios, vote or consent, as the case may be, shall be counted in the determination of whether the requisite

matter was approved by the Members. In the event an action requires the consent of the remaining Members or some portion thereof, the foregoing rules of this Section shall be applied by substituting "remaining Members" for "Members" therein.

- H. **Proxies.** At all meetings of the Members, a Member may vote in person or by a proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting and may be of any duration except that a Member who shall appear in person at a meeting shall void any outstanding proxy for so long as such Member is in attendance.
- I. **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members sufficient to have approved the actions or resolutions at issue had a duly called meeting been held at which all Members were in attendance and delivered to the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when the necessary Members have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.
- J. **Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.
- K. **Telephonic Meetings.** With respect to a particular meeting or generally with respect to future meetings, the Members may permit any or all Members to participate in the meeting by, or may permit the conduct of the meeting through, use of any means of communication by which all Members participating may simultaneously hear each other; provided the notice of such a meeting shall state that the Members may participate in such a fashion and describe how any Member may notify the Company of the Member's desire to be included in the meeting. A Member participating in such a meeting is deemed to be present in person at such meeting.

Section 6. Books, Records, Reports and Information

Each Member shall have the right to receive the reports and information required to be provided by this Agreement. Upon reasonable request, each Member, and the Member's agent and attorney shall have the right, during ordinary business hours, to inspect and copy, at the requesting Member's expense, the books and records which the Company is required, by the Act and this Agreement, to keep.

Article Three

Managers

Section 1. General

- A. **Initial Managers.** Robert W. Nunn shall serve as the Initial Manager.
- B. **Term.** Each Manager shall hold office until the Manager resigns, dies, dissolves (if an entity other than an individual), or is removed or replaced.
- C. **Election.** Except as otherwise provided herein, Managers shall be elected by the Class A Members.
- D. **Resignation.** Any Manager may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. 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 as a Member.

Section 2. Action by Managers

The rights and powers of the Managers hereunder shall be exercised by them in such manner as they may agree. In the absence of an agreement among the Managers, the following shall apply:

- A. **Place of Meetings.** The Managers may designate any place, either within or outside of Oregon, as the location for any meeting of the Managers. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in Oregon.
- B. **Notice of Meetings.** Except as provided below, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than 10 hours nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Manager. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Manager at the Manager's address as it appears on the books of the Company, with postage thereon prepaid.

- C. Meeting of All Managers.** If all of the Managers shall meet at any time and place, either within or outside of Oregon, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.
- D. Quorum.** More than half of the Managers, represented in person or by proxy, shall constitute a quorum at any meeting of Managers. In the absence of a quorum at any such meeting, the Managers so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, a notice of the adjourned meeting shall be given to each Manager. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Managers present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Managers whose absence would cause less than a quorum.
- E. Manner of Acting.** If a quorum is present, the act of a Majority of the Managers who are present, in person or by proxy, shall be the act of the Managers, unless the vote of a different proportion or number is otherwise required by the Act, the Articles, or this Agreement. Unless otherwise expressly provided herein or required under applicable law, Managers who have an interest in the outcome of any particular matter upon which the Managers vote or consent may not vote or consent upon any such matter and their vote or consent, as the case may be, shall not be counted in the determination of whether the requisite matter was approved by the Managers.
- F. Proxies.** At all meetings of the Managers, a Manager may vote in person or by a proxy executed in writing by the Manager or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers before or at the time of the meeting and may be of any duration except that a Manager who shall appear in person at a meeting shall void any outstanding proxy for so long as such Manager is in attendance.
- G. Action by Managers Without a Meeting.** Action required or permitted to be taken at a meeting of the Managers may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Managers sufficient to have approved the actions or resolutions at issue had a duly called meeting been held at which all Managers were in attendance and delivered to the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when the necessary Managers have signed the consent, unless the consent specifies a different effective date.
- H. Waiver of Notice.** When any notice is required to be given to any Manager, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

- I. **Telephonic Meetings.** With respect to a particular meeting or generally with respect to future meetings, the Managers may permit any or all Managers to participate in the meeting by, or may permit the conduct of the meeting through, use of any means of communication by which all Managers participating may simultaneously hear each other. A Manager participating in such a meeting is deemed to be present in person at such meeting.

Section 3. Authority of the Managers

Subject to the limitations and restrictions set forth in the Act, the Articles and this Agreement (including, without limitation, those set forth in this Article), the Managers shall have the sole and exclusive right to manage the business of the Company and shall have all of the rights and powers which may be possessed by Managers under the Act and the Articles including, without limitation, the right and power, on behalf and in the name of the Company, to:

- A. Institute, prosecute, and complain and defend in all courts in the Company's name;
- B. Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in or with real or personal property or any interest in real or personal property, wherever situated;
- C. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer and otherwise dispose of a part of the Company Property in the ordinary course, subject, however, to the restrictions set forth in Article Two, Section 2, regarding a disposition of all or substantially all of the Property, which must be approved by the Members as set forth therein;
- D. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of and otherwise use or deal in or with other interests in or obligations of any other Entity;
- E. Make contracts or guarantees, incur liabilities, borrow money, issue Company notes or other obligations that may be convertible into other securities of the Company, or include the option to purchase other securities of the Company, or secure any of the Company's obligations by mortgage or pledge of any of the Company Property, franchises or income;
- F. Lend money, invest or reinvest Company funds or receive and hold real or personal property as security for repayment of funds so loaned, invested or reinvested, including, without limitation, the loans to Managers, Members, employees and agents;
- G. Be a promoter, incorporator, general partner, limited partner, member, associate or manager of any partnership, joint venture, trust or other Entity;

- H. Conduct the Company's business, locate its offices and exercise the powers granted by the Act and the Articles within or without Oregon;
- I. Elect or appoint Managers, employees or agents of the Company, define their duties, fix their compensation and lend them money and credit;
- J. Make and alter this Agreement not inconsistent with the Articles or the laws of Oregon for managing the Company's business and regulating its affairs;
- K. Pay pensions and establish pension plans, profit sharing plans and other benefit or incentive plans for any and all of its current or former Managers, Members, employees and agents;
- L. Make donations for the public welfare or for charitable, scientific or educational purposes;
- M. Transact any lawful business that will aid governmental policy;
- N. Indemnify a Member or Manager or any other person as and to the extent not inconsistent with the provisions of the Act or the Articles;
- O. Cease the Company's activities and dissolve.

Section 4. Restrictions on Authority of Managers

In addition to any other consent requirements contained in the Act, the Articles, or this Agreement, each Manager shall not have the authority to, and covenants and agrees that it shall not, do any of the following acts without the consent of a Majority of the Managers in addition to any required consent of the Members:

- A. Determining the amount and kind of property available for and the timing of distributions;
- B. Admitting an Additional Member;
- C. Accepting a Substitute Member; or
- D. Expelling a Member.

Section 5. Duties and Obligations of Managers

In addition to such other duties and obligations as Managers may have, Managers shall be responsible for the following:

- A. The Managers shall cause the Company to conduct its business and operations separate and apart from that of any Manager, including, without limitation:
 - 1. Segregating Company Property and not allowing Company Property to be commingled with the funds or other assets of, held by, or registered in the name of, any Manager,
 - 2. Maintaining books and financial records of the Company separate from the books and financial records of any Manager, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization of the Members,
 - 3. Causing the Company to pay its liabilities from Company Property, and
 - 4. Causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.
- B. The Managers shall take all actions which may be necessary or appropriate
 - 1. For the continuation of the Company's valid existence as a limited liability company under the laws of Oregon and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business in which it is engaged and
 - 2. For the accomplishment of the Company's purposes, including the acquisition, development, maintenance, preservation, and operation of Company Property in accordance with the provisions of this Agreement and applicable laws and regulations.
- C. The Managers shall be under a fiduciary duty to perform the duties of Managers in good faith, in a manner they reasonably believe to be in the best interests of the Company and its Members, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In discharging these duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained under this Agreement and upon such information, opinions, reports or statements by any other Manager, Member, or agent, or by any other person, as to matters the Manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits

and losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

Section 6. Right to Rely on Managers.

Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

- A. The identity of any Manager or any Member;
- B. The existence or nonexistence of any fact or facts which constitute a condition precedent to acts by a Manager or which are in any other manner germane to the affairs of the Company;
- C. The Persons who are authorized to execute and deliver any instrument or document of the Company; or
- D. Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.
- E. The signature of any Manager shall be necessary and sufficient to convey title to any Company Property or to execute any promissory notes, trust deeds, mortgages, or other instruments of hypothecation, and all of the Members agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and further agree that the signature of any Manager shall be sufficient to execute any "statement of company" or other documents necessary to effectuate this or any other provision of this Agreement. All of the Members do hereby appoint the Managers as their attorney(s)-in-fact for the execution of any or all of the documents described in this Section.

Section 7. Liability and Indemnity of the Managers

A Manager is not personally liable for any debt, obligation or liability of the Company merely by reason of being a Manager and is not liable to the Company or its Members for monetary damages for conduct as a Manager. A Manager who performs the duties as Manager in accordance with this Agreement shall not have any liability by reason of being or having been a Manager. The Company shall indemnify the Managers and make advances for expenses to the maximum extent permitted under the Act. However, this provision shall not eliminate or limit a Manager's liability for:

- A. Any breach of a Manager's duty of loyalty to the Company or its Members as described in this Agreement;

- B. Acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;**
- C. Any unlawful distribution under the Act; or**
- D. Any transaction from which the Manager derives an improper personal benefit.**

Article Four

Conflicts of Interest and Confidential Information

Section 1. Duty of Loyalty

Each Member and Manager shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members and Managers may enter into transactions that are similar to the transactions into which the Company may enter and the Company and each Member and Manager waive the right or claim to participate therein. Notwithstanding the foregoing, Members and Managers shall account to the Company and hold, as trustee for it, any property, profit, or benefit derived by the Member or Manager, without the consent of the Members or Managers, in the formation, conduct and winding up of the Company business or from a use or appropriation by the Member or Manager of Company Property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

Section 2. Other Self Interest

A Member or Manager does not violate a duty or obligation to the Company merely because the conduct furthers the interest of the Member or Manager. A Member or Manager may lend money to and transact other business with the Company. The rights and obligations of a Member or a Manager who lends money to or transacts business with the Company are the same as those of a person who is not a Member or a Manager, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member or a Manager has a direct or indirect interest in the transaction if the transaction is approved or ratified as provided for herein.

Section 3. Confidential Information

The Members and Managers recognize and acknowledge that as Members or as Managers they will have access to, be provided with and, in some cases, will prepare and create Confidential Information. Neither a Member nor a Manager shall, either while a Member or a Manager or subsequent to Cessation, use or disclose any Confidential Information, either personally or for the use of others, other than in connection with the Member's or Manager's activities on behalf of the Company. Nor shall a Member or a Manager disclose any Confidential Information to any Person who is not a Member or Manager, not employed by the Company or not authorized by the Company to receive such Confidential Information, without the prior written consent of the Company. Each Member and each Manager shall use reasonable and prudent care to safeguard and protect and

prevent the unauthorized use and disclosure of Confidential Information. The obligations contained in this Section shall survive for as long as the Company, in its sole judgment of a majority of the Class A members, considers subject information to be Confidential Information.

Section 4. Conflicts of Interest

The Members hereby acknowledge that: (a) Evans, Freeby & Jennings, LLP, an Oregon limited liability partnership, ("*EF & J*") has represented the Evelyn M. Coburn in connection with the formation of the Company and the drafting of this Operating Agreement; (b) that each of the other parties has been advised to seek independent counsel in connection with such matters; and (c) that EF & J does not represent any Member either directly or indirectly through the Company. Payment of EF & J's attorney fees by the Company shall not alter or amend any of the relationships contemplated in this paragraph.

Article Five

Capital Contributions

Section 1. Initial Contributions

Each Member shall contribute the consideration described for that Member on Exhibit A or in the Member's Admission Agreement at the time and on the terms specified on Exhibit A or in the Member's Admission Agreement. If no time for Contribution is specified, the Contributions shall be made upon the Member's signing an Admission Agreement. The value of the Contributions, other than cash, shall be as set forth on Exhibit A or in the Member's Admission Agreement. No interest shall accrue on any Contribution and no Member shall have the right to withdraw or be repaid any Contribution except as provided in this Agreement. Each Additional Member shall make the Contribution described in the Member's Admission Agreement. The value of the Additional Member's Contribution and the time for making such contribution shall be set forth in the Admission Agreement.

Section 2. Additional Contributions

In addition to the Initial Contributions, the Managers may determine from time to time that Additional Contributions are needed to enable the Company to conduct its business. Upon making such a determination, the Managers shall give written notice to all Members at least ten Business Days prior to the date on which such Contribution is due. Such notice shall set forth the amount of Additional Contribution needed, the purpose for which the Contribution is needed, and the date by which the Members should contribute. Each Member shall be entitled to contribute a proportionate share of such Additional Contribution. No Member shall be obligated to make any Additional Contributions except as otherwise required by law. In the event any one or more Members do not make their Additional Contribution, the other Members shall be given the opportunity to make the Contributions not otherwise made.

Section 3. Enforcement of Commitments

In the event a Member fails to make a Contribution when due, the following may occur.

- A. **Collection.** The Managers shall give any Delinquent Member a notice of the failure to make a required Contribution. If the Delinquent Member fails to make the Contribution (together with any costs associated with the failure and interest on such entire obligation at the Default Interest Rate) within ten Business Days of the giving of notice, the

Managers may take such action as is deemed appropriate, including but not limited to enforcing the Contribution obligation in the court of appropriate jurisdiction in Oregon or the state of the Delinquent Member's address as reflected in the Agreement or in the Member's Admission Agreement. Each Member expressly agrees to the jurisdiction of such courts but only for the collection of contributions.

- B. **Compromises.** The Managers may compromise any Contribution obligation of a Delinquent Member.
- C. **Advance of Delinquent Contribution.** The Managers may elect to allow the other Members to contribute the amount of the delinquent contribution in proportion to such Members' Sharing Ratios, with those Members who contribute ("*Contributing Members*") to contribute additional amounts equal to any amount of the delinquent contribution. The Contributing Members shall be entitled to treat the amounts contributed pursuant to this section as a loan from the Contributing Members bearing interest at the Default Interest Rate secured by the Delinquent Member's interest in the Company. Until they are fully repaid the Contributing Members shall be entitled to all distributions to which the Delinquent Member would have been entitled. Notwithstanding the foregoing, no obligation to make an contribution may be enforced by a creditor of the Company unless the Member expressly consents to such enforcement.

Section 4. Maintenance of Capital Accounts

The Company will maintain a Capital Account for each Member on a cumulative basis in accordance with federal income tax accounting principles as set forth in Treasury Regulation §1.704-1(b)(2)(iv). Each Member's Capital Account will be equal to:

- A. The amount of cash and the fair market value of the property contributed to the capital of the Company by the Member (net of any liabilities secured by such contributed property assumed by the Company or to which such contributed property is subject), but excluding any loans to the Company; plus
- B. The Member's allocable share under Article Six of any income and gain, or items thereof, of the Company (including any income and gain exempt from federal income tax and including any items of gain, as computed for book purposes, under Treasury Regulation §1.704-1(b)(2)(iv)(g), with respect to property properly reflected on the books of the Company at a value that differs from the adjusted tax basis of such property, but excluding items of income or gain, as computed for tax purposes, as described in Treasury Regulation §1.704-1(b)(4)(i)); less
- C. The Member's allocable share under Article Six of any loss or deduction, or any items thereof of the Company (including any items of depreciation, depletion, amortization, and loss, as computed for book purposes under Treasury Regulation §1.704-1(b)(2)(iv)(g),

with respect to property properly reflected on the books of the Company at a value that differs from the adjusted tax basis of the property, but excluding items of depreciation, depletion, amortization, and loss, as computed for tax purposes as described in Treasury Regulation §1.704-1(b)(4)(i)); less

- D. The amount of cash and the fair market value of property distributed to the Member (net of any liabilities secured by the distributed property assumed by the Member or to which such distributed property is subject); less
- E. The Member's allocable share under Article Six of any Company expenditures described in Internal Revenue Code §705(a)(2)(B), including items treated as §705(a)(2)(B) expenditures by Treasury Regulation §1.704-1(b)(2)(i); and
- F. Otherwise adjusted as required pursuant to Treasury Regulation §1.704-1(b)(2)(iv).

Article Six

Allocations

Section 1. Pro Rata Allocation

- A. Determination of Income and Loss.** The Company's profits or losses for each fiscal year will be determined as of the end of that fiscal year by the Company's accountants in accordance with federal income tax accounting principles, consistently applied, utilizing that method of accounting employed in the federal income tax informational return filed by the Company for that fiscal year.
- B. Allocation of Profits and Losses.** Subject to the special allocations and limitations set forth below, the profits and losses of the Company for each fiscal year will be allocated among the Members pro rata in proportion to their respective ownership percentage, as set forth on Exhibit "B."
- C. Special Allocations and Limitations.** The Members intend that all allocations will be pro rata; however, in order to comply with federal income tax regulations regarding the substantial economic effect of Company allocations, in the special circumstances described in such provisions, all allocations of Company income, gain, loss, and deductions are subject to the special allocations and limitations described below.
- D. No Right to Demand Return of Capital.** No Member will have any right to any distribution except as expressly provided in this Agreement. No Member will have any drawing account in the Company.
- E. Optional Revaluation of Company Property.** Upon the occurrence of (i) a subsequent contribution of money or property to the Company by a Member as an additional capital contribution, (ii) the admission of a new Member, or (iii) a distribution of money or property by the Company to a retiring or continuing Member in exchange for his or her capital interest, or otherwise as provided in this Agreement, the Manager may elect to increase or decrease the respective Capital Accounts of all Members to reflect a revaluation of all Company property on the books of the Company, but:

 - 1. Such adjustments must be based on the fair market value of the property on the date of adjustment;
 - 2. The adjustments must reflect the manner in which the unrealized income, gain, loss, or deduction inherent in such property (that has not been reflected in the Capital Accounts of the Members previously) would be allocated among the Members under

this Article if there were a taxable disposition of the property for the fair market value on the adjustment date;

3. Thereafter, the Capital Accounts of the Members must be adjusted in accordance with Treasury Regulation §1.704-1(b)(2)(iv)(g) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to the property; and
 4. Thereafter, the Members' distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to the property will be determined so as to take account of the variation between the adjusted tax basis and the book value of the property in the same manner as under Internal Revenue Code §704(c) and Treasury Regulation §1.704-1(b)(4)(i).
- F. Transfer of Membership Interest by Member During Fiscal Year.** If, after compliance with the requirements relating to transfer herein, any Member transfers any of his or her Membership Interest during any fiscal year of the Company by sale, exchange, transfer, assignment, gift, death, operation of law, or in any other manner, the income, gain, loss or expense of the Company allocable to the transferred membership interest will be prorated between the transferor and the transferee in accordance with the number of days during the fiscal year each party owned the ownership interest in question; but the gain or loss realized by the Company from an insurance recovery or a condemnation award will be allocated to the owner of the ownership interest on the date of the transaction.

Section 2. Special Allocations and Limitations

- A. Limitations on Allocations of Loss.** In no event will any Company loss or deduction, or item thereof, be allocated to any Member to the extent that the Member has, or would have as a result of the allocation, an Adjusted Capital Account Deficit in the Member's Capital Account as of the end of the Company taxable year to which the allocation relates. Any loss or deduction, the allocation of which to a Member is disallowed by the foregoing restriction, will be reallocated to those Members who do not have an Adjusted Capital Account Deficit as of the end of such taxable year.
- B. Company Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain during any Company taxable year, each Member will be specially allocated, before any other allocation of Company income, gain, loss, or deduction for the taxable year, items of Company income and gain for the taxable year (and, if necessary, subsequent years) in proportion to and to the extent of an amount equal to each Member's share of the net decrease in Company Minimum Gain determined in accordance with Treasury Regulation §1.704-2(g)(2). This paragraph is intended to comply with, and will be interpreted consistently with, the "minimum gain chargeback" provisions of Treasury Regulation §1.704-2(f).

- C. **Member Nonrecourse Debt Minimum Gain Chargeback.** Notwithstanding any other provision herein, except the foregoing paragraph, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any taxable year of the Company, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(5), will be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(4). Allocations pursuant to this paragraph will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Treasury Regulation §1.704-2(i)(4). This paragraph is intended to comply with, and will be interpreted consistently with, the partner nonrecourse debt minimum gain chargeback provisions of Treasury Regulation §1.704-2(i)(4).
- D. **Qualified Income Offset.** Notwithstanding any other provision of the Agreement the foregoing two paragraphs, in the event any Member for any reason receives an Adjustment Item for any fiscal year that results in an Adjusted Capital Account Deficit for that Member, the Member will be specially allocated items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for the year) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit, if any, created by such Adjustment Item as quickly as possible. This paragraph is intended to comply with the "qualified income offset" requirements of Treasury Regulation §1.704-1(b)(2)(ii)(d) and will be interpreted and applied consistently therewith.
- E. **Offsetting Allocations.** Any special allocation of items of income, gain, loss, or deduction pursuant to this Section will be taken into account in computing subsequent allocations of Company income, gain, loss, or deduction pursuant to this Article so that the net amount of any items so allocated and all other income, gain, loss, deductions, and items thereof allocated to each Member will, to the extent possible, be equal to the net amount that would have been allocated to each Member if the special allocation had not occurred.
- F. **Allocations with Respect to Contributed or Revalued Property.** Notwithstanding any other provision of this Article, in the event Internal Revenue Code ("IRC") §704(c) or IRC §704(c) principles applicable under Treasury Regulation §1.704-1(b)(2)(iv) require allocations of Company income, gain, loss, or deductions for income tax purposes in a manner different than otherwise provided in this Article, the provisions of IRC §704(c) and the regulations thereunder will control such allocations among the Members for income tax purposes. Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed to the Company by a Member or that has been revalued for Capital Account purposes under this Section pursuant to Treasury Regulation §1.704-1(b)(2)(iv) and which is required or permitted to be allocated to such Member for income tax purposes under IRC §704(c) so as to take into account the variation between the tax basis of such contributed or revalued property and its fair market

value at the time of its contribution or revaluation will be allocated solely for income tax purposes in the manner so required or permitted under IRC §704(c) using the method described in Treasury Regulation §1.704-3 (or any successor regulation) selected by the Manager.

Article Seven

Distributions

Section 1. General

Notwithstanding anything contained in this Agreement or the Articles to the contrary, no distribution shall be made in violation of ORS 63.229. If any such wrongful distribution is made, the provisions of ORS 63.235 shall determine each Person's liability and the remedy, if any, therefor.

Section 2. Distributions

Except as otherwise provided in this Agreement, the amount, if any, to be distributed shall be determined by the Managers. Unless expressly required otherwise, all distributions to the Members or to Transferees shall be in proportion to their percentage of ownership interest, as set forth on Exhibit "B" hereto.

Section 3. Liquidating Distributions

In the event the Company is dissolved and the business and affairs are wound up, distributions shall be made pursuant to Article Eleven.

Section 4. Amounts Withheld

All amounts withheld, pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Members, shall be treated as amounts distributed to the Members pursuant to this for all purposes under this Agreement. The Managers are authorized to withhold from distributions, or with respect to allocations, and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law and shall allocate any such amounts to the Members with respect to which such amounts were withheld.

Article Eight

Additional Members

Section 1. Admission

Persons may be added as Additional Members upon terms and conditions approved by the Members and Managers. Notwithstanding the foregoing, a Person shall not become an Additional Member unless and until such Person:

- A. Becomes a party to this Agreement as a Member by signing an Admission Agreement and executes such documents and instruments as the Managers may reasonably request as may be necessary or appropriate to confirm such Person as a Member in the Company and such Person's agreement to be bound by the terms and conditions hereof;
- B. Provides the Company with evidence satisfactory to counsel for the Company that such Person has made each of the representations and undertaken each of the warranties contained in the Additional Member's Admission Agreement; and
- C. If the Person is not an individual of legal majority, the Person provides the Company with evidence satisfactory to counsel for the Company of the authority of the Person to become a Member and to be bound by the terms and conditions of this Agreement.

Section 2. Accounting

No Additional Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Managers may at the time an Additional Member is admitted, close the Company books (as though the Company's Fiscal Year had ended), make pro rata allocations of loss, income and expense deductions to an Additional Member for that portion of the Company's Fiscal Year in which such Member was admitted, and equitably adjust capital accounts and book values of assets in accordance with the provisions of Code Section 706(d) and the Regulations promulgated thereunder. ORS 63.185(4) shall not apply in the event of the admission of an Additional Member.

Article Nine

Transfers of Interests

Section 1. Restriction on Transfers

Except as otherwise permitted by this Agreement, no Member or Transferee shall Transfer all or any portion of such Person's interests in the Company. In the event that any Member or Transferee pledges or otherwise encumbers any of such Person's interests in the Company as security for the payment of a debt, any such pledge or hypothecation shall not constitute a Transfer but shall only be made:

- A. Pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all of the terms and conditions of this Article; and
- B. Upon the consent of the Members.

A Transfer of an ownership interest in a Member or Transferee that is an Entity shall not constitute a Transfer of such Entity's interests in the Company.

Section 2. Permitted Transfers

Subject to the conditions and restrictions set forth in this Article, a Member or Transferee may at any time Transfer all or any portion of such Person's interests in the Company to:

- A. Any other Member;
- B. Any member of the transferor's Family;
- C. Any revocable living trust created by a Member, where the Member retains the power to revoke that trust;
- D. The transferor's executor, administrator, trustee, or personal representative to whom such interests are Transferred at death or involuntarily by operation of law;
- E. Any Purchaser in accordance with this Article.

Section 3. Conditions to Permitted Transfers

A Transfer shall not be treated as a Permitted Transfer unless and until the following conditions are satisfied:

- A. Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor and Transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Transferee to be bound by the provisions of this Article. In the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the Company shall be reimbursed by the transferor and/or Transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.
- B. Except in the case of a Transfer at death or involuntarily by operation of law, the transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to terminate for federal income tax purposes or under the Act and that such Transfer will not cause the application of the rules of Code Sections 174(g)(1)(B) and 174(h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Company, Company Property, the Managers, or the Members.
- C. The transferor and Transferee shall furnish the Company with the Transferee's taxpayer identification number, sufficient information to determine the Transferee's initial tax basis in the Person's interests in the Company Transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transfer until it has received such information.
- D. Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, either:
 - 1. Such a Person's interests in the Company shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or
 - 2. The transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to the Company, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

- E. Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the other Members, to the effect that such Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940.

Section 4. Right of First Refusal

- A. **Limitation on Transfers.** No Transfer may be made hereunder unless the Seller has received a bona fide written offer (the "*Purchase Offer*") from a Person (the "*Purchaser*") to purchase the Offered Interest for a purchase price (the "*Offer Price*"), in writing signed by the Purchaser.
- B. **Notice.** Notice of that Purchase Offer, together with a copy thereof, must be given by the Seller to the Company and each Member. First the Company, and then if the Company declines, then the other Members, shall have the right to purchase the Offered Interest at either: (i) the same terms designated in the Purchase Offer (but without the necessity of making any earnest money deposit); or (ii) upon the terms and at the price set forth in Section 5, Paragraphs A and B, below; whichever the purchaser (whether that be the Company or any or all of the other Members) shall choose.
- C. **Consideration Period.** The Company shall have 120 days after receipt of Notice and a copy of the Purchase Offer to exercise its right of purchase. If the Company chooses not to exercise that right, then the other Members shall have a period of 120 days after the expiration of the Company's Period within which to exercise their rights of purchase, on a pro rata basis; if any of the Members choose not to exercise their rights of purchase, then the other Members may opt to exercise those rights in their stead, for their own benefit.
- D. **Acceptance.** Written notice of the exercise of rights to purchase shall be sent to the Seller. Thereafter, the purchaser shall have a period of 90 days within which to close the purchase at such time and at such location as the purchaser may determine.
- E. **Sale Pursuant to Purchase Offer.** If neither the Company nor any Members opt to exercise their rights to purchase, then the Seller may sell the Offered Interest to the Purchaser at any time within 15 days after the expiration of the Consideration Period, provided that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer and provided further that such sale complies with other terms, conditions, and restrictions of this Agreement that are applicable to sales of a Person's interest in the Company and are not expressly made inapplicable to sales occurring hereunder. In the event that the Offered Interest is not sold and the transaction not closed in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Agreement.

Section 5. Option to Purchase at Death

Upon the death of a Member, the Company shall have the option to purchase the membership interest of the deceased Member, upon the terms and conditions set forth in this paragraph. The option will expire 120 days after the Company has received written notification of the death of the deceased Member and the appointment of the deceased Member's appropriate fiduciary (whether that be a court-appointed personal representative, or whether it be a successor trustee under a trust which owns the Membership Interest ("*Fiduciary*"). In the event that the Company does not choose to exercise this option to purchase, then the other remaining Members shall have the option to purchase the membership interest of the deceased Member, upon the terms and conditions set forth in this paragraph. Their option commences upon the expiration of the Company's option and continues for a period of 120 days thereafter. The option may be exercised only in writing and by delivery to the appropriate fiduciary for the deceased Member.

- A. **Valuation of Member's Interest.** Upon an election by the Company or the remaining Members ("*Purchaser*") to purchase the interest of a deceased Member, the value of the deceased Member's interest shall be determined by agreement of the parties, or, if they cannot agree, by a third party appraiser acceptable to both the Purchaser and the duly authorized fiduciary of the deceased Member (whether that be a duly appointed personal representative or a successor trustee) ("*Seller*"). If agreement cannot be reached as to an appropriate appraiser, then either party may petition the Presiding Judge of Marion County Circuit Court to appoint an appraiser, and the costs of that petition process shall be divided equally between the parties. Prior to selecting the third-party appraiser, each party shall provide to the other the amount each will accept as the value of the deceased Member's interest. In the event that the value established by the third-party appraiser is equal to or less than the value proposed by the Purchaser, the cost of the appraisal shall be paid solely by the Seller; in the event that the value established by the third-party appraiser is equal to or greater than the Seller's proposed value, then the cost of the appraisal shall be paid solely by the Purchaser. In the event that the value established by the third-party appraiser is between the values established by both parties, the cost of the appraisal shall be divided equally.
- B. **Payment for Member's Interest.** The purchase price for the deceased Member's interest shall be paid in 30 substantially equal, consecutive annual payments, including principal and interest. Interest shall accrue at the prime rate in effect on the date of the event giving rise to the election to purchase as quoted by the Wall Street Journal or, if that publication becomes unavailable, another reputable source chosen by vote of the Members. The first payment shall be made not later than one year following such date. The Purchaser may prepay the remaining amount of the purchase price at any time.

Section 6. Prohibited Transfers

Any purported Transfer of a Person's interests in the Company that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the interest Transferred shall be strictly limited to the transferor's Economic Rights with respect to the Transferred interests, with amounts otherwise available for distributions first applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or Transferee may have to the Company. In the case of a Transfer or attempted Transfer of a Person's interests in the Company that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all costs, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

Section 7. Rights and Obligations Arising out of Transfers

- A. A Transfer (including a Permitted Transfer) of a Person's interest in the Company to a Person who is not a Member does not itself dissolve the Company or entitle the Transferee to become a Member or exercise any Management Rights. A Person who is not a Member who acquires a Person's interests in the Company but who is not admitted as a Substitute Member shall be entitled only to the Economic Rights with respect to such interests, and shall have no right to any information or accounting of the affairs of the Company, and shall not be entitled to inspect the books or records of the Company.
- B. An assignment of an interest in the Company by a Member (the "*Assigning Member*") to any other Member (the "*Acquiring Member*") shall cause the Acquiring Member's Membership Interest to increase to the extent of such assigned interest (including both Economic Rights and Management Rights) and the Assigning Member's Membership Interest to decrease to the extent of the such assigned interest. If a Member acquires an interest in the Company from a Transferee, the Member shall acquire both the Economic Rights with respect to such interest and the Management Rights with respect to such interest, and the Management Rights of the Member from whom the Transferee's interest was obtained shall decrease accordingly. The Assigning Member shall not be released from liabilities to the Company, including without limitation Contribution obligations, but notwithstanding this the Acquiring Member shall be liable for any obligation to make Contributions with respect to the interest in the Company that the Acquiring Member so acquires. ORS 63.185(4) shall not apply to an Acquiring Member's acquisition of an interest in the Company as set forth above.

- C. In the event a court of competent jurisdiction charges a Membership Interest with the payment of an unsatisfied amount of a judgment with interest, to the extent so charged the judgment creditor shall be treated as an Transferee.
- D. Unless and until admitted as a Substitute Member, a Transferee shall only enjoy the rights of an assignee, as defined in ORS 63.249.

Section 8. Acceptance of Transferee as Substitute Member

- A. Subject to the other provisions of this Article, a Transferee may be admitted to the Company as a Substitute Member, with all of the Management Rights of a Member, to the extent Transferred, only upon satisfaction of all of the conditions set forth below.
 - 1. All Managers, and Remaining Members with aggregate Sharing Ratios in excess of 80% of the remaining Membership Interests, consent to the admission.
 - 2. The Transferee shall become a party to this Agreement as a Member by executing such documents and instruments as the Managers may reasonably request as may be necessary or appropriate to confirm such Transferee as a Member in the Company and such Transferee's agreement to be bound by the terms and conditions hereof.
 - 3. The Transferee shall pay or reimburse the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the Transferee as a Member with respect to the Transferred interests.
 - 4. The Transferee shall provide the Company with evidence satisfactory to counsel for the Company that such Transferee has made each of the representations and undertaken each of the warranties contained in the documents and instruments referred to above.
 - 5. If the Transferee is not an individual of legal majority, the Transferee shall provide the Company with evidence satisfactory to counsel for the Company of the authority of the Transferee to become a Member and to be bound by the terms and conditions of this Agreement.
 - 6. A Transferee who becomes a Substitute Member has, to the extent of the interests assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under the Act, the Articles and this Agreement, and, to the extent of the interests assigned, is also liable for any obligations of the transferor to make Contributions, but is not obligated for liabilities reasonably unknown to the Transferee at the time the Transferee becomes a Member.

7. Neither the Member and any subsequent transferor is released from any liability to the Company by virtue of such Transfer or admission, even if the Transferee becomes a Substitute Member and even if the Member whose Membership Interest is being transferred ceases to be a Member by virtue of such act, but the Member ceases to be a Member when one or more Transferees become Substitute Members with respect to the Member's entire Membership Interest.

B. ORS 63.185(4) shall not apply in the event of the admission of a Substitute Member.

Section 9. Distributions and Allocations re: Transfers

If any Person's interest in the Company is Transferred during any Fiscal Year in compliance with the provisions of this Article, profits, losses, each item thereof, and all other items attributable to such interest for such Fiscal Year shall be divided and allocated between the transferor and the Transferee by taking into account their varying interests during such Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Managers. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the Transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least ten Business Days prior to the Transfer the Company shall recognize such Transfer as the date of such Transfer, and provided further that, if the Company does not receive a notice stating the date such interest was Transferred and such other information as the Managers may reasonably require within 30 days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the interest on the last day of the Fiscal Year during which the Transfer occurs. Neither the Company nor the Managers shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not the Company or the Managers have knowledge of any Transfer of ownership of any interest.

Article Ten

Cessation of a Member

Section 1. Cessation

A Person shall cease to be a Member upon the happening of any of the following events:

- A. The withdrawal of a Member;
- B. The expulsion of a Member;
- C. The Bankruptcy of a Member;
- D. The transfer of a Member's entire membership interest;
- E. In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;
- F. In the case of a Member who is acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- G. In the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity;
- H. In the case of a Member that is a corporation, the filing of articles of dissolution or its equivalent, for the corporation or the revocation of its charter; or
- I. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

Section 2. Withdrawal

A Member may voluntarily withdraw from the Company upon six months' written notice. Upon withdrawal, the Member shall enjoy only Economic Rights and no Management Rights, in accordance with ORS 63.249.

Section 3. Expulsion

A Member may be expelled from the Company upon a determination by the Managers that the Member has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company, or has willfully and persistently committed a material breach of the Articles or this Agreement, or otherwise breached a duty owed to the Company or the other Members, to the extent that it is not reasonably practicable to carry on the business or affairs of the Company with the Member. An expelled Member shall be treated as having withdrawn voluntarily from the Company on the date of the expulsion determination and withdrawn in breach of this Agreement.

Section 4. Rights upon Cessation

In the event that any Person ceases to be a Member, the Person shall be treated as an assignee, enjoying only Economic Rights and no Management Rights, pursuant to ORS 63.265 and 63.249, from the date of Cessation until such time as the Person has received all distributions to which the Person is or may be due under this Agreement.

Article Eleven

Dissolution and Winding Up

Section 1. Covenant Not to Cause Dissolution

Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to take any voluntary action that would cause the Company to dissolve and notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

Section 2. Dissolution Events

The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following Dissolution Events:

- A. The vote of the Members to dissolve, wind up, and liquidate the Company;
- B. The happening of any other event that makes it unlawful, impossible, or impractical to carry on the business of the Company; or
- C. The occurrence of an event which results in the Company having no Members.

Notwithstanding anything in ORS 63.621 to the contrary and except for the events which may cause judicial and administrative dissolution under ORS 63.621(5) and (6), the foregoing events are the exclusive events which may cause the Company to dissolve.

Section 3. Continuation

Upon the occurrence of any Dissolution Event set forth above, the Company shall not be dissolved or required to be wound up if, within 120 days after such event, 80% of the remaining Class A Members agree to continue the business of the Company. Upon any such election to continue the business, all Members shall be bound thereby and shall be deemed to have consented thereto. Unless such an election is made within the 120 day period, the Company shall wind up its affairs. If such an election is made within the 120 day period, the Company shall continue until the occurrence of another Dissolution Event; provided that the right to continue the business of the Company shall not exist and may not be exercised unless the Company has received an opinion of counsel, in a form and content satisfactory to the Company, that the Company would not cease to be treated as a partnership for federal income tax purposes upon the exercise of such right to continue.

Section 4. Winding Up

Upon the occurrence of a Dissolution Event and unless the election to continue the business of the Company is made, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all obligations in this Agreement shall continue in full force and effect until such time as the Company Property has been distributed. The Manager shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

- A. *First*, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;
- B. *Second*, to the payment and discharge of all of the Company's debts and liabilities to Members;
- C. *Third*, the balance, if any, to the Members in accordance with their share of the profits, after giving effect to all distributions and allocations for all periods.

Section 5. Rights of Members

Except as otherwise provided in this Agreement,

- A. Each Member shall look solely to the assets of the Company for the return of Contributions and shall have no right or power to demand or receive property other than cash from the Company, and
- B. No Member shall have priority over any other Member as to the return of Contributions, distributions, or allocations.

Section 6. Notice of Dissolution

In the event a Dissolution Event occurs or an event occurs that would, but for provisions of Section 3 above, result in a dissolution of the Company, the Managers having knowledge of such event shall, within 30 days thereafter, provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the

Members) and shall publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the discretion of the Members).

Article Twelve

Taxes

Section 1. Elections

The Managers may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company, including but without limitation, elections:

- A. To adjust the basis of Company Property pursuant to Code Sections 754, 734(b), and 743(b), or comparable provisions of state or local law, in connection with transfers of interests in the Company and Company distributions;
- B. With the consent of the Members, to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state, or local tax returns; and
- C. To the extent provided in Code Sections 6221 through 6231, to represent the Company, the Managers, and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company, the Managers, and the Members in their capacities as Managers or as Members, and to file any tax returns and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company, the Managers, and Members.

Section 2. Taxes of Taxing Jurisdictions

To the extent that the laws of any taxing jurisdiction require, each Member requested to do so by the Managers will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such taxing jurisdiction the amount of tax, penalty and interest determined under the laws of the taxing jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Article Seven. The Managers may, where permitted by the rules of any taxing jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in

which case the Company shall inform the Members of the amount of such tax interest and penalties so paid.

Section 3. Tax Matters Partner

The Managers shall designate one of their number or, if there are no Managers eligible to act as tax matters partner, any Member as the tax matters partner of the Company pursuant to Code Section 6231(a)(7). Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Section 6223 to the Code. Any Member who is designated tax matters partner may not take any action contemplated by Code Sections 6222 through 6232 without the consent of the Managers.

Article Thirteen

Banking, Books, Records, and Accountings

Section 1. Banking

All funds of the Company will be deposited in a separate bank account or in an account or accounts as will be determined by the Manager. Such funds may be withdrawn from such account or accounts upon the signature of such person or persons as are designated by the Manager.

Section 2. Books, Records, and Accountings

At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

- A. A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;
- B. A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- C. Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- D. Copies of the Company's currently effective written operating agreement and all amendments thereto, copies of any writings permitted or required under the Act and copies of any financial statements of the Company for the three most recent years;
- E. Minutes of every meeting of the Members and the Managers and any written consents obtained from Members or Managers for actions taken without a meeting; and
- F. A statement prepared and certified as accurate by the Managers which describes the amount of cash and a description and statement of the agreed value of other Property or consideration contributed by each Member and which each Member has agreed to contribute in the future, the times at which or events on the occurrence of which any additional Contributions agreed to be made by each Member are to be made, and if agreed upon, the time at which or the events on the occurrence of which the Company is dissolved and its affairs wound up.

- G. The Managers shall provide reports at least annually to the Members at such time and in such manner as the Managers may determine reasonable. In addition, if the Company indemnifies or advances expenses to a Manager in connection with a proceeding by or in the right of the Company, the Company shall report the indemnification or advance in writing to the Members.

Article Fourteen

Amendment

This Agreement may be amended, restated or modified from time to time only by a written instrument adopted by the Members and Managers, as set forth in Articles Two and Three. No Member or Manager shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement.

Article Fifteen

Definitions

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein);

- A. **"Act"** shall mean the Oregon Limited Liability Company Act.
- B. **"Additional Contribution"** shall mean any Contribution made pursuant to Article Five, Section B.
- C. **"Additional Member"** shall mean a Member, other than an Initial Member, who has acquired a Membership Interest from the Company.
- D. **"Adjusted Capital Account Deficit"** shall mean a deficit balance in any Member's Capital Account at the end of any fiscal year, after adjustment to reflect any Adjustment Items, to the extent that the deficit exceeds the amount of a Member's shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain (if any) that the Member is deemed to be obligated to restore pursuant to Treasury Regulation §§1.704-2(g)(1) and 1.704-2(i)(5).
- E. **"Adjustment Items"** shall mean adjustments, allocations, and distributions described in Treasury Regulation §§1.704-1(b)(2)(ii)(d)(4), (5), and (6).
- F. **"Admission Agreement"** shall mean the agreement between a Member and the Company described in Section YZ below; Article Five, Sections A and C; and Article Eight, Section A.
- G. **"Agreement"** shall mean this Operating Agreement as originally executed and as amended or restated from time to time.
- H. **"Articles"** shall mean the Articles of Organization of the Company as filed with the Secretary of State of Oregon as the same may be amended or restated from time to time.
- I. **"Bankruptcy"** shall mean, with respect to any Person, bankruptcy as defined in ORS 63.001(3).
- J. **"Business Day"** shall mean any day other than Saturday, Sunday or any legal holiday observed in Oregon.
- K. **"Capital Account"** shall mean the account maintained with respect to a Member determined in accordance with Article Five, Section 4.

- L. **"Capital Interest"** shall mean a Person's positive Capital Account as it may be adjusted from time to time.
- M. **"Cessation"** shall mean any action which causes a Person to cease to be Member as described in Article Ten hereof.
- N. **"Code"** shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.
- O. **"Company"** shall refer to BATTLE CREEK LLC.
- P. **"Company Minimum Gain"** shall mean, as of any date, the amount of gain, if any, that would be recognized by the Company for federal income tax purposes, as if it disposed of property in a taxable transaction on that date in full satisfaction of any nonrecourse liability secured by the property, computed in accordance with Treasury Regulation §1.704-2(d)(1).
- Q. **"Company Property"** shall mean any Property owned by the Company.
- R. **"Confidential Information"** means information or material proprietary to the Company or proprietary to others and entrusted to the Company, whether written or oral, tangible or intangible, which a Member obtains knowledge of through or as a result of the Member's activities on behalf of the Company. Confidential Information may include, without limitation, data, know-how, trade secrets, designs, plans, drawings, specifications, reports, customer and supplier lists, pricing information, marketing techniques and materials, and manufacturing techniques and processes, whether related to the Company's past, present or future business activities, research or development, or products.
- S. **"Contributing Members"** shall mean those Members making Contributions as a result of the failure of a Delinquent Member to make Contributions as described in Article Five.
- T. **"Contribution"** shall mean, with respect to any Member, the amount of money and the initial value of any Property (other than money) or the fair market value of services contributed or to be contributed to the Company with respect to the interest in the Company held by such Person.
- U. **"Default Interest Rate"** shall mean the lesser of any maximum legal rate or the then-current prime rate quoted by United States National Bank of Oregon, N.A. plus 3 percent.
- V. **"Delinquent Member"** shall mean a Member or Transferee who has failed to fulfill a Contribution obligation.
- W. **"Dissolution Event"** shall mean the events identified in Article Eleven, Section B.

- X. **"Economic Rights"** shall mean, with respect to any Membership Interest, a Person's share of the profits, losses, capital and distributions of Company Property pursuant to the Act, the Articles and this Agreement but shall not include any Management Rights.
- Y. **"Effective Date"** shall mean the date the Articles are filed.
- Z. **"Entity"** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.
- AA. **"Family"** shall mean a Member's spouse, natural or adoptive lineal ancestors or descendants, and trusts for which any of them are more than insignificant beneficiaries.
- BB. **"Fiscal Year"** shall mean the Company's fiscal year, which shall be determined pursuant to Code Section 706.
- CC. **"Initial Contribution"** shall mean the initial Contribution made pursuant to Exhibit "A".
- DD. **"Initial Members"** shall mean those Persons identified on Exhibit A attached hereto and made a part hereof by this reference who have executed the Agreement and an Admission Agreement.
- EE. **"Majority"** shall mean, with respect to the Members or the remaining Members, greater than 50%, in terms of Sharing Ratios, of all the Members or all the remaining Members required to vote on a given topic; provided however, in the case of a meeting of the Members at which a quorum is present, "Majority" shall mean greater than 50%, in terms of Sharing Ratios, of the Members or remaining Members who are present, in person or by proxy at such meeting.
- FF. **"Management Right"** shall mean the right of a Member to participate in the management of the Company, including the rights to information and to consent or approve actions of the Members.
- GG. **"Manager"** shall mean a Person designated or selected to manage the affairs of the Company under this Agreement.
- HH. **"Member"** shall mean each of the parties who executes a counterpart of this Agreement as an Initial Member and each of the parties who may hereafter become Additional or Substitute Members.
- II. **"Membership Interest"** shall mean a Member's entire interest in the Company including such Member's Economic Rights and Management Rights.

- JJ.** "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" set forth in Treasury Regulation §1.704-2(b)(4).
- KK.** "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined pursuant to Treasury Regulation §1.704-2(i)(2) and (3).
- LL.** "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" set forth in Treasury Regulation §1.704-2(i)(2). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company fiscal year equals the excess, if any, of: (A) the net increase, if any, in the amount of the Company Minimum Gain attributable to such Member Nonrecourse Debt during the fiscal year over (B) the aggregate amount of any distribution during the fiscal year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent the distributions are from proceeds of the Member Nonrecourse Debt and are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to the Member Nonrecourse Debt, determined pursuant to Treasury Regulation §1.704-2(i).
- MM.** "Net Cash Flow" shall mean, for any given fiscal period of the Company, the amount by which (1) the gross cash receipts received by the Company during that fiscal period exceed (2) the sum, without duplication, of (a) all cash operating expenses of the Company during that fiscal period, (b) debt service payments made during that fiscal period on all indebtedness of the Company, (c) payments made during that fiscal period on account of the maintenance, leasing, repair, replacement, or improvement of property of the Company, and (d) all amounts allocated during that fiscal period, in the reasonable judgment of the Manager, to reserves established to meet the reasonable needs of the business, including working capital and capital improvement requirements and for reserves for unknown or unfixed liabilities or contingencies of the Company.
- NN.** "Nonrecourse Deductions" has the meaning set forth in Treasury Regulation §1.704-2(c). The amount of Nonrecourse Deduction for a Company fiscal year equals excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined pursuant to Treasury Regulation §1.704-2(c).
- OO.** "Nonrecourse Liability" has the meaning set forth in Treasury Regulation §1.704-2(b)(3).
- PP.** "Permitted Transfer" shall mean a Transfer of a Person's interest in the Company in accordance with Article Nine, Section 2.

- QQ.** "Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.
- RR.** "Property" shall mean any property, real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.
- SS.** "Regulations" shall mean proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.
- TT.** "Sharing Ratio" shall mean the proportion that a Person's share of profits bears to that of all Person's entitled to share in profits.
- UU.** "Substitute Member" shall mean a Person who would otherwise be a Transferee but who has been admitted to all of the rights of membership (including Management Rights) as to the portion of a Member's Membership Interest being Transferred; provided however, it shall not include an existing Member who increases the Member's interest by acquiring an interest in the Company from another Person.
- VV.** "Transferee" shall mean the owner of Economic Rights who is not a Member and as such has no Management Rights.
- WW.** "Transfer" shall mean, as a noun, any voluntary or involuntary transfer, sale, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, or otherwise dispose of; and shall include, without limitation, any sale, assignment, exchange, gift, devise, bequest, descent, pledge, hypothecation, lien, encumbrance, attachment, levy, foreclosure, sale by legal process, or other change in ownership, whether voluntary, involuntary, or by operation of law. The term transfer as used in this Agreement shall also include any filing by or against a member under any bankruptcy, reorganization, receivership, or other laws providing relief for debtors (collectively, Debtor Relief Laws). The term transfer shall not, however, include any gift, assignment, or sale to the Company, nor shall it include any such transfer in trust for the benefit of the spouse, children, or descendants of a member, or any transfer by a member to his or her spouse of an undivided interest in any membership interest, provided that in either such case, the transferring member shall retain all voting rights with respect to the membership interest so transferred.

Article Sixteen

Miscellaneous

Section 1. Application of Oregon Law

This Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of Oregon, and specifically the Act.

Section 2. Construction

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

Section 3. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Section 4. Execution of Additional Instruments

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

Section 5. Headings

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 6. Heirs, Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

Section 7. Notices

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

Section 8. Rights and Remedies Cumulative

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 9. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

Section 10. Waivers

The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 11. Arbitration

If any controversy or claim arising out of this Agreement or the parties' relationship cannot be settled, the controversy or claim shall be settled by arbitration in accordance with the rules of the American Arbitration Association or Arbitration Services of Portland, Inc., whichever organization is selected by the party which first initiates arbitration by filing a claim in accordance with the rules of the organization, as then in effect, and judgment on the award may be entered in any court having jurisdiction. Nothing herein, however, shall prevent a Member or the Company from resort to a

court of competent jurisdiction in those instances where injunctive relief may be appropriate or for purposes of expelling a Member.

Section 12. Attorney Fees

In the event arbitration is instituted to enforce or determine the parties' rights in connection with the Company or duties arising out of the terms of this Agreement or the parties' relationship or a suit or action permitted herein is brought, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such proceeding. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party shall be decided by the arbitrator(s) (with respect to attorney fees incurred prior to and during arbitration proceedings) and by the court or courts, including any appellate court, in which such matter is tried, heard, or decided, including the court which hears any exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorney fees incurred in such confirmation proceedings).

Section 13. Entire Agreement

This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

BATTLE CREEK LLC

MEMBERS

Evelyn M. Coburn Living Trust, dated March 15, 1995

By: Robert W. Nunn, Manager

By: Robert W. Nunn, Trustee

EXHIBIT A

ORGANIZER: Kathleen A. Evans

INITIAL MEMBER CONTRIBUTIONS:

CLASS A MEMBERS,
HOLDING A TOTAL OF ONE PERCENT (1%)
OF ALL MEMBERSHIP INTERESTS:

NAME AND ADDRESS	CONTRIBUTION	VALUE	%
Evelyn M. Coburn Living Trust, dated March 15, 1995, c/o Robert W. Nunn, Trustee 1000 SW Broadway, Suite 1400 Portland, OR 97205	1% of the real property described on the deeds attached to the Admis- sion Agreement		100%

CLASS B MEMBERS,
HOLDING A TOTAL OF NINETY-NINE PERCENT (99%)
OF ALL MEMBERSHIP INTERESTS:

NAME AND ADDRESS	CONTRIBUTION	VALUE	%
Evelyn M. Coburn Living Trust, dated March 15, 1995, c/o Robert W. Nunn, Trustee 1000 SW Broadway, Suite 1400 Portland, OR 97205	99% of the real prop- erty described on the deeds attached to the Admission Agreement		100%

EXHIBIT B
LEDGER OF OWNERSHIP
BATTLE CREEK LLC

MEMBER'S NAME	PERCENT OF OWNERSHIP	TRANSFeree	PERCENT TRANSFERRED
Evelyn M. Coburn Living Trust dated March 15, 1995	100%		

3.1.2 15:04

coburn\BCOperatingAgreement