

**OWNER INFORMATION**

**FOR**

**LOT 2**

**OF**

**FRED MEYER  
SUBDIVISION**

**OWNER:**

**SFP-E, LLC**

**SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**SFP-E, LLC**

This **SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this “*Agreement*”), dated as of November 2, 2020, of SFP-E, LLC an Oregon limited liability company (the “*Company*”), is entered into by the person or entity named as Member in Exhibit A hereto, as the sole member of the Company (the “*Member*”).

WHEREAS, the Company was formed by the filing of Articles of Organization with the office of the Secretary of State of the State of Oregon on December 20, 2011;

WHEREAS, in connection with the organizational restructuring of the Les Schwab business as it relates to the real property and related property assets, pursuant to that certain Contribution and Exchange Agreement (LS PropCo), dated as of December 31, 2019, for consideration thereto, all limited liability company interests of the Company were contributed to Les Schwab Group Holdings LLC (f/k/a LS PropCo, LLC) (the “*Initial Member*”) and the Initial Member and the Company entered into an amended and restated operating agreement on January 1, 2020 (the “*Original Agreement*”);

WHEREAS, in connection with the closing of the transactions contemplated by that certain Equity Purchase Agreement, dated as of September 25, 2020, the Initial Member contributed all of the interest in the Company to the Member pursuant to that certain Contribution Agreement, dated as of the date hereof (the “*Contribution*”);

WHEREAS, the undersigned wishes to amend and restate the Original Agreement in its entirety as hereinafter set forth to reflect the Contribution, the admission of the Member as the sole member of the Company, to make certain modifications, as hereinafter set forth, and to continue the business of the Company in accordance with the provisions of this Agreement.

NOW, THEREFORE, the Member hereby agrees as follows:

**1. Name.** The name of the Company is “SFP-E, LLC”. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the Member may from time to time deem necessary or desirable.

**2. Purpose and Powers.** The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the Oregon Limited Liability Company Act (the “*Act*”). The Company shall possess and may exercise all of the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

**3. Registered Office and Registered Agent.** The registered office of the Company in the State of Oregon shall be the office of the registered agent or such other office as the Member may designate from time to time in the manner provided by law. The registered office of the Company in the State of Oregon shall be located at 1127 Broadway Street NE, Suite 310, Salem OR 97301 and the registered agent of the Company in the State of Oregon shall be Corporation Service Company or such other Person or Persons as the Member may designate from time to time in the manner provided by law.

**4. Member.** Simultaneously with its execution of this Agreement, the Member is hereby admitted as the sole member of the Company and agrees to be bound by the terms of this Agreement.

**5. Capital Contribution.** The Member shall have the right, but not the obligation, to make capital contributions to the Company as the Member in its sole discretion may determine.

**6. Allocations and Distributions.** The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated to the Member for U.S. federal (and, to the extent applicable, state and local) income tax purposes, and the Company, as a separate entity, is to be classified as a disregarded entity for U.S. federal (and, to the extent applicable, state and local) income tax purposes. Subject to the applicable provisions of the Act, the Company shall make such distributions to the Member as the Member determines.

**7. Management by Member.** The management and control of the Company shall be vested entirely in the Member. The Member shall have all the rights and powers that are conferred by law or are otherwise necessary, advisable or convenient to the discharge of the Member's duties and to the management of the business and affairs of the Company. No person or entity dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting for such purposes on behalf of the Company.

## **8. Officers.**

8.1. The Member may, but is not required to, designate one or more persons to fill one or more officer positions of the Company. Such officers may include Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, Vice President, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary and such other offices determined by the Member from time to time. No officer need be a resident of the State of Oregon and any number of offices may be held by the same Person. Each officer will hold office until his successor will be duly designated and will qualify to hold such office, or until his death or until he will resign or will have been removed in the manner hereinafter provided. Any number of offices may be held by the same person. Unless the Member specifies otherwise, the assignment of such title will constitute the delegation to such officer of the authority and duties that are normally associated with that office. The officers of the Company as of the date hereof are set forth in Exhibit B hereto.

8.2. Any officer may be removed, with or without cause, by the Member. Any officer may resign at any time by giving written notice to the Company. Any resignation by an officer shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and

unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company or the officer under any contract to which the officer is a party.

**9. Transfer of Interest; Admission of Additional Members.** The Member may assign its interest in whole or in part at any time. Upon assignment of all of the Member's interest to a transferee, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the "Member" shall be read as references to the transferee as the substituted member of the Company); provided, in any event, that the transferee must agree in a document or instrument to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to cause the Company to be classified as a partnership or corporation for U.S. federal (and, to the extent applicable, state and local) income tax purposes, and to include such other provisions as the members may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

**10. Resignation of Members; Events of Bankruptcy.** Except as provided in the mandatory provisions of the Act, no right is given to any member of the Company to resign from the Company. Notwithstanding the provision of Section 63.265(1) of the Act, the Member shall not cease to be a member of the Company upon the Member's bankruptcy.

**11. Dissolution and Term of the Company.** The Company shall dissolve upon any act or event causing the dissolution of the Company under the Act, unless, if permitted by the Act, the Company is continued in accordance with the Act. Subject to an earlier dissolution as described in the preceding sentence, the Company shall have a perpetual existence.

**12. Limitation of Liability and Indemnification of Member.**

12.1. Except as otherwise required by the Act, the Member, in such capacity, shall not be liable for any debts, liabilities, contracts or any other obligations of the Company, except for and only to the extent of such Member's capital contribution, and then only to the extent and under the circumstances set forth in the Act. The Member shall have no responsibility to return distributions made by the Company, except as required by the Act or other applicable law.

12.2. Except as otherwise required by the Act, the Member, the Manager, and officers shall not be liable to the Company or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement for any breach of this Agreement or of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company other than for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

12.3. The Company shall indemnify and hold harmless the Member, officers and any direct or indirect officer, director, Affiliate, stockholder, member, manager, employee or partner of the Member and its Affiliates (each such Person, an “**Indemnatee**”) from and against any and all losses, claims, damages, liabilities, costs and expenses, including in connection with seeking indemnification pursuant to this Section 12.3, whether joint or several (the “**Liabilities**”), related to, arising out of or in connection with the services contemplated by this Agreement, whether or not pending or threatened, civil or criminal, administrative, investigative or other, whether or not an Indemnatee is a party thereto, whether or not resulting in any liability to such Indemnatee and whether or not such action, claim, suit, investigation or proceeding is initiated or brought by the Company. The Company shall reimburse any Indemnatee for all reasonable costs and expenses (including reasonable attorneys’ fees and expenses) as they are incurred in connection with investigating, preparing, pursuing, defending or assisting in the defense of any action, claim, suit, investigation or proceeding for which such Indemnatee would be entitled to indemnification under this Section 12.3, or any action or proceeding arising therefrom, whether or not such Indemnatee is a party thereto, regardless of whether such Indemnatee continues to be a Member, officer, any direct or indirect officer, director, Affiliate, stockholder, member, manager, employee or partner of the Member or its Affiliates at the time any such Liability is paid or incurred. The Company shall not be liable under this Section 12.3 with respect to any particular Liability of an Indemnatee to the extent that such Liability is for acts or omissions for which the Indemnatee is not absolved from liability under Section 12.4. The Company shall pay the attorneys’ fees and other expenses of an Indemnatee as they are incurred upon receipt of an agreement by or behalf of an Indemnatee to pay such amounts unless it is finally judicially determined that the Liabilities in question resulted primarily from the willful misconduct or bad faith of such Indemnatee.

12.4. No Indemnatee shall be liable to the Company or any other Indemnatee for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Indemnatee in good faith and with the belief that such action or omission is in, or not opposed to, the best interest of the Company, so long as such action does not constitute fraud, gross negligence, willful misconduct or a material breach of this Agreement by such Indemnatee or is not made in knowing violation of the provisions of this Agreement.

12.5. Certain Indemnitees that are managers, officers, members, employees, equityholders, managers, or advisors of Member or Member’s Affiliates (each such Person, a “**Fund Indemnatee**”) may have certain rights to indemnification, advancement of expenses and/or insurance provided by or on behalf of Member and/or its Affiliates (collectively, the “**Fund Indemnitors**”). Notwithstanding anything to the contrary in this Agreement or otherwise: (i) the Company is the indemnitor of first resort (i.e., the Company’s obligations to each Fund Indemnatee are primary and any obligation of the Fund Indemnitors to advance costs, expenses or damages or to provide indemnification for such costs, expenses or damages incurred by each Fund Indemnatee are secondary), (ii) the Company shall be liable for the full amount of all such costs, expenses or damages paid in settlement to the extent legally permitted and as required by this Agreement, without regard to any rights each Fund Indemnatee may have against the Fund Indemnitors, and (iii) the Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Notwithstanding anything to the contrary in this Agreement or

otherwise, no advancement or payment by the Fund Indemnitors on behalf of a Fund Indemnitee with respect to any claim for which such Fund Indemnitee has sought indemnification or advancement of costs, expenses or damages from the Company shall affect the foregoing and the Fund Indemnitors will have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Indemnitee against the Company. The Fund Indemnitors are express third party beneficiaries of the terms of this Section 12.5.

12.6. The right of an Indemnitee to indemnification hereunder shall not be exclusive of any other right or remedy that the Member or officer may have pursuant to applicable law or this Agreement.

12.7. An Indemnitee shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Indemnitee 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, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

12.8 The Company may purchase and maintain insurance on behalf of an Indemnitee or any other person who, while a Member, officer or any direct or indirect officer, director, affiliate, stockholder, member, manager, employee or partner of the Member or its affiliates, is or was serving at the request of the Company as a director, manager, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The Company may purchase and maintain the insurance even if the Company has no power to indemnify the individual against the same liability under the applicable law.

**13. Amendment.** This Agreement may be amended by the Member; provided, however, that any amendment to this Agreement must be in writing and signed by the Member.

**14. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to any choice of law principles.

**15. Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the undersigned has executed this Second Amended and Restated Limited Liability Company Agreement as of the date first written above.

**SOLE MEMBER:**

LES SCHWAB PROPERTY HOLDINGS LLC

By:   
Name: Corey J. Parks  
Title: Secretary and Chief Administrative Officer

**Exhibit A**

**Member**

Les Schwab Property Holdings LLC  
20900 Cooley Road  
Bend, OR 97701  
Attn: Corey J. Parks  
Email: corey.j.parks@lesschwab.com

**Exhibit B**

<b>Officer</b>	<b>Title</b>
John W. Cuniff	President
Corey J. Parks	Vice President and Secretary
Michael D. Broberg	Treasurer



**CONTRACT PURCHASER  
INFORMATION**

**FOR**

**LOT 2**

**OF**

**FRED MEYER  
SUBDIVISION**

**CONTRACT PURCHASER:**

**MJC INVESTMENT  
PROPERTY XII, LLC**

**Operating Agreement**  
**of**  
**MJC Investment Property XII, LLC**  
a California Limited Liability Company

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, 15 U.S.C. § 15b ET SEQ., AS AMENDED (THE "FEDERAL ACT"), IN RELIANCE UPON ONE (1) OR MORE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE FEDERAL ACT. IN ADDITION, THE ISSUANCE OF THIS SECURITY HAS NOT BEEN QUALIFIED UNDER THE CALIFORNIA CORPORATE SECURITIES LAW OR ANY OTHER STATE SECURITIES LAWS (COLLECTIVELY, THE "STATE ACTS"), IN RELIANCE UPON ONE (1) OR MORE EXEMPTIONS FROM THE REGISTRATION PROVISIONS OF THE STATE ACTS. IT IS UNLAWFUL TO CONSUMMATE A SALE OR OTHER TRANSFER OF THIS SECURITY OR ANY INTEREST THEREIN TO, OR TO RECEIVE ANY CONSIDERATION THEREFORE FROM, ANY PERSON OR ENTITY WITHOUT THE OPINION OF COUNSEL FOR THE COMPANY THAT THE PROPOSED SALE OR OTHER TRANSFER OF THIS SECURITY DOES NOT AFFECT THE AVAILABILITY TO THE COMPANY OF SUCH EXEMPTIONS FROM REGISTRATION AND QUALIFICATION, AND THAT SUCH PROPOSED SALE OR OTHER TRANSFER IS IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS. THE TRANSFER OF THIS SECURITY IS FURTHER RESTRICTED UNDER THE TERMS OF THIS AGREEMENT.

**Operating Agreement  
of  
MJC Investment Property XII, LLC  
a California Limited Liability Company**

This Operating Agreement ("**Agreement**") is entered into as of April 22, 2021 ("**Effective Date**") by and between Heslin Investors LLC, a California limited liability company ("**Heslin**"), and 98 Prospect Avenue, LLC, a California limited liability company ("**Prospect**"), (collectively referred to herein as the "**Members**").

**RECITALS**

A. Articles of Organization for the LLC were filed with the California Secretary of State on April 22, 2021

B. The Members desire to adopt and approve an operating agreement for the LLC under the California Revised Uniform Limited Liability Company Act, as amended from time to time (the "**Act**"). The Members desire to adopt and approve an operating agreement for the LLC. The Members also desire to enter into this Agreement for the LLC to delineate their rights and liabilities as members, to provide for the LLC's management, and to provide for certain other matters, all as permitted under the Act.

C. NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members by this Agreement set forth the operating agreement for the LLC on the terms and subject to the conditions of this Agreement.

**TERMS**

**Article 1  
ORGANIZATIONAL MATTERS**

1.1. **Formation.** The Members have formed a California limited liability company by filing the Articles of Organization with the California Secretary of State and entering into this Agreement. This Agreement shall be deemed effective as of the Effective Date. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement.

1.2. **Name.** The name of the LLC shall be "MJC Investment Property XII, LLC" (the "**LLC**"). The LLC may conduct business under that name or any other name approved by the Members.

1.3. **Term.** The LLC's term commenced as of the date of the filing of the Articles and, unless sooner terminated under this Agreement, will expire on December 31, 2068.

1.4. **Office; Agent.** The LLC shall continuously maintain an office and agent for service of process in California as required by the Act. The LLC's principal office shall be located at 23421 South Pointe Drive, Suite 270, Laguna Hills, California, 92653, or such location

as the Members may determine. The registered agent shall be as stated in the Articles of Organization or as otherwise determined by the Managers.

1.5. **LLC's Business; Purpose.** The business and purpose of the LLC is to engage in any lawful act or activity for which a limited liability company may be organized under the Act.

1.6. **Tax Classification.** The Members intend the LLC to be a limited liability company under the Act, classified as a partnership for federal income tax purposes, to the maximum extent possible. The rights and liabilities of the Members and the Managers shall be determined under the Act and this Agreement. To the extent that the rights or obligations of any Member or the Managers are different because of any provision of this Agreement than those rights and obligations would be in the absence of that provision, this Agreement shall control, to the extent permitted by the Act. Neither the Managers nor any Member shall take any action inconsistent with the express intent of the Members to this Agreement.

1.7. **Definitions.** Certain definitions of terms used in this Agreement are defined in **EXHIBIT "A"** attached hereto.

## **Article 2 CAPITAL CONTRIBUTIONS**

2.1. **Initial Capital Contribution and Membership Interest.** The Members have made a contribution to the capital ("**Capital Contributions**") of the LLC as set forth on **EXHIBIT "B"** attached hereto and incorporated herein by reference.

2.2. **Additional Capital Contributions.** The Members shall not be required to contribute any additional capital to the LLC other than the initial Capital Contribution. The Members will have no obligation to restore any negative or deficit balance in their Capital Accounts (as defined in Section 2.3 below), including any negative or deficit balance in their Capital Accounts upon liquidation and dissolution of the LLC. Any additional funds required by the LLC to meet its cash requirements shall, to the extent possible, be provided by LLC borrowings from third parties, upon such terms and conditions as determined appropriate by the Managers; provided, however, that in lieu of causing the LLC to borrow from third parties, the Members may from time to time make additional Capital Contributions to the LLC or the LLC may borrow from the Members.

2.3. **Capital Accounts.** The LLC shall establish a capital account ("**Capital Account**") for each Member. The LLC shall determine and maintain the Capital Account in accordance with Treasury Regulations § 1.704-1(b)(2)(iv). On a valid Transfer of the Member's interest in the LLC ("**Membership Interest**"), the Member's Capital Account shall carry over to the new owner.

2.4. **No Third Party Beneficiary.** Any agreement of the Member to pay any amount and any assumption of liability herein contained, expressed or implied, shall not inure to the benefit of the obligee of any indebtedness or any other party who may be deemed to be a third party beneficiary of this Agreement.

2.5. **Rights Regarding Capital.** No Member shall be entitled to withdraw or to demand the return of any or all of that Member's Capital Contribution, except as specifically provided in this Agreement. No Member shall be entitled to receive interest on that Member's

Capital Contributions or the balance of that Member's Capital Account without the prior written consent of the Managers. No Member shall have priority over any other Member regarding the return of a Capital Contribution. No Member shall be obligated to restore a Capital Account having a balance of less than zero.

2.6. **Guaranty.** If any Member at any time guarantees the payment of any loan or obligation of the LLC or makes any loan to the LLC (whether or not made before or after the execution of this Agreement), and provided such guaranty or loan was approved by all Members, the other Member of the LLC, and any affiliated Persons including, without limitation, those Persons who have co-guaranteed any loans on behalf of the LLC, will indemnify, reimburse and hold harmless such Member or such Affiliate of Member on a pro rata basis in like proportion to their respective Membership Interests, so that each of the Members shall bear a proportionate share of any loss(es) sustained by reason of such guarantee(s). For purposes of ascertaining the proportionate share of any such loss(es), the Member's respective Membership Interests at the time the loss was sustained shall be determinative. The above-described indemnification, reimbursement and hold harmless obligations shall apply only to those loans or obligations which are incurred in the ordinary course of the LLC's business and are reasonably necessary for the LLC to incur and shall survive the expiration or earlier termination of this Agreement.

2.7. **Member Loans.** Any Member may lend money to the LLC on terms and conditions approved by all of the Members. The loan shall not be treated as a Capital Contribution by that Member or entitle the Member to an increase in that Member's Membership Interest. The loan amount shall be a debt due from the LLC, repayable out of the LLC's assets and shall be on such terms as the Members agree. Notwithstanding the foregoing, no Member shall be required to make any loans to the LLC. The Members acknowledge that any Member ("**Lender**") who loans money to the LLC pursuant to this Section 2.7 shall have rights ("**Rights**"), the exercise of which may be in conflict with the LLC's best interests. In that regard, the Members hereby authorize, agree and consent to the Lender's exercise of any of Lender's Rights under any promissory note, security agreement or other loan document, even though the Lender's exercise of those rights may be detrimental to the LLC or the LLC's business. Further, the Members agree that any Lender's proper exercise of the Rights shall not be deemed a breach of that Lender's fiduciary duties (if any) to the LLC.

2.8. **Rights of Creditors and Third Parties.** This Agreement is entered into by the Members for the exclusive benefit of the LLC, its Members, and their successors and assigns. The Agreement is expressly not intended for the benefit of any creditor of the LLC, a creditor of a Member, or any other person. Except, and only to the extent, as provided by the Act, no creditor or third party shall have any rights under this Agreement or any agreement between the LLC and any Member with respect to any Capital Contribution or otherwise. Subject to the provisions of this Agreement, any Member's obligations to make a requested and approved Capital Contribution is without recourse. No Member or Manager shall be personally liable for the debts, obligations, losses, liabilities or expenses of the LLC, whether that liability arises in contract, tort or otherwise, except as expressly set forth in this Agreement, or as may be required by applicable law. If a default occurs, a defaulting Member or Manager shall not have personal liability to any third party creditor. Nothing in this Agreement (whether express or implied) is intended to or shall: (i) confer any rights or remedies under or by reason of this Agreement on any persons, other than the parties hereto and their respective successors and assigns, (ii) relieve or discharge the obligation or liability of any third person to any party hereto, or (iii) give any third party any right of subrogation or action against any party to this Agreement.

### **Article 3 MEMBERS**

3.1. **Powers and Duties of the Members.** The Members shall have the sole authority to decide those matters identified in Section 4.4.2 below.

3.2. **Separateness/Operations Matters.** The LLC shall: (i) maintain books, records and bank accounts separate from those of any other Person; (ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets; (iii) observe all customary organizational and operational formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group; (vi) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; (vii) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements; (viii) conduct business in its own name, and use separate stationery, invoices and checks; (ix) not commingle its assets or funds with those of any other Person; (x) not assume, guarantee or pay the debts or obligations of any other Person; (xi) correct any known misunderstanding as to its separate identity; (xii) not permit any affiliate to guarantee or pay its obligations; and (xiii) not make loans or advances to any other Person.

3.3. **Liability of the Members.** Except as otherwise expressly provided in the Act, the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and the Members shall not be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member. Except as otherwise expressly provided in the Act, a Member's liability shall be limited to the amount of Capital Contributions, if any, required to be made by the Member under this Agreement, but only when and to the extent they are due under this Agreement.

3.4. **Admission of Additional Members.** The Managers may admit additional members to the LLC. Any additional members shall obtain Membership Interests and will participate in the LLC's Net Profits, Net Losses, and distributions on such terms as determined by the Managers.

3.5. **Effect of Bankruptcy, Death or Incompetency of a Member.** To the extent permitted by applicable law, the bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination or dissolution of the LLC, and the business of the LLC shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any LLC Interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.

3.6. **Competing Activities.** The Members may engage or invest in, independently or with others, any business activity of any type or description, including, without limitation, those that might be the same as or similar to the LLC's business and that might be in direct or indirect competition with the LLC. Neither the LLC nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom.

The Members shall not be obligated to present any investment opportunity or prospective economic advantage to the LLC or the other Members, even if the opportunity is of the character that, if presented to the LLC or the other Members, could be taken by the LLC or the other Members. The Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the LLC.

3.7. **Transactions with the LLC.** Subject to any limitations set forth in this Agreement and with the prior approval of the Managers, a Member may transact business with the LLC so long as the transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the LLC and are at least as favorable to the LLC as those terms and conditions generally available in similar transactions from Persons operating at arm's length and, in the case of services, from Persons capable of performing similar services. Subject to other applicable laws, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

#### **Article 4 MANAGEMENT AND CONTROL OF THE LLC**

4.1. **Title to LLC Property.** All property owned by the LLC shall be owned by the LLC as an entity and, insofar as permitted by applicable law, the Members shall not have any ownership interest in any LLC property in their individual name or right, and the Members' Membership Interests shall be personal property for all purposes.

4.2. **Management of the LLC by the Managers.** The LLC's business, property and affairs shall be managed exclusively by Heslin Investors LLC, a California limited liability company, and 98 Prospect Avenue, LLC, a California limited liability company (the "**Managers**"). The Managers shall have no duties to the LLC or to the Members, other than as expressly set forth in this Agreement.

4.3. **Authority of the Managers.** Except for situations in which the Members' approval is expressly required by the Act or this Agreement, the Managers shall have complete and exclusive authority, power and discretion to manage and control the LLC's business, property and affairs, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the LLC's business, property and affairs. Subject to Section 4.4.2 below, the Managers, on either of their signatures alone, are authorized to endorse checks, drafts and other evidences of debt made payable to the LLC's order, but only for the LLC's benefit, and to execute contracts, bind the LLC, and incur obligations on the LLC's behalf, pay all invoices, debts and payables of the LLC, and take all actions on its behalf necessary to manage its affairs, as determined by the Managers.

4.4. **Powers of the Managers.**

4.4.1. **Powers.** The Managers, on either Manager's signature alone, shall have all necessary powers to manage and carry out the LLC's purposes, business, property, and affairs, including the power to exercise, on behalf and in the name of the LLC, all the powers described in the Act, including, without limitation, the following: (i) to enter into and perform all agreements or contracts and take all actions relating to the LLC and/or its business; (ii) to borrow money on behalf of the LLC and execute and deliver any security instruments necessary to evidence or perfect a lien on all or part of the LLC assets, including the right and authority of the Managers to negotiate and obtain any type of loan (including bridge loans) for

the LLC which the Managers, in the Managers' discretion, deem in the best interests of the LLC; (iii) to manage, improve, alter, invest and further develop the LLC's assets and business, and sell, lease, encumber or convey all or part of the LLC's assets and business for consideration and on terms and conditions the Managers deem reasonable; (iv) to pay from LLC assets all expenses of organizing and conducting the LLC's business, including legal and accounting fees; (v) to execute all other instruments and take all other actions necessary or desirable to carry out the LLC's purposes and business; (vi) to employ, retain or otherwise secure the services of Persons or firms deemed necessary by the Managers for the LLC's business on terms the Managers deem advisable, and to appoint an agent for service of process for the LLC; (vii) to take all other action permitted by law and customary in or reasonably related to the conduct of the LLC's business; (viii) to sell, exchange or otherwise dispose of all or substantially all the LLC's assets occurring as part of a single transaction or plan, or in multiple transactions, except in the orderly liquidation and winding up of the LLC's business on its duly authorized dissolution; (ix) to merge with another limited liability company or limited partnership, provided in no event shall a Member be required to become a general partner in a merger with a limited partnership without the Member's express written consent, or unless the merger agreement provides each Member with the dissenter's rights described in the Act; (x) to merge with a corporation or a general partnership or other Person; and (xi) to enter into transactions between the LLC and any Manager or one or more of such Manager's affiliates, or transactions in which any Manager, or one or more of the Manager's affiliates, has a material financial interest, including, without limitation, the lending of money by the LLC to any Manager or Member.

4.4.2. **Limitations on Powers.** The Managers shall not have authority hereunder to cause the LLC to engage in the following transactions without first obtaining the written consent of the Members: (i) an alteration of the LLC's primary purpose as set forth in Section 1.5 above; (ii) any act making it impossible to carry on the LLC's ordinary business; (iii) the confession of a judgment against the LLC; and (iv) any other transaction described in this Agreement requiring a Member's vote, consent, or approval.

4.5. **Election of the Managers.**

4.5.1. **Number, Term and Qualifications.** The LLC shall have two (2) Managers. Unless a Manager resigns or is removed, the Manager shall hold office until a successor shall have been elected and qualified.

4.5.2. **Resignation.** A Manager may resign at any time by giving written notice to the Members without prejudice to the rights, if any, of the LLC under any contract to which the Manager is a party. The resignation of the Manager shall take effect on receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the 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. If a Manager resigns pursuant to this Section 4.5.2, the remaining Manager shall act as the sole Manager of the LLC.

4.5.3. **Removal.** A Manager may be removed at any time, with or without cause, by the vote of all Members. Any removal shall be without prejudice to the rights, if any, of the Manager under any employment contract and, if the Manager is also a Member, shall not affect the Manager's rights as a Member or constitute a withdrawal as a Member.

4.5.4. **Vacancies.** Any managerial vacancy occurring for any reason shall be filled by an individual or entity determined by the Members upon the written consent of the Members.

4.6. **Members Have No Managerial Authority.** The Members shall have no power to participate in the LLC's management, except as expressly authorized by this Agreement or the Articles, and except as expressly required by the Act. Unless expressly and duly authorized in writing to do so by the Managers, the Members shall not have any power or authority to bind or act on the LLC's behalf in any way, to pledge its credit, or to render it liable for any purpose.

4.7. **Performance of Duties; the Managers' Liability.** The Managers shall not be liable to the LLC or the Members for any loss or damage sustained by the LLC or the Members, unless it shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by a Manager. The Managers shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the LLC's and the Members' best interests, and with such care, including reasonable inquiry, as an ordinarily prudent Person in a like position would use under similar circumstances. A Manager who so performs the duties of the Manager shall not have any liability by reason of being or having been a Manager of the LLC. In performing his duties, a Manager shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following Persons or groups, unless he has knowledge concerning the matter in question that would cause such reliance to be unwarranted, and provided that the Manager acts in good faith and after reasonable inquiry when the need therefor is indicated by the circumstances:

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

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

4.8. **Devotion of Time.** The Managers are not obligated to devote all of their time or business efforts to the LLC's affairs. The Managers shall devote whatever time, effort, and skill as they deem appropriate for the LLC's operation. Notwithstanding the foregoing, the Managers shall devote sufficient time and effort in order to attend to the operational and business needs of the LLC and its purpose in a commercially reasonable fashion.

4.9. **Competing Activities.** The Managers may engage or invest in, independently or with others, any business activity of any type or description, including those that might be the same as or similar to the LLC's business and that might be in direct or indirect competition with it. Neither the LLC nor the Members shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Managers shall not be obligated to present any investment opportunity or prospective economic advantage to the LLC, even if the opportunity is such that, if presented to the LLC, could be taken by it. The Managers shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the LLC or the Members. The Members acknowledge that the Managers and their affiliates own and/or manage other businesses, including businesses that may compete with the LLC and for

the Managers' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Managers as a result of any of such activities.

4.10. **Transactions Between LLC and a Manager.** Notwithstanding any possible conflict of interest, a Manager may, and may cause his or the Manager's affiliates to, engage in any transaction (including the purchase, sale, lease, or exchange of any property or the rendering of any service, or the establishment of any salary, compensation, or other terms of employment) with the LLC so long as such transaction is not expressly prohibited by this Agreement and so long as such transaction, on an overall basis, is fair and reasonable to the LLC and at least as favorable to it as those generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's-length, and provided that the Members consent, in writing, to approve the transaction. A transaction between a Manager and/or his affiliates, on the one hand, and the LLC shall be conclusively determined to constitute a transaction on terms and conditions, on an overall basis, fair and reasonable to the LLC and at least as favorable to the LLC as those generally available in a similar transaction between parties operating at arm's-length if the Members consent, in writing, to approve the transaction. Any dealing with a Manager or his affiliate not acting in the capacity of a Member or a Manager which is described in the Agreement shall not be subject to the written consent of the Members.

4.11. **Payments to the Managers.** Except as specified in this Agreement, no Manager or affiliate of a Manager is entitled to remuneration for services rendered or goods provided to the LLC.

4.12. **Expenses.** The LLC shall reimburse the Managers and their affiliates for the actual cost of goods and materials used for or by the LLC. The LLC shall also pay or reimburse the Managers or their affiliates for organizational expenses (including legal and accounting fees and costs) incurred to form the LLC and prepare the Articles and this Agreement. Except as otherwise provided herein, the Managers and their affiliates shall not be reimbursed by the LLC for the following expenses: (i) salaries, compensation or fringe benefits of directors, officers or employees of the Managers or their affiliates; (ii) overhead expenses of the Managers or their affiliates, including rent and general office expenses; and (iii) the cost of providing any service or goods for which the Managers or their affiliates are not entitled to compensation under this Agreement.

4.13. **Acts of the Managers as Conclusive Evidence of Authority.** Any note, mortgage, evidence of debt, contract, certificate, statement, conveyance, or other written instrument, and any assignment or endorsement thereof, executed or entered into between the LLC and any other Person, when signed by the Managers, is not invalidated as to the LLC by any lack of authority of the signing Managers in the absence of actual knowledge on the part of the other Person that the signing Managers had no authority to execute the same.

4.14. **Limited Liability.** No Person who is a Manager of the LLC shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the LLC, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager or officer, or both a Manager and officer of the LLC.

**Article 5**  
**ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS**

**5.1. Allocations of Net Profit and Net Loss.**

5.1.1. **Net Loss.** After giving effect to the special allocations set forth in this Article 5, Net Loss shall be allocated to the Members in proportion to their Membership Interest.

5.1.2. **Net Profit.** After giving effect to the special allocations set forth in this Article 5, Net Profit shall be allocated to the Members in proportion to their Membership Interest.

5.1.3. **Reallocations.** Notwithstanding anything to the contrary in Section 5.1.1 above, Net Loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain. Any Net Loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of losses under this Section 5.1.3). Any loss reallocated under this Section 5.1.3 shall be taken into account in computing subsequent allocations of income and losses pursuant to this Article 5, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this Article 5, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article 5 if no reallocation of losses had occurred under this Section 5.1.3.

**5.2. Special Allocations.** Notwithstanding Section 5.1 above:

5.2.1. **Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of LLC income and gain for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of LLC property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with the Regulations. Allocations pursuant to this Section 5.2.1 shall be made in proportion to the amounts required to be allocated to each Member under this Section 5.2.1. The items to be so allocated shall be determined in accordance with the Regulations. This Section 5.2.1 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

5.2.2. **Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt.** If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each Member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with the Regulations) shall be specially allocated items of LLC income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of LLC property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with the Regulations). Allocations pursuant to this Section 5.2.2 shall be made in proportion to the amounts required to be allocated to each Member under this

Section 5.2.2. The items to be so allocated shall be determined in accordance with the Regulations. This Section 5.2.2 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

5.2.3. **Member Nonrecourse Deductions.** Those items of LLC loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i)(1).

5.2.4. **Qualified Income Offset.** If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of LLC income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Article 5 shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article 5 so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article 5 to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article 5 if such unexpected adjustments, allocations, or distributions had not occurred.

5.3. **Section 754 Adjustments.** Regulations Sections 1.704-1(b)(2)(iv)(m) (2) or (4) may require the LLC to adjust the Members' Capital Accounts if the LLC adjusts the tax basis of its assets pursuant to Code Sections 734(b) or 743(b) following an election pursuant to Code Section 754. Any such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis). Such gain or loss shall be specially allocated among the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted. Such gain or loss shall also be included in any calculation of the aggregate Net Profit or Net Loss allocated to a Member for the purpose of determining the amount of any subsequent allocation that Member is to receive pursuant to this Agreement.

5.4. **Member Services: Interest Payments.** Notwithstanding any other provision of this Agreement, if a final determination, assessment, or adjudication is made or conceded to on behalf of the LLC that any amount paid to a Member for services authorized to be rendered by such Person, or interest authorized to be paid to such Person, under this Agreement is not deductible for income tax purposes during any Fiscal Year of the LLC, the LLC shall specially allocate items of income and gain, for that Fiscal Year or subsequent Fiscal Years as necessary, to the Member in the amount of the disallowed payment. Notwithstanding any other provision of this Agreement, such items of income and gain shall not be included in any calculation of the aggregate amount of Net Profit and Net Loss allocated to such Member.

5.5. **Curative Allocations.** The allocations set forth in this Agreement are intended to comply with certain requirements of Regulation Section 1.704-1(b). Because it is not possible to foresee every possible future event during the term of the LLC, the allocations might not be consistent with the manner in which the Members intend to share LLC distributions in all situations. Accordingly, if the Members unanimously agree, the Members may require the Managers to allocate income, gain, loss and deductions among the Members in a manner to

prevent the allocations from distorting the manner in which the LLC distributions are intended to be shared among the Members. The Managers shall have the discretion to accomplish this result in any reasonable manner.

5.6. **Other Allocation Rules.** For purposes of determining Net Profit, Net Loss, or any other items allocable to any period, Net Profit, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Partnership Representative using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

5.7. **Obligations of Members to Report Allocations.** The Members are aware of the income tax consequences of the allocations made by this Article 5 and hereby agree to be bound by the provisions of this Article 5 in reporting their shares of LLC income and loss for income tax purposes.

5.8. **Minimum Distribution to Pay Tax Liabilities.** The LLC shall make minimal annual cash distributions to each Member in an amount of cash equal to the then current highest marginal income tax rates under Federal and California law, after taking into account the deductibility of California income taxes from Federal taxable income. Such percentage shall be readjusted to account for any change in the tax laws that would affect such percentage.

5.9. **Distributable Cash.** Subject to applicable law and any limitations contained elsewhere in this Agreement, Distributable Cash shall be distributed to the Members in the following priority: (i) first, to the Members pro-rata to the extent of their unreturned Capital Contributions until their Capital Contributions are reduced to zero (0); and (ii) second, to the Members in proportion to their Membership Interest. All such distributions shall be made only to the Persons who, according to the books and records of the LLC, are the holders of record of a Membership Interest on the actual date of distribution. Neither the LLC nor the Managers shall incur any liability for making distributions in accordance with this Section 5.9.

5.10. **Form of Distribution.** A Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the LLC in any form other than cash. No Member may be compelled to accept from the LLC: (i) a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members, or (ii) a distribution of any asset in kind.

5.11. **Restriction on Distributions.** No distribution shall be made if, after giving effect to the distribution: (i) the LLC would not be able to pay its debts as they become due in the usual course of business; or (ii) the LLC's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the LLC were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution. The Managers may base a determination that a distribution is not prohibited on any of the following: (a) financial statements prepared in accordance with generally accepted accounting principles; or (b) any other method that is determined by the Members unanimously and the LLC's accountant.

5.12. **Return of Distributions.** Members who receive distributions made in violation of the Act or this Agreement shall return such distributions to the LLC. Except for those distributions made in violation of the Act or this Agreement, no Member shall be obligated to return any distribution to the LLC or pay the amount of any distribution for the account of the

LLC or to any creditor of the LLC. The amount of any distribution returned to the LLC by a Member, or paid by a Member, for the account of the LLC or to a creditor of the LLC shall be added to the account or accounts from which it was subtracted when it was distributed to the Member.

5.13. **Tax Withholding.** If any federal, foreign, state or local jurisdiction requires the LLC to withhold taxes or other amounts with respect to any Member's allocable share of Net Profits, taxable income or any portion thereof, or with respect to distributions, the LLC shall withhold from distributions or other amounts then due to such Member (or shall pay to the relevant taxing authority with respect to amounts allocable to such Member) an amount necessary to satisfy the withholding responsibility.

5.14. **Power of the Manager to Vary Allocations.** It is the intent of the Members that each Member's share of Net Profit and Net Loss be determined and allocated in accordance with Section 704(b) of the Code and the provisions of this Agreement shall be so interpreted. Therefore, if the LLC is advised by the LLC's legal counsel or the LLC's CPA or tax advisor that the allocations provided in this Article 5 are unlikely to be respected for federal income tax purposes, the Managers are hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) of the Code and effect the plan of allocations and distributions provided for in this Agreement.

## **Article 6**

### **ACCOUNTING, RECORDS, REPORTING BY THE MEMBERS**

6.1. **Books and Records.** The LLC's books and records shall be kept in accordance with the accounting methods followed for federal income tax purposes. The LLC shall maintain at its principal office all of the following: (a) a current and past list of the full name and last known mailing address of each Member and Manager set forth in alphabetical order; (b) a copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed; (c) copies of the LLC's federal, state, and local income tax returns and financial statements or information returns and reports, if any, for the three (3) most recent taxable years, or if those returns or statements were not prepared for any reason, copies of the information or statements provided to or which should have been provided to the Member to enable it to prepare its federal, state and local tax returns for the period; and (d) a copy of this Agreement and all amendments thereto.

6.2. **Reports.** The LLC shall file, in accordance with the Act, all reports and documents required to be filed with any governmental agency and shall cause to be prepared, at least annually, information concerning its operations necessary for completion of the Members' federal and state income tax returns. The LLC shall send or cause to be sent to each Member within ninety (90) days after the end of each taxable year: (i) such information necessary to complete the Members' federal and state income tax or information returns; and (ii) a copy of the LLC's federal, state, and local income tax or information returns for the year.

6.3. **Bank Accounts.** The Managers shall maintain the LLC's funds in one or more separate bank accounts in the LLC's name, and shall not permit the LLC's funds to be commingled in any fashion with the funds of any other Person. The Managers, on either of their signatures alone, are each authorized to endorse checks, drafts and other evidences of debt made payable to the LLC's order, but only for the purpose of deposit into its accounts. All

checks, drafts and other instruments obligating the LLC to pay money may be signed by the Managers on either Manager's signature alone.

6.4. **Tax Treatment of LLC.** The Members have formed the LLC as a California limited liability company under the Act, and do not intend to form a corporation or a general or limited partnership under California or any other state law. The Members intend for the LLC to be treated as a partnership for federal income tax purposes. The Members agree to act consistently with the foregoing provisions of this Section 6.4 for all purposes, including, without limitation, for purposes of reporting the transactions contemplated herein to the Internal Revenue Service and all state and local taxing authorities.

6.5. **LLC Tax Matters.** Heslin Investors LLC is designated and shall act as the Partnership Representative as provided in Code Section 6223(a), as amended by the Bipartisan Budget Act of 2015 (the "BBA") to represent the LLC (at its expense) in connection with all examination of its affairs by tax authorities and to expend LLC funds for professional services and costs associated therewith. The Partnership Representative may be removed and replaced at any time by a vote of a majority of Members based on Member's Membership Interest. All decisions regarding elections under IRC Section 6221(b), as amended by the BBA, shall be made by the Partnership Representative subject, in all cases, to the consent of the Managers. Each Member agrees that such Member shall not treat any LLC item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the LLC's return. If the LLC becomes liable for any taxes, interest or penalties under Code Section 6225, as amended by the BBA (following a final determination of such liability by the relevant governmental authority, or as determined by the Managers), each Person that was a Member of the LLC for the taxable year to which such liability relates shall indemnify and hold harmless the LLC for such Person's allocable share of the amount of such tax liability, including any interest and penalties associated therewith, as reasonably determined by the Managers. The LLC shall have a right of set-off against distributions to a Member or former Member in the amount of withholding tax or other liability or obligation. Any amount withheld pursuant to this Section 6.5 shall be treated as an amount distributed to such Member or former Member for all purposes under this Agreement.

## **Article 7 TRANSFER OF INTERESTS**

7.1. **Restrictions on Transfer.** Except as otherwise provided in this Agreement, no Member shall Transfer all or any part of that Member's Membership Interest, except with the prior written consent of the other Members, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the non-transferring Member may determine, in its sole and absolute discretion. Transfers in violation of this Article 7 shall be effective only to the extent set forth in Section 7.6 below.

7.2. **Further Restrictions on Transfer of Interests.** In addition to other restrictions found in this Agreement, no Member shall Transfer all or any part of that Member's Membership Interest: (i) without compliance with applicable securities laws; (ii) if the Transfer would cause the LLC's tax termination within the meaning of Code Section 708(b)(1)(B); or (iii) if the Transfer would cause the LLC to be treated as a corporation pursuant to Code Section 7704 or Regulations Section 1.7704-1.

7.3. **Substitution of Members.** An Assignee of a Membership Interest shall have the right to become a substitute Member only if: (i) the requirements of Sections 7.1 and 7.2

above are met; (ii) the Assignee executes an instrument accepting and adopting the terms and provisions of this Agreement; and (iii) the Assignee pays any reasonable expenses in connection with such Assignee's admission as a new Member. The admission of an Assignee as a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the LLC.

7.4. **Permitted Transfers.** Subject to compliance with Sections 7.1 and 7.2 above, a Member may Transfer that Member's Membership Interest as follows (each, a "**Permitted Transfer**"): (i) to any Affiliate of the Member so long as that Member remains in voting control of the Affiliate, and at such time as the Member is no longer in voting control of such Affiliate, a "**Transfer**" shall be deemed to have occurred); or (ii) by inter vivos gift or by testamentary transfer to any Family Member. In executing this Agreement, the Members have consented to such Transfers.

7.5. **Rights of Legal Representatives.** If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under the Act or this Agreement to give an Assignee the right to become a Member. If a Member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

7.6. **No Effect to Transfers in Violation of Agreement.** Upon any Transfer of a Membership Interest in violation of this Article 7, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the LLC or to exercise any rights of a Member. Such transferee shall only be entitled to become an Assignee and thereafter shall only receive the share of one or more of the LLC's Net Profits, Net Losses and distributions of the LLC's assets to which the transferor would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the LLC's legal counsel, a Transfer in violation of this Article 7 would cause the LLC to: (i) be treated as a corporation pursuant to Code Section 7704 or Regulations Section 1.7704-1; or (ii) be terminated for tax purposes under IRC Section 708(b)(1)(B), the Transfer shall be null and void and the purported transferee shall not become either a Member or an Assignee.

7.7. **Right of First Refusal.** Each time a Member proposes to Transfer all or any part of his, her or its Membership Interest (or as required by operation of law or other involuntary transfer to do so) other than pursuant to Section 7.4 above, such Member shall first offer such Membership Interest to the non-transferring Member in accordance with the following provisions:

7.7.1. **Notice of Proposed Transfer.** Such Member shall deliver a written notice ("**Option Notice**") to the Managers and the non-transferring Member stating: (i) such Member's bona fide intention to Transfer such Membership Interest; (ii) the Membership Interest to be Transferred; (iii) the purchase price and terms of payment for which the Member proposes to Transfer such Membership Interest; (iv) the nature of the proposed Transfer (e.g., sale or pledge); and (iv) the name and address of the proposed transferee, if any. The Member shall use commercially reasonable efforts to cause the Option Notice to be signed by the proposed transferee, if any, confirming the accuracy of the information contained therein.

7.7.2. **Member's Option.** Within the thirty (30) days after receipt of the Option Notice, the non-transferring Member shall have the right, but not the obligation, to elect to purchase all of such Membership Interest on the same terms and conditions designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, such purchasing Member may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered. Within thirty (30) days after receipt of the Option Notice, the non-transferring Member shall notify the Transferring Member, in writing, of his, her or its desire to purchase the Membership Interest proposed to be so Transferred. The failure of the non-transferring Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase the Membership Interest which may be so Transferred.

7.7.3. **Closing.** If the non-transferring Member elects to purchase all of the Membership Interest designated in the Option Notice, then the closing of such purchase shall occur within ninety (90) days after the LLC's receipt of the Option Notice. The Transferring Member and the non-transferring Member shall execute such documents and instruments and make such deliveries as may be reasonably required to consummate such purchase.

7.7.4. **Failure to Exercise Options.** If the other Member elects not to purchase or obtain, or defaults in their obligation to purchase or obtain, all of the Membership Interest designated in the Option Notice, then the Transferring Member may Transfer the Membership Interest described in the Option Notice to the proposed Transferee, providing such Transfer: (i) is completed within thirty (30) days after the expiration of the other Members' right to purchase such Membership Interest; (ii) is made on terms no less favorable to the Transferring Member than as designated in the Option Notice; and (iii) complies with Sections 7.1, 7.2 and 7.3 above; it being acknowledged by the Members that compliance with Sections 7.7.1 through 7.7.3 above does not modify any of the Transfer restrictions in this Article 7 or otherwise entitle a Member to Transfer his, her or its Membership Interest other than in the manner prescribed by this Article 7. If such Membership Interest is not so Transferred, the Transferring Member must give notice in accordance with this Article 7 prior to any other or subsequent Transfer of such Membership Interest.

## **Article 8**

### **OPTIONAL PURCHASE EVENTS AND TERMINATION OF MEMBERSHIP INTEREST**

8.1. **Optional Purchase Event Defined.** As used in this Article 8, "**Optional Purchase Event**" means, with respect to any Member, the occurrence of any of the following events: (i) the death, withdrawal, resignation, retirement, insanity, bankruptcy or dissolution of a Member; (ii) the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement; or (iii) the filing by a Member of an action seeking a decree of judicial dissolution pursuant to the Act.

8.2. **Optional Purchase Event.** Upon the occurrence of an Optional Purchase Event that is not a Permitted Transfer, the remaining Member ("**Remaining Member**") shall have the option to purchase on a pro-rata basis in an amount that bears the same proportion to the total purchase price that such Remaining Member's then current Capital Account balance bears to the then total Capital Account balance of the Remaining Member electing to purchase and, if such option is exercised, the Member whose actions or conduct resulted in the Optional Purchase Event ("**Former Member**") or such Former Member's legal representative shall sell, the Former Member's Membership Interest ("**Former Member's Interest**") as provided in this

Article 8. Each Former Member agrees to give prompt notice of the Optional Purchase Event to the other Member.

8.3. **Purchase Price.** The purchase price for the Former Member's Interest shall be the Capital Account balance of the Former Member; provided; however, that if the Former Member, such Former Member's legal representative or the LLC, deems the Capital Account balance to vary from the fair market value of the Former Member's Interest by more than ten percent (10%), such party shall be entitled to require an appraisal by providing notice of the request for appraisal within fifteen (15) days after the determination of the Remaining Member to continue the business of the LLC. In such event, the value of the Former Member's Interest shall be determined by three (3) independent appraisers, one (1) selected by the Former Member or such Former Member's legal representative, one (1) selected by the Remaining Member, and one (1) selected by the two (2) appraisers so named. The fair market value of the Former Member's Interest shall be the average of the two (2) appraisals closest in amount to each other. In the event the fair market value is determined to vary from the Capital Account balance by less than ten percent (10%), the party requesting such appraisal shall pay all expenses of all the appraisals incurred by the party offering to enter into the transaction at the Capital Account valuation. In all other events, the party requesting the appraisal shall pay one-half (1/2) of such expense and the other party shall pay one-half (1/2) of such expense. Notwithstanding the foregoing, if the Optional Purchase Event results from a breach of this Agreement by the Former Member, the purchase price shall be reduced by an amount equal to the actual damages suffered by the Remaining Member as a result of such breach.

8.4. **Notice of Intent to Purchase.** Within fifteen (15) days after the purchase price of the Former Member's Interest is determined in accordance with Section 8.3 above, the Managers shall notify the Remaining Member of such price. Within thirty (30) days after the Managers have notified the Remaining Member as to the purchase price of the Former Member's Interest determined in accordance with Section 8.3 above, the Remaining Member shall notify the Managers, in writing, of its desire to purchase the Former Member's Interest. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase any of the Former Member's Interest. The Remaining Member who does submit a notice within the applicable time period shall be permitted to purchase the Former Member's Membership Interest.

8.5. **Election to Purchase the Former Member's Interest.** The Remaining Member must elect to purchase all of the Former Member's Interest.

8.6. **Payment of Purchase Price.** The purchase price shall be paid in cash by the Remaining Member.

8.7. **Closing of Purchase of Former Member's Interest.** Unless court approval is required, the closing ("**Closing**") for the sale of a Former Member's Membership Interest pursuant to this Article 8 shall be held at 10:00 a.m. at the principal office of the LLC no later than sixty (60) days after the determination of the purchase price, except that if the Closing date falls on a Saturday, Sunday, or federal legal holiday, then the Closing shall be held on the next succeeding business day. If court approval is required: (i) the Closing of the sale of a Former Member's Interest shall occur not later than five (5) business days after entry of the order approving such sale; (ii) the Former Member or such Former Member's legal representative shall file the application seeking court approval within thirty (30) days following the determination of the purchase price; and (iii) the parties to the court proceeding shall make every effort to obtain the court's approval in an expeditious manner. At the Closing, the Former

Member, or such Former Member's legal representative, shall deliver to the LLC and the Remaining Member an instrument of Transfer (containing warranties of title and no encumbrances) conveying the Former Member's Membership Interest. The Former Member, or such Former Member's legal representative, the LLC and the Remaining Member, shall do all things and execute and deliver all papers as may be necessary to consummate fully such sale and purchase in accordance with the terms and provisions of this Agreement.

## **Article 9 DISSOLUTION AND WINDING UP**

9.1. **Dissolution Event.** The LLC shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the LLC or the occurrence of any other event which terminates the continued membership of the last remaining Member of the LLC in the LLC unless the LLC is continued without dissolution in a manner permitted by this Agreement or the Act, or (ii) the entry of a decree of judicial dissolution of the LLC under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining Member of the LLC to cease to be a Member of the LLC or that causes the Member to cease to be a member of the LLC (other than upon continuation of the LLC without dissolution upon: (i) an assignment by the Member of all of its limited liability company interest in the LLC and the admission of the transferee pursuant to this Agreement or the Act, or (ii) the resignation of the Member and the admission of an additional Member of the LLC pursuant to this Agreement or the Act), to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued Membership of such Member in the LLC, agree, in writing: (i) to continue the LLC, and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the LLC, effective as of the occurrence of the event that terminated the continued membership of such Member in the LLC.

9.2. **Winding Up.** On the LLC's dissolution, its assets shall be disposed of and its affairs wound up. The LLC shall give written notice of the commencement of the dissolution to all its known creditors.

9.3. **Order of Payment of Liabilities.** After determining that all the LLC's known debts and liabilities have been paid or adequately provided for, the remaining assets shall be distributed to the Members in the manner and order of priority as set forth in Section 18-804 of the Act.

9.4. **Termination.** The LLC shall terminate when: (i) all of the assets of the LLC, after payment of or due provision for all debts, liabilities and obligations of the LLC shall have been distributed to the Members in the manner provided for in this Agreement, and (ii) the Articles shall have been canceled in the manner required by the Act.

## **Article 10 EXCULPATION AND INDEMNIFICATION**

10.1. (a) To the fullest extent permitted by applicable law, neither the Members nor the Managers nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "**Covered Persons**") shall be liable to the LLC or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the LLC and

in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the LLC for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the LLC and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Article 10 by the LLC shall be provided out of and to the extent of LLC assets only, and the Members and the Managers shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the LLC prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the LLC of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Article 10.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the LLC and upon such information, opinions, reports or statements presented to the LLC by any Person as to matters the Covered Person 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 LLC, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the LLC or its Members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Article 10 shall survive any termination of this Agreement.

## **Article 11 GENERAL PROVISIONS**

11.1. **Complete Agreement.** This Agreement and the Articles constitute the complete agreement between the parties with respect to their subject matters and replace and supersede all prior written and oral agreements or statements by the parties. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on them or have any effect whatsoever. To the extent that any provision of the Articles conflicts with any provision of this Agreement, the Articles shall control.

11.2. **Binding Effect.** Subject to the provisions of this Agreement relating to transferability, this Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

11.3. **Parties in Interest.** Except as expressly provided in the Act, nothing in this Agreement shall: (i) confer any rights or remedies under this Agreement on any Person other than the Members and the LLC and their respective successors and assigns; (ii) relieve or discharge the obligation or liability of any third Person to any party hereto; or (iii) give any third Person any right of subrogation or action over or against any party to this Agreement.

11.4. **Interpretation.** All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. All headings are inserted for convenience and ease of reference and shall not be considered in interpreting this Agreement. Numbered or lettered articles and sections refer to articles and sections of this Agreement unless otherwise expressly stated. No presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Person or his or her legal counsel. Any reference to any law or regulation will include all amendments, modifications, or replacements of the specific sections and provisions concerned. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect. "**Including**" means including without limitation. "**Person**" means an individual or any legal entity. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Person may be lawfully entitled.

11.5. **Headings; Exhibits.** All headings are inserted for convenience of reference and shall not be considered in the construction or interpretation of any provision of this Agreement. Any recitals set forth above, and any exhibits or schedules referred to and/or attached hereto, are incorporated by reference into this Agreement.

11.6. **Jurisdiction.** This Agreement shall be construed and enforced under California law without regard to conflict of law principles. Each party agrees that personal jurisdiction over it may be effected by service of process by registered or certified mail addressed as provided in Section 11.8 below. Proper venue in any such action shall be in the County in which the LLC's principal office is located.

11.7. **Additional Documents and Acts.** The Members shall execute and deliver such additional documents and instruments and perform such additional acts as may be necessary or appropriate to implement this Agreement and the transactions contemplated hereby.

11.8. **Notices.** Any notice to be given or to be served upon the LLC or any party hereto in connection with this Agreement must be in writing (which may include facsimile) and will be deemed to have been given and received when delivered to the address shown in the LLC's records or instead when three (3) business days have elapsed following deposit in the U.S. mail, certified or registered mail, return receipt requested, first-class postage prepaid. Any party may, at any time by giving five (5) days' prior written notice to the other party, designate any other address in substitution of the foregoing address to which such notice will be given. Transmission to a facsimile machine specified in such a notice shall constitute personal delivery upon receipt of facsimile confirmation.

11.9. **Amendments.** All amendments to this Agreement will be in writing and signed by the Members. No waiver or discharge of this Agreement shall be valid unless it is in writing and signed by the party against which its enforcement is or may be sought.

11.10. **Reliance on Authority.** If a Member is not a natural Person, neither the LLC nor the Member will be: (i) required to determine the authority of the individual signing below to make any commitment on behalf of such entity or to determine any fact or circumstance bearing on the existence of the authority of such individual; or (ii) responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

11.11. **No Interest in LLC Property.** The Members have no interest in specific property of the LLC. The Members irrevocably waive, during the LLC's term, any rights that they may have to maintain any action for partition with respect to the LLC's property.

11.12. **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.

11.13. **Attorneys' Fees.** If any dispute involving the LLC and the Members should result in litigation or arbitration, the prevailing party shall be entitled to recover from the other(s) all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees, costs, and expert witnesses' fees.

11.14. **LLC Legal Counsel.** Counsel to the LLC may also be counsel to any Member, the Managers or any Affiliate of such Member or the Managers. The Managers may execute, on behalf of the LLC and the Members, any consent to the representation of the LLC that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction ("**Rules**"). The LLC has initially selected Weitzen, Phillips & Weinberg LLP ("**Company Counsel**") as legal counsel to the LLC. Each Member acknowledges that Company Counsel does not represent any Member in the absence of a clear and explicit written agreement to such effect between a Member and Company Counsel, and that in the absence of any such agreement, Company Counsel shall owe no duties directly to a Member. In the event any dispute or controversy arises between any Member and the LLC, or between the Managers, the Members or the LLC, then each Member agrees that Company Counsel may represent the LLC in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that: (i) Company Counsel has represented the interests of Matthew J. Heslin and his Affiliates in connection with other unrelated matters; and (ii) while communications with Company Counsel concerning the formation of the LLC, its Members and/or the Managers may be confidential with respect to third parties, no Member has any expectation that such communications are confidential with respect to each other. Each Member hereby waives any conflict of interest arising from Company Counsel's prior and on-going representation of Matthew J. Heslin and his Affiliates and any conflicts arising by Company Counsel's formation of the LLC on behalf of the Members.

11.15. **Rights of Creditors and Other Persons Under This Agreement.** This Agreement is entered into between the Members for the exclusive benefit of the Members and their successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of the LLC or any other Person. Except, and only to the extent provided by applicable

statute, no such creditor or other Person shall have any rights under this Agreement or any agreement between the Members with respect to any Capital Contribution or otherwise.

11.16. **Saving Clause.** If and to the extent any provision of this Agreement is, or is found by an arbitrator or court of competent jurisdiction to be, prohibited under, contrary to or ineffective under the Act, this Agreement shall be considered amended to the smallest degree necessary to make this Agreement conform to the Act and effective under the Act.

11.17. **Effectiveness.** This Agreement shall be effective as of the time of the filing of the Articles with the Office of the California Secretary of State on April 22, 2021.

11.18. **Investor Representations.** Each Member hereby represents and warrants to, and agrees with the Managers, the other Member and the LLC, those matters set forth on **EXHIBIT "C"** attached hereto and incorporated herein by reference.

INTENDING TO BE LEGALLY BOUND, the Members hereto have executed this Agreement effective as of the date written above.

**MEMBERS:**

Heslin Investors LLC,  
a California limited liability company

By:   
Matthew J. Heslin

Title: Manager

98 Prospect Avenue, LLC,  
a California limited liability company

By:   
John S. Belanich

Title: Manager

# **EXHIBIT "A"**

## **DEFINITIONS**

1. "Act" shall mean the California Revised Uniform Limited Liability Company Act, codified in the California Corporations Code, Section 17701.01, as the same may be amended from time to time.
2. "Affiliate" of a Member shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Member. The term "control," as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.
3. "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.
4. "Articles" shall mean the Articles of Organization for the LLC originally filed with the California Secretary of State and as amended from time to time.
5. "Assignee" or "Assignees" shall mean a Person who has not been admitted as a substitute Member in accordance with Section 7.3.
6. "Capital Account" shall mean with respect to any Member the capital account which the LLC establishes and maintains for such Member pursuant to Section 2.3.
7. "Capital Contribution" shall mean the total amount of cash and fair market value of property contributed and/or services rendered or to be rendered to the LLC by Members.
8. "Closing" shall have the meaning ascribed to that term in Section 8.7.
9. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.
10. "Company Counsel" shall have the meaning ascribed to that term in Section 11.14.
11. "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations Section 1.704-2(d).
12. "Distributable Cash" shall mean the amount of cash which the Members deem available for distribution to the Members, taking into account all debts, liabilities, and obligations of the LLC then due, and working capital and other amounts which the Members deem

necessary for the LLC's business or to place into reserves for customary and usual claims with respect to such business.

13. "Family Member" shall mean: (i) with respect to any individual, such individual's spouse, parent, sibling, in-law, child or grandchild (whether natural, adopted or in the process of adoption), any trust all of the beneficial interests of which are owned by any such individuals or by any such individuals together with any organization described in Code Section 501(c)(3), the estate of any such individual, and any corporate, association, partnership or limited liability company all of the equity interests of which are owned by those above-described individuals, trust or organizations; and (ii) with respect to any trust, the owners of the beneficial interests of such trust.

14. "Fiscal Year" shall mean the LLC's fiscal year, which shall be the calendar year.

15. "Former Member" shall have the meaning ascribed to it in Section 8.2.

16. "Former Member's Interest" shall have the meaning ascribed to it in Section 8.2.

17. "Lender" shall have the meaning ascribed to that term in Section 2.7.

18. "LLC" shall mean MJC Investment Property XII, LLC, a California limited liability company.

19. "Member" or "Members" shall mean each Person who: (i) is an initial signatory to this Agreement, has been admitted to the LLC as a Member in accordance with the Articles or this Agreement or is an Assignee who has become a Member in accordance with this Agreement; and (ii) has not ceased to be a Member in accordance with this Agreement, or for any other reason.

20. "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

21. "Membership Interest" shall mean a Member's entire interest in the LLC, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs of the LLC, as set forth in **EXHIBIT "B"**.

22. "Net Profits" and "Net Losses" shall mean the income, gain, loss and deductions of the LLC in the aggregate or separately stated, as appropriate, determined in accordance with the method of accounting at the close of each Fiscal Year on the LLC's information tax return filed for federal income tax purposes.

23. "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

24. "Option Notice" shall have the meaning ascribed to that term in Section 7.7.1.

25. "Optional Purchase Event" shall have the meaning set forth in Section 8.1.

26. "Partnership Representative" (as defined in Code Section 6223(a)) shall be Heslin Investors LLC, or its successor as designated pursuant to Section 6.5.

27. "Permitted Transfer" shall have the meaning ascribed to that term in Section 7.4.
28. "Person" or "Persons" shall mean an individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association or any other entity.
29. "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.
30. "Remaining Member" shall have the meaning ascribed to it in Section 8.2.
31. "Rights" shall have the meaning ascribed to that term in Section 2.7.
32. "Secretary of State" shall mean the California Secretary of State.
33. "Securities Act" shall mean the Securities Exchange Act of 1933, as amended.
34. "Transfer" or "Transferred" shall mean any sale, assignment, transfer, conveyance, pledge, hypothecation, or other disposition voluntarily or involuntarily, by operation of law, with or without consideration, or otherwise (including, without limitation, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Membership Interest. Without limiting the generality of the foregoing, the sale or exchange of at least fifty percent (50%) of the voting stock of a Member, if a Member is a corporation, or the Transfer of an interest or interests of at least fifty percent (50%) in the capital or profits of a Member (whether accomplished by the sale or exchange of interests or by the admission of new members), if a Member is a partnership or limited liability company, or the cumulative Transfer of such interests in a Member which effectively equal the foregoing (including Transfer of interests followed by the incorporation of a Member and subsequent stock Transfers, or Transfers of stock followed by the liquidation of a Member and subsequent Transfers of interests) will be deemed to constitute a Transfer of the Member's entire Membership Interest.
35. "Transferable Interest" shall mean the right, as originally associated with a Person's capacity as a Member, to receive distributions from the LLC in accordance with the terms of this Agreement, whether or not the Person remains a Member or continues to own any part of the right.

# **EXHIBIT "B"**

## **MEMBERS**

<b><u>Name</u></b>	<b><u>Mailing Address</u></b>	<b><u>Agreed Value of Capital Contribution</u></b>	<b><u>Membership Interest</u></b>
Heslin Investors LLC	23421 South Pointe Drive, Suite 270 Laguna Hills, CA 92653	\$500.00	50%
98 Prospect Avenue, LLC	23421 South Pointe Drive, Suite 270 Laguna Hills, CA 92653	\$500.00	50%

# **EXHIBIT "C"**

## **INVESTOR REPRESENTATIONS**

Each of the Members hereby makes the following representations, warranties and covenants with respect to its investment in the LLC.

1. **Pre-existing Relationship or Experience.** (i) He, she or it has a pre-existing personal or business relationship with the LLC or the Managers or controlling Persons; or (ii) by reason of his, her or its business or financial experience, or by reason of the business or financial experience of his, her or its financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the LLC or any Affiliate or selling agent of the LLC, he, she or it is capable of evaluating the risks and merits of an investment in the Membership Interest and of protecting his, her or its own interests in connection with this investment. Each Member further acknowledges that such Member is familiar with the financial condition and prospects of the LLC's business, and has discussed with the other Member the current activities of the LLC. Each Member believes that the Membership Interests are securities of the kind such Member wishes to purchase and hold for investment, and that the nature and amount of the LLC Interests are consistent with such Member's investment program.

2. **No Advertising.** He, she or it has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

3. **Investment Intent.** He, she or it is acquiring the Membership Interest for investment purposes for his, her or its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other Person will have any direct or indirect beneficial interest in or right to the Membership Interest.

4. **Accredited Investor.** He, she or it is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission (the "**SEC**") under the Securities Act.

5. **Purpose of Entity.** If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interest.

6. **Economic Risk.** He, she or it is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof.

7. **No Registration of Membership Interest.** Each Member fully acknowledges and understands that the Membership Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, or qualified under the Act, or any other applicable blue sky laws (collectively, the "**Securities Acts**") in reliance, in part, on such Member's representations, warranties, and agreements herein, and because the LLC is issuing

Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering.

8. Membership Interest in Restricted Security. He, she or it understands that the Membership Interest is a "restricted security" under the Securities Act in that the Membership Interest will be acquired from the LLC in a transaction not involving a public offering, and that the Membership Interest may not be resold without registration under the Securities Act, except in certain limited circumstances, and that otherwise the Membership Interest must be held indefinitely. In this connection, he, she or it understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of "restricted securities," including the requirement that the securities must be held for at least two (2) years after purchase thereof from the LLC prior to resale (three (3) years in the absence of publicly available information about the LLC) and the condition that there be available to the public current information about the LLC under certain circumstances. He, she or it understands that the LLC has not made such information available to the public and has no present plans to do so.

9. No Obligation to Register. He, she or it represents, warrants, and agrees that the LLC and the Managers are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist him, her or it in complying with any exemption from registration and qualification.

10. No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting anything set forth in this Agreement, he, she or it will not make any disposition of all or any part of the Membership Interest which will result in the violation by him, her or it or by the LLC of the Securities Acts or any other applicable securities laws. Without limiting the foregoing, he, she or it agrees not to make any disposition of all or any part of the Membership Interest unless and until: (i) there is then in effect a registration statement under the Securities Acts covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or (ii) he, she or it has notified the LLC of the proposed disposition and has furnished the LLC with a detailed statement of the circumstances surrounding the proposed disposition; and (iii) if reasonably requested by the Managers, he, she or it has furnished the LLC with a written opinion of counsel, reasonably satisfactory to the LLC, that such disposition will not require registration of any securities under the Securities Acts or the consent of or a permit from appropriate authorities under any applicable state securities law. In the case of any disposition of all or any part of the Membership Interest pursuant to SEC Rule 144, in addition to the matters set forth in this Section 10, he, she or it shall promptly forward to the LLC a copy of any Form 144 filed with the SEC with respect to such disposition and a letter from the executing broker satisfactory to the LLC evidencing compliance with SEC Rule 144. If SEC Rule 144 is amended or if the SEC's interpretations thereof in effect at the time of any such disposition have changed from its present interpretations thereof he, she or it shall provide the LLC with such additional documents as the Managers may reasonably require.

11. Investment Risk. He, she or it acknowledges that the Membership Interest is a speculative investment, which involves a substantial degree of risk of loss by him, her or it of his, her or its entire investment in the LLC, that he, she or it understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the LLC is newly organized and has no financial or operating history.

12. Restrictions on Transferability. He, she or it acknowledges that there are substantial restrictions on the transferability of the Membership Interest pursuant to this Agreement, that there is no public market for the Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for him, her or it to liquidate his, her or its investment in the LLC.

13. Information Reviewed. He, she or it has received and reviewed all information he, she or it considers necessary or appropriate for deciding whether to purchase the Membership Interest. He, she or it has had an opportunity to ask questions and receive answers from the LLC regarding the terms and conditions of purchase of the Membership Interest and regarding the business, financial affairs, and other aspects of the LLC and has further had the opportunity to obtain all information (to the extent the LLC possesses or can acquire such information without unreasonable effort or expense) which he, she or it deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to him, her or it.

14. No Representations by the LLC. Neither the Managers, nor any agent or employee of the LLC or of any Manager, or any other Person has at any time expressly or implicitly represented, guaranteed, or warranted to him, her or it that he, she or it may freely Transfer the Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of any Manager or his Affiliates or any other Person in any way indicates the predictable results of the ownership of the Membership Interest or of the LLC's overall business, that any cash distributions from the LLC's operations or otherwise will be made to the Members by any specific date or will be made at all or that any specific tax benefits will accrue as a result of an investment in the LLC.

15. Consultation with Attorney. He, she or it has been advised to consult with his, her or its own attorney regarding all legal matters concerning an investment in the LLC and the tax consequences of participating in the LLC, and has done so, to the extent he, she or it considers necessary.

16. Tax Consequences. He, she or it acknowledges that the tax consequences to him, her or it of investing in the LLC will depend on his, her or its particular circumstances, and neither the LLC, the Managers, the Members, nor the partners, shareholders, members, managers, agents, officers, directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to him, her or it of an investment in the LLC. He, she or it will look solely to, and rely upon, his, her or its own advisers with respect to the tax consequences of this investment.

17. No Assurance of Tax Benefits. He, she or it acknowledges that there can be no assurance that the Code or the Regulations will not be amended or interpreted in the future in such a manner so as to deprive the LLC and the Members of some or all of the tax benefits they might now receive, or that some of the deductions claimed by the LLC or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

18. Indemnity. Each Member understands the meaning and consequences of the representations, warranties and covenants made by such Member set forth herein, and the LLC has relied upon such representations, warranties and covenants. He, she or it shall defend,

indemnify and hold harmless the LLC, the Managers, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him, her or it including, without limitation, the information in this Agreement, against losses, liabilities, and expenses of the LLC, the Managers, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like. All representations, warranties and covenants contained herein and the indemnification contained herein shall survive the execution of this Agreement, the formation and/or termination of the LLC, and the liquidation of the LLC.

19. Residency. Each Member is a resident of, or if the Member is an entity, has its principal place of business in the State in which such Member's address is stated in **EXHIBIT "B"**.