

COMPANY AGREEMENT
OF
LOS CIELOS FLYERS, LLC,
A TEXAS LIMITED LIABILITY COMPANY

This COMPANY AGREEMENT of Los Cielos Flyers, LLC, a Texas limited liability company (the “Agreement”), dated as of the 24st day of January, 2015, is adopted by the Members (as defined below) and is initially made and entered into, for good and valuable consideration, by the Members (as defined below).

ARTICLE I
DEFINITIONS

1.01 **Definitions.** As used in this Agreement, the following terms have the following meanings:

“Bankrupt Member” means (except to the extent a Required Interest consents otherwise) any Member (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, winding up, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a Proceeding of the type described in sub-clauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member’s or of all or any substantial part of the Member’s properties; or (b) against which a Proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, winding up, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member’s consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member’s properties has been appointed and 90 days have expired without the appointment’s having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

“Business Day” means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Texas are closed.

“Capital Contribution” means any contribution by a Member to the capital of the Company.

“Certificate” has the meaning given that term in Section 2.01.

“Code” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

“Commitment” means, subject in each case to adjustments on account of Dispositions of Membership Interests permitted by this Agreement, (a) in the case of a Member executing this Agreement or a Person acquiring that Membership Interest, the amount specified for that Member as its Commitment on Exhibit A, and (b) in the case of a Membership Interest issued pursuant to Section 3.0, the Commitment established pursuant thereto.

“Company” means Los Cielos Flyers, LLC, a Texas limited liability company.

“Default Interest Rate” means a rate per annum equal to the lesser of (a) 10% percent plus a varying rate per annum that is equal to the interest rate publicly quoted by the Wall Street Journal from time to time as its prime commercial or similar reference interest rate, with adjustments in the varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

“Delinquent Member” has the meaning given that term in Section 4.03(a).

“Dispose”, “Disposing”, or “Disposition” means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including without limitation, by operation of law), or the acts thereof.

“Former Member” means any Person who had executed this Agreement, as of the date of this Agreement as a Member, or hereafter admitted to the Company as a Member, as provided in the Agreement, but who is no longer a Member of the Company.

“General Interest Rate” means a rate per annum equal to the lesser of (a) varying rate per annum that is equal to the interest rate publicly quoted by the Wall Street Journal from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, or (b) the maximum rate permitted by applicable law.

“Lending Member” has the meaning given that term in Section 4.03(a)(ii).

“Member” means any Person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement, but does not include any Person who has ceased to be a Member of the Company.

“Membership Interest” means, at any time, the interest of a Member in the Company, including, the right to receive distributions of Company assets and the right to receive allocations of income, gain, loss, deduction, or credit of the Company, but does not include the voting rights or management rights reserved to the Members under the terms of this Agreement until such holder of the Membership Interest has been admitted to the Company as a Member as to that Membership Interest.

“Permitted Transferee” has the meaning given that term in Section 3.03(b).

“Person” means any individual, corporation, partnership, limited liability company, business trust or other entity, government or governmental agency or instrumentality.

“Proceeding” has the meaning given that term in Section 8.01.

“Agreement” has the meaning given that term in the introductory paragraph.

“Required Interest” means one or more Members having among them more than seventy percent (70%) of the Sharing Ratios of all Members.

“Sharing Ratio” with respect to any Member means a fraction (expressed as a percentage), the numerator of which is that Member’s Commitment and the denominator of which is the sum of the Commitments of all Members as reflected in the Company’s records of the kind described in

Article 3.151 of the TLLCL.

“TLLCL” means the Texas Limited Liability Company Law, which is part of the Texas Business Organizations Code, and any successor statute, as amended from time to time.

“TBOC” means the Texas Business Organizations Code and any successor statute, as amended from time to time.

“Unanimous Interest” – Members holding among them all of the Sharing Ratios; provided, however, that, if a provision of these Regulations provides that a Unanimous Interest, for purposes of such provision, is to be calculated or determined without reference to one or more excluded Members, then, solely for purposes of such provision, “*Unanimous Interest*” shall mean Members, other than the excluded Members, holding among them all of the Sharing Ratios, other than Sharing Ratios held by such excluded Members.

Other terms defined herein have the meaning so given them.

1.02 **Construction.** Whenever the context requires, the gender of all words used in this Agreement included the masculine, feminine, and neuter. All references to Sections refer to sections of this Agreement, and all references to Exhibits are to Exhibits attached hereto, each of which is made a part hereof for all purposes.

ARTICLE II ORGANIZATION

2.01 **Formation.** The Company has been organized as a Texas limited liability company by the filing of the Certificate of Formation (the “Certificate”) under and pursuant to the issuance of an acknowledgment of filing for the Company by the Secretary of State of Texas.

2.02 **Name.** The name of the Company is “Los Cielos Flyers, LLC” and all Company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

2.03 **Registered Office, Registered Agent, Principal Office in the United States; Other Offices.** The registered office of the Company required by the TLLCL to be maintained in the State of Texas shall be the office of the initial registered agent named in the Certificate of Formation or such other office (which need not be a place of business of the Company) as the Members may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Texas shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Members may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of Texas, and the Company shall maintain records there as required by the TLLCL and shall keep the street address of such principal office at the registered office of the Company in the State of Texas. The Company may have such other offices as the Members may designate from time to time.

2.04 **Purposes.** The purposes of the Company are those set forth in the Certificate of Formation, including but not limited to the ownership and operation of an aircraft. The Company’s intent is to be a disregarded entity for federal income tax purposes.

2.05 **Foreign Qualification.** Prior to the Company’s conducting business in any jurisdiction other than Texas, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the

Company as a foreign limited liability company in that jurisdiction. At the request of the Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.06 **Term.** The Company commenced on the date the Secretary of State of Texas issued a Certificate of Formation for the Company and shall continue in existence until December 31, 2039, unless sooner wound up and terminated pursuant to Section 12 herein.

2.07 **Mergers and Exchanges.** The Company may be a party to (a) a merger, or (b) an exchange or acquisition of the type described in the TLLCL, subject to the requirements of Section 6.01(b)(ii).

2.08 **No State-Law Partnership.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be considered a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

ARTICLE III MEMBERSHIP; DISPOSITIONS OF INTERESTS

3.01 **Initial Members.** The initial Members of the Company are the Persons executing this Agreement as of the date of this Agreement as Members, each of which is admitted to the Company as a Member effective contemporaneously with the execution by such Person of this Agreement.

3.02 **Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing, and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein) and the representations and warranties in clause (a), (b) or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other member thereof; (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Members, Partners, Trustees, Beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other Agreement or arrangement to which that Member is a party or by which it is bound.

3.03 **Restrictions on the Disposition of an Interest.** (a) A disposition of an interest in the Company may not be effected without the consent of all the Members. Any attempted disposition by a Person of an interest or right, or any part thereof, in or in respect of the Company other than in accordance with this Section 3.03 shall be, and is hereby declared, null and void ab initio.

(b) The interest of any Member in the Company may not be transferred without the consent of all the Members if (i) the transfer occurs by reason of or incident to the death, winding up, divorce, liquidation, merger or termination of the transferor Member.

(c) Subject to the provisions of this Section 3.03, (i) a Person to whom an interest in the Company is transferred has the right to be admitted to the Company as a Member with the Sharing Ratio and the Commitment so transferred to such Person, if (A) the Member making such transfer grants the transferee the right to be so admitted, and (B) such transfer is consented to in accordance with Section 3.03 (a) or (b); (ii) the Company or (with the permission of the Company, which may be withheld in its sole discretion) a Lending Member may grant the purchaser of a Delinquent Member's interest in the Company at a foreclosure of the security interest therein granted pursuant to Section 4.03(b) the right to be admitted to the Company as a Member with such Sharing Ratio and such Commitment (no greater than the Sharing Ratio and the Commitment of the Member effecting such Disposition prior thereto) as they may agree.

(d) The Company may not recognize for any purpose any purported Disposition of all or part of a Membership Interest unless and until the other applicable provisions of this Section 3.03 have been satisfied and the Members have received, on behalf of the Company, a document (i) executed by both the Member effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, its representative) and the Person to which the Membership interest or part thereof is Disposed, (ii) including the notice address of any Person to be admitted to the Company as a Member and its Agreement to be bound by this Agreement in respect of the Membership Interest or part thereof being obtained, (iii) setting forth the Sharing Ratios and the Commitments after the Disposition of the Member effecting the Disposition and the Person to which the Membership Interest of part thereof is Disposed (which together must total the Sharing Ratio and the Commitment of the Member effecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the disposition was made in accordance with all applicable laws and regulations (including securities laws) and, if the Person to which the Membership Interest or part thereof is Disposed is to be admitted to the Company, its representation and warranty that the representations and warranties in Section 3.02 are true and correct with respect to that Person. Each disposition and, if applicable, admission complying with the provisions of this Section 3.03 is effective as of the first day of the calendar month immediately succeeding the month in which the Members receive the notification of Disposition and the other requirements of this Section 3.03 have been met.

(e) For the right of a Member to Dispose of a Membership Interest or any part thereof or of any Person to be admitted to the Company in connection therewith to exist or be exercised, (i) either (A) the Membership Interest of part thereof subject to the Disposition or admission must be registered under the Securities Act of 1933, as amended, and any applicable state securities laws or (B) the Company must receive a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Members to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Company must receive a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Members to the effect that the Disposition or admission, when added to the total of all other sales, assignments, or other dispositions within the preceding 12 months, would not result in the Company's being considered to have terminated within the meaning of the Code. The Members, however, may waive the requirements of this Section 3.03.

(f) The Member effecting a Disposition and any Person admitted to the Company in connection therewith shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in Section 3.03(e) on or before the tenth day after the receipt by that Person of the Company's invoice for the amount due. If payment is not made by the date due, the Person owing the amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

(g) If the interest is transferred by assignment, the fact of assignment itself entitles the assignee to the right of (i) allocation of income, gain, loss, deduction, credit, or similar items, and to receive distributions to which the assignor is entitled to the extent these items were assigned, and (ii) reasonable information or account of transactions of the Company and to make reasonable inspection of the books and records of the Company. If and until the assignee is made a Member by consent of the Required Interest, the assignor continues as a Member. The assignee becomes liable as a Member upon admittance to Membership; and is liable for assignor's obligations, limited to those obligations that were ascertainable at admittance as a Member from this Agreement. The assignor continues to be liable to the Company regardless of assignment of his interest, in whole or in part.

3.04 Additional Members. Additional Persons may be admitted to the Company as Members and Membership Interests may be created and issued to those Persons and to existing Members at the direction of all of the Members on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance must specify the Sharing Ratios and the Commitments applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Members shall reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Members. Any such admission must comply with the provisions of Section 3.03 and is effective only after the new Member has executed and delivered to the Members a document including the new Member's notice address, its Agreement to be bound by this Agreement, and its representation and warranty that the representation and warranties in Section 3.02 are true and correct with respect to the new Member. The provisions of this Section 3.03 shall not apply to dispositions of Membership Interests.

3.05 Interest in a Member. A Member that is not a natural Person may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the Disposition, (a) the Company would be considered to have terminated within the meaning of Section 708 of the Code or (b) without the consent of the Members, that Member shall cease to be controlled by substantially the same persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest, all in accordance with Section 11.01 as if the breaching Member were a Bankrupt Member.

3.06 Information. (a) In addition to the other rights specifically set forth in this Agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to the TLLCL under the circumstances and subject to the conditions therein stated.

(b) The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by law (but the Member must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this Section 3.06(b) or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section 3.06(b) may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both.

Accordingly, the Members agree that the provisions of this Section 3.06(b) may be enforced by specific performance.

3.07 Liability to Third Parties. No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.08 Intentionally Deleted.

3.09 Right to Purchase Upon Death or Disability of a Member. Following the death or disability of a Member (the “Transferring Member”) and the Proposed Transfer (“Proposed Transfer) of its Membership Interest as a result of death or disability, the Company shall provide each of the other members notice of such Proposed Transfer (the “Transfer Notice”). The other Members will have the right to purchase all or a portion of the Transferring Member’s Membership Interest (the “Transferred Interest”) for its Appraised Value determined as of the date of the Notification Date. Such right may be exercised by any one or more of the other Members by giving, within thirty (30) days after such Transfer Notice, to the Transferring Member (or its heirs, representatives, or assigns) notice of its desire to purchase all or a portion of such Transferred Interest (the “Notification Date”). If there is more than one Member who desires to exercise such right (each, a “Purchasing Member”), the Transferred Interest will be allocated among all Purchasing Members to the extent of the lesser of (i) the Purchasing Member’s pro rata portion (based on the Sharing Ratios owned by such Purchasing Member relative to the number of Sharing Ratios of all Purchasing Members expressing a desire to purchase a portion of the Transferred Interest) or (ii) the portion of the Transferred Interest that such Purchasing Members expressed a desire to purchase in such notice. If, after such allocation, any portion of the Transferred Interest has not been allocated to the Purchasing Members (the “Residual Transferred Interest”), a similar allocation will be made of the Residual Transferred Interest among the Purchasing Members who have not been allocated the full portion of the Transferred Interest that such Purchasing Members expressed a desire to purchase in their respective notices. Such procedure will be continued until all of the Transferred Interest has been fully allocated, if possible. In the event the Appraised Value of a Membership Interest is to be determined under the terms of this Section, the Company and the Transferring Member’s Estate and/or beneficiaries of said Estate each shall select a qualified appraiser and said two appraisers shall select a third qualified appraiser, and the determination of the Appraised Value shall be made by agreement of at least two of said three appraisers. In connection with any determination of Appraised Value, the Company will make its books and records available to the three appraisers and will otherwise cooperate and cause its employees to cooperate with such appraisers. The expense of employing the first two appraisers shall be borne by the party selecting such appraiser and the expense of the third appraiser shall be borne in equal portions by the Company and the Transferring Member’s Estate and/or beneficiaries of said Estate. In each case, the Company and the Transferring Member’s Estate and/or beneficiaries of said Estate will cause each of the appraisers to be selected and the appraisal provided in accordance with the time frames set out in Section 3.14. The determination of Appraised Value, made by such appraisers will be based on the fair market value of the applicable Membership Interest at the time of the Transfer, and shall be final, conclusive, and binding on the Company, all Members, and the Transferring Member’s Estate and/or the beneficiaries of said Estate. Upon receipt of the determination of the Appraised Value the Company shall cause the report or reports developed by the appraisers to be distributed to each of the Members and the Transferring Member’s Estate and/or beneficiaries of said Estate as soon as reasonably possible thereafter.

3.10 Right to Purchase Upon Divorce of a Member. If, as a result of divorce, a Proposed Transfer of a Membership Interest (the “Divorced Spouse Interest”) takes place to the spouse of the Person who is or was a Member (the “Spouse”), the Member who was divorced will have the right to purchase the Divorced Spouse Interest for its Appraised Value determined as of the date of the Transfer. Such right may be exercised by the Member who was divorced by giving, to (i) the Spouse and (ii) each of the other Members, notice of a desire to purchase all or a portion of such Divorced Spouse Interest within thirty (30)

days after such Proposed Transfer (the “Initial Notice”). The date of the timely delivery of that Initial Notice is hereinafter referred to as the Initial Notification Date. If, after the delivery of the Initial Notice, the Member who was divorced has not given notice to purchase all or a portion of such Divorced Spouse Interest, the other Members will have the right to purchase the portion of the Divorced Spouse Interest with respect to which the Member who was divorced did not give such notice (the “Residual Divorce Interest”) for its Appraised Value determined as of the date of the Transfer. Such right may be exercised by the other members by giving, within thirty (30) days after their receipt of the Initial Notice, a written notice (the “Residual Notice”) of their desire to purchase all or a portion of such Residual Divorce Interest. The date of the timely delivery of the Residual Notice is hereinafter referred to as the Residual Notification Date. If there is more than one Member who desires to exercise such right (each, a “Purchasing Member”), the Residual Divorce Interest will be allocated to each Purchasing Member to the extent of the lesser of (i) the Purchasing Member’s pro rata portion (based on the Sharing Ratio of such Purchasing Member relative to the Sharing Ratios of all Purchasing Members) of the Residual Divorce Interest and (ii) the portion of the Residual Divorce Interest that such Purchasing Members expressed a desire to purchase in such notice. If, after such allocation, any portion of the Residual Divorce Interest has not been allocated to the Purchasing Members, a similar allocation will be made of the remaining Residual Divorce Interest among the Purchasing Members who have not been allocated the full portion of the Residual Divorce Interest which such Purchasing Members expressed a desire to purchase in their respective notices. Such procedure will be continued until all of the Residual Divorce Interest has been fully allocated, if possible. In the event the Appraised Value of a Membership Interest is to be determined under the terms of this Section, the Company and the Spouse each shall select a qualified appraiser and said two appraisers shall select a third qualified appraiser, and the determination of the Appraised Value shall be made by agreement of at least two of said three appraisers. In connection with any determination of Appraised Value, the Company will make its books and records available to the three appraisers and will otherwise cooperate and cause its employees to cooperate with such appraisers. The expense of employing the first two appraisers shall be borne by the party selecting such appraiser and the expense of the third appraiser shall be borne in equal portions by the Company and the Spouse. In each case, the Company and the Spouse will cause the appraiser to be selected in accordance with the time frames set out in Section 3.14. The determination of the Appraised Value, made by such appraisers will be based on the fair market value of the applicable Divorce Spouse Interest, and shall be final, conclusive, and binding on the Company, all Members, and the Spouse. Upon receipt of the determination of the Appraised Value the Company shall cause the report or reports developed by the appraisers to be distributed to each of the Members and the Spouse as soon as reasonably possible thereafter.

3.11 Special Purchase or Sale Offer. In order to prevent the injury that might occur to the Company in case of a prolonged discord between the Members, in addition to all other restrictions contained in this Agreement, any Member may at any time send to all of the other Members a Special Purchase or Sale Notice. A Special Purchase or Sale Notice is a written notice by which the Offering Member offers to buy all of the other Member(s)’ Membership Interests, or to sell to the other Member(s) all of the Offering Member’s Membership Interest, for a price stated in the Special Purchase or Sale Notice (the “Agreement Price”) and on terms that shall include full payment at closing by good check or other immediately available funds. A Special Purchase or Sale Notice is valid only if accompanied by the Offering Member’s deposit with an escrow agent such documentation as the Member(s) shall require to affect a transfer of the Membership Interests then owned by the selling Member(s) and, if the Offering Member is offering to buy, the Offering Member’s good check for the entire purchase price.

(a) The other Member(s) (any one or more of them) shall have ninety (90) days from the Special Purchase or Sale Notice either to accept the offer or, at the discretion of any one or more of the other Member(s), reject the offer by (i) if the original offer was to sell the Offering Member’s interest, causing the Offering Member to buy all of the other Member(s)’ Membership Interests for the Agreement Price; or, (ii) if the original offer from the Offering Member was to buy the other Members’ Membership Interests, causing the Offering Member to sell his or her Membership Interest to the other Members, for the Agreement Price,

prorata in accordance with the relative Membership Interests of the other Member(s) or in such other ratio as the other Member(s) shall agree upon.

(b) Failure to respond to the Special Purchase or Sale Notice within ninety (90) days shall constitute the other Member(s)' acceptance of the offer of either an agreement to sell all of the other Member(s)' Membership Interests or to buy all of the Offering Member's Membership Interests, as the case may be.

(c) The purchasing Member(s) must deliver to the escrow agent such documentation as the Company shall require to affect a transfer of the Membership Interests then being bought, free and clear of all liens, claims, or encumbrances. Upon acceptance of the offer, the escrow agent shall do or cause to be done the following: (i) transfer the selling Member's Membership Interest to the purchasing Member(s) or, if the other Member(s) has/have not yet provided the escrow agent with such documentation as the Company shall require to effect a transfer of the Membership Interests then being bought, free and clear of all liens, claims, or encumbrances, direct the Company to cancel the Membership Interests of the selling Member(s) on the Company's books and to issue an equal number of additional Membership Interests to the purchasing Member; (ii) deliver to the selling Member(s) the purchasing Member(s) check for the Agreement Price; and, (iii) terminate the escrow, at which time the escrow agent shall be released from all duties and responsibilities.

(d) All fees charged by the escrow agent shall be paid by the Company, regardless of which Member sells or buys any Membership Interests.

3.12 Termination Right. The above notwithstanding, in the event a Member exercises an election to purchase a Membership Interest under the terms of Sections 3.09 or 3.10, the Member may terminate its purchase right within fifteen (15) days following its receipt of the determination of the Appraisal Value, by delivery of Notice to the party transferring the Membership Interest and the Company. If such election is terminated each of the other Members electing to purchase the Membership Interest will have the pro rata right to purchase that interest in the manner set out above.

3.13 Securities Laws Compliance. The Membership Interest has not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or the state securities law of Texas or any other state. Without such registration, no Member or assignee of a Membership Interest may affect or suffer a Transfer until the Member or assignee of a Membership Interest provides evidence satisfactory to the Company which, in the discretion of the Members, may include an opinion of counsel satisfactory to the Members, that such registration is not required for such Transfer to the effect that any such Transfer will not be in violation of the Securities Act of 1933, as amended, applicable state securities laws, or any rule or regulation promulgated thereunder.

3.14 Closing. If one or more Members elect to purchase the Membership Interest under the terms of any Section of this Article, the Closing shall be on or before that date which is the later of thirty (30) days after (i) any applicable notification date or (ii) the determination of the Appraisal Value under the terms of this Agreement. At the Closing, the Person selling the Membership Interest will transfer the Membership Interest to be sold to the Member or Members purchasing the Membership Interest, free and clear of any liens or encumbrances (other than those which may have been created to secure any indebtedness or obligations of the Company). At the Closing, the purchase price to be paid for the Membership Interest shall be paid to the Person selling their interest, in cash.

3.15 Third Party Offer. In the event a Member (the "Selling Member") desires to sell all or any portion of its Membership Interest to a Person or entity it shall first offer the Membership Interest to the other Members on the terms set out below:

(a) Upon receipt of the terms of a third party offer to purchase such Membership Interest which is acceptable to the Selling Member (the “Third Party Offer”) the Selling Member shall promptly delivery a copy of the Third Party Offer to all other Members, and shall thereafter promptly disclose all pertinent information with regard to the offer which the other Members may reasonably request. For the purpose of this Article, if the written offer contains provisions relating to the purchase and sale of items other than the Membership Interest, the Third Party Offer shall be deemed to relate to only those terms and conditions set out in the written offer which relate to the Membership Interest. The date that all of the Members receive notice of the Selling Member’s intent to sell his Membership Interest is the “Notification Date.”

(b) Each Member who is to receive the copy of the Third Party Offer made to the Selling Member will have thirty (30) days from the Notification Date in which to notify the Selling Member in writing of his or her intention to purchase all (but not less than all) of the Selling Member’s Membership Interest for the amount and on the terms and conditions set out in the Third Party Offer. If more than one of the Members (the “Electing Members”) elect to purchase the Selling Member’s Membership Interest, each Electing Member shall purchase the part of the Selling Member’s Membership Interest that is proportional to the Electing Member’s Sharing Ratio divided by the aggregate Sharing Ratios of all Electing Members. If none of the Members elect to purchase the Membership Interest of the Selling Member within thirty (30) days from the Notification Date, the Selling Member may then sell his or her Membership Interest to the Third Party on the terms and conditions of the Third Party Offer.

(c) If one or more of the Electing Members elect to purchase the Membership Interest, then, except as set out below, the Closing shall be on or before that date which is the later of: (i) thirty (30) days after the Notification Date, or (ii) the date set out for closing under the terms of the Third Party Offer, and the purchase price must be paid on the same terms and conditions as are set out in the Third Party Offer.

(d) At the Closing, the Selling Member will transfer the Membership Interest to be sold to the Electing Members, free and clear of any liens or encumbrances (other than any encumbrances to be taken subject to or assumed under the terms of the Third Party Offer). If the sale to the Third Party is not closed within 180 days following the Notification Date, the Membership Interest to be sold shall first be re-offered to the other Members as described in this Section.

(e) A person who purchases a Membership Interest in the Company under this Section (other than an existing Member) shall only be entitled to the right of an Assignee until admitted to the Company as a Substitute Member as provided in this Agreement.

ARTICLE IV CAPITAL CONTRIBUTIONS

4.01 **Initial Contributions.** Contemporaneously with the execution by such Member of this Agreement, each Member shall make the Capital Contributions described for that Member in Exhibit A.

4.02 **Subsequent Contributions.** Without creating any rights in favor of any third party, each Member shall contribute to the Company, in cash, on or before the date specified as hereinafter described, that Member’s Sharing Ratio of all monies that in the judgment of the Members are necessary to enable the Company to cause the assets of the Company to be properly operated and maintained and to discharge its costs, expenses, obligations, and liabilities; provided, however, that a Member is not obligated to contribute a total amount that, when added to all Capital Contributions that Member previously has made pursuant to Section 4.01 or this Section 4.02, exceeds that Member’s Commitment. The Members shall notify each

Member of the need for Capital Contributions pursuant to this Section 4.02 when appropriate, which the written notice must include a statement in reasonable detail of the proposed uses of the Capital Contributions and a date (which date may be no earlier than the fifth business day following each Member's receipt of its notice) before the Capital Contributions must be made. Notices for Capital Contributions must be made to all Members in accordance with their Sharing Ratios.

4.03 **Failure to Contribute.** (a) If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may exercise, on notice to that Member (the "Delinquent Member"), one or more of the following remedies:

(i) taking such action (including, without limitation, court proceedings) as the Members may deem appropriate to obtain payment by the Delinquent Member of the portion of the Delinquent Member's Capital Contribution that is in default, together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Delinquent Member;

(ii) permitting the other Members in proportion to their Sharing Ratios or in such other percentages as they may agree (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Contribution that is in default, with the following results:

(A) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Agreement,

(B) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member,

(C) the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member,

(D) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after the winding up of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal),

(E) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, as more fully set in Section 4.03(b), and

(F) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member;

(iii) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas, as more fully set forth in Section 4.03(b);

- (iv) reducing the Delinquent Member's Membership Interest or other interest in the Company;
- (v) subordination of the Delinquent Member's interest to the non-defaulting Member;
- (vi) a forced sale of the Delinquent Member's interest;
- (vii) forfeiture of the Delinquent Member's interest;
- (viii) determination of the value of the Delinquent Member's interest by appraisal or by formula and redemption or sale of the interest at that value; or
- (ix) exercising any other rights and remedies available at law or in equity.

(b) Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Delinquent Member pursuant to Section 4.03(a)(ii), as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Delinquent Member pursuant to Section 4.03(a)(ii), a security interest in and a general lien on its Membership Interest and the proceeds thereof, all under the Uniform Commercial Code of the State of Texas. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted in this Section 4.03(b). Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Members or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Section 4.03(b). At the option of the Members or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

(c) The obligation of a Delinquent Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Delinquent Member in violation of the TLLCL or this Agreement may be compromised or released only by consent of all Members. Notwithstanding the compromise or release, a creditor of the Company who extends credit or otherwise acts in reasonable reliance on that obligation, after the Member signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release may enforce the original obligation.

4.04 Return of Contributions. A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

4.05 Advances by Members. If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Members' consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section 4.05 constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.06 **Capital Accounts.** A capital account shall be established and maintained for each Member. Each Member's capital account (a) shall be increased by (i) the amount of money contributed by that Member to the Company, (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treas. Reg. § 1.704-1(b)(4)(i), and (b) shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under section 752 of the Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (b)(iii) above and loss or deduction described in Treas. Reg. § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii). The Member's capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. §§ 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, as required by Treas. Reg. § 1.704-1(b)(2)(iv)(g). A Member that has more than one Membership Interest shall have a single capital account that reflects all its Membership Interests, regardless of the class of Membership Interests owned by that Member and regardless of the time or manner in which those Membership Interests were acquired. On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(I).

ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

5.01 **Allocations.** (a) Except as may be required by Section 704 (c) of the Code and Treas. Reg. § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members in accordance with their Sharing Ratios.

(b) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under Section 706 of the Code and the regulations thereunder.

5.02 **Distributions.** (a) From time to time the Members shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Members shall cause the Company to distribute to the Members, in accordance with their Sharing Ratios, an amount in cash equal to that excess.

(b) From time to time the Members also may cause property of the Company other than cash to be distributed to the Members, which distribution must be made in accordance with their Sharing Ratios and may be made subject to existing liabilities and obligations. Immediately prior to such a distribution, the capital accounts of the Members shall be adjusted as provided in Treas. Reg. § 1.704-

1(b)(2)(iv)(f).

ARTICLE VI MEMBERS

6.01 **Management by Members.** (a) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Members; and the Members may make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

- (i) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
- (ii) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (iii) maintaining the assets of the Company in good order;
- (iv) collecting sums due the Company;
- (v) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;
- (vi) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;
- (vii) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
- (viii) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (ix) obtaining insurance for the Company;
- (x) determining distributions of Company cash and other property as provided in Section 5.02;
- (xi) establishing a seal for the Company.

6.02 **Actions by Members, Committee, Delegation of Authority and Duties.** (a) In managing the business and affairs of the Company and exercising its powers, the Members shall act (i) collectively through meetings and written consents pursuant to Article VII; (ii) through committees pursuant to Section 6.02(b), or (iii) through Members to whom authority and duties have been delegated pursuant to this Section 6.02(c).

(b) The Members may, from time to time, designate one or more committees, each of which shall be comprised of one or more Members. Any such committee, to the extent provided in such resolution or in

the Certificate of Formation or this Agreement, shall have and may exercise all of the authority of the Members, subject to the limitations set forth in the TLLCL. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for the adoption of any resolution. The Members may dissolve any committee at any time, unless otherwise provided in the Certificate of Formation or this Agreement.

(c) The Members may, from time to time, delegate to one or more Members such authority and duties as the Members may deem advisable. In addition, the Members may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to any such Member. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation formed under the TBOC, the assignment of such title shall constitute the delegation to such Member of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to the first sentence of this Section 6.02(c). Any number of titles may be held by the same Member. Any delegation pursuant to this Section 6.02(c) may be revoked at any time by the Members.

(d) Any Person dealing with the Company may rely on the authority of any Member or officer in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provision of this Agreement.

6.03 Conflicts of Interest. Subject to the other express provisions of this Agreement, each Member and Officer of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member or Officer the right to participate therein. The Company may transact business with any Member, Officer or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

6.04 Officers. (a) The Members may, from time to time, designate one or more Persons to be officers of the Company. No officer need be a resident of the State of Texas. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. The Members may assign titles to particular officers. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation formed under the TBOC, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to (i) any specific delegation of authority and duties made to such officer by the Members pursuant to the third sentence of Section 6.11(b), or (ii) any delegation of authority and duties made to one or more Members pursuant to this Section 6.02(a). Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the Person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Members.

(b) Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Members whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the

Company will be filled by the Members.

ARTICLE VII MEETING OF MEMBERS

7.01 **Meetings.** (a) A quorum shall be present at a meeting of Members if the holders of a Required Interest are represented at the meeting in person or by proxy. With respect to any matter, other than a matter for which the affirmative vote of the holders of a specified portion of the Sharing Ratios of all Members entitled to vote is required by the TLLCL or this Agreement, the affirmative vote of a Required Interest at a meeting of Members at which a quorum is present shall be the act of the Members.

(b) All meetings of the Members shall be held at the principal place of business of the Company or at such other place within or without the State of Texas as shall be specified or fixed in the notices or waivers of notice thereof; provided that any or all Members may participate in any such meetings by means of conference telephone or similar communications equipment pursuant to Section 7.05.

(c) Notwithstanding the other provisions of the Certificate of Formation or this Agreement, the chairman of the meeting or the holders of a Required Interest shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by the Members, such time and place shall be determined by a vote of the holders of a Required Interest. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(d) An annual meeting of the Members, for the transaction of business as may properly come before the meeting, shall be held at such place, within or without the State of Texas, on such date and at such time as the Members shall fix and set forth in the notice of the meeting, which date shall be within thirteen months subsequent to the date of organization of the Company or the last annual meeting of Members, whichever most recently occurred.

(e) Special meetings of the Members for any proper purpose or purposes may be called at any time by the Members or the holders of at least ten percent of the Sharing Ratios of all Members. If not otherwise stated in or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the notice of that meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) required by this Agreement may be conducted at a special meeting of the Members.

(f) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the Members or Person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address provided for in Section 13.02, with postage thereon prepaid.

(g) The date on which notice of a meeting of Members is mailed or the date on which the resolution of the Members declaring a distribution is adopted, as the case may be, shall be the record date for the determination of the Members entitled to notice of or to vote at such meeting, including any adjournment thereof, or the Members entitled to receive such distribution.

(h) The right of Members to cumulative voting in the election of Members is expressly

prohibited.

7.02 Voting List. The Members shall make, at least ten days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the Sharing Ratios held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office or principal place of business of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original membership records shall be prima-facie evidence as to who are the Members entitled to examine such list or transfer records or to vote at any meeting of Members. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at the meeting.

7.03 Proxies. A Member may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this Section. Proxies for use at any meeting of Members or in connection with the taking of any action by written consent shall be filed with the Members, before or at the time of the meeting or execution of the written consent, as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the Members, who shall decide all questions touching upon the qualification of voters, the validity of the proxies, and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Should a proxy designate two or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the Sharing Ratios that are the subject of such proxy are to be voted with respect to such issue.

7.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Member (or representative thereof) designated by a majority of the Members. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

7.05 Action by Written Consent, Telephone Conference or Other Remote Communications Technology. (a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Members, Managers, or committee members, as the case may be, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all Members, Members, or committee members, as the case may be, entitled to vote on the action were present and voted. Every written consent shall bear the date of signature of each Member who signs the consent. No written consent shall be effective to take the action that is the subject to the consent unless, within sixty days after the date of the earliest dated consent delivered to the Company in the manner required by this Section, a consent or consents signed by not fewer than the minimum number of votes that would be necessary to take action at a meeting that would be entitled to vote on the action if present and voted are delivered to the Company by delivery to its registered office, its principal place of business, or the

Members. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Members. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office, its principal place of business, or the Members. Delivery shall be by hand or by certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Members.

(c) If any action by Members is taken by written consent, any Certificate of Formation or documents filed with the Secretary of State of Texas as a result of the taking of the action shall state, in lieu of any statement required by the TLLCL concerning any vote of Members, that written consent has been given in accordance with the provisions of the TLLCL and that any written notice required by the TLLCL has been given.

(d) Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all Persons participating in the meeting can hear each other. Or, another suitable electronic communications system may be used including videoconferencing technology or the Internet, but only if, each member entitled to participate in the meeting consents to the meeting being held by means of that system and the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

7.06 Member's Consent Required. Consent of a Required Interest of the Members is required, in accordance with the TLLCL, to: (a) change the status of the Company from one which management is vested in one or more Members, or vice versa; (b) issue any additional Membership Interests in the Company subsequent to the issuance of Membership Interests to the initial Members of the Company; (c) approve any merger, conversion, share or interest exchange, or other transaction authorized by or subject to provisions of the TLLCL; (d) voluntarily cause the winding up of the Company; (e) authorize any transaction, agreement, or action on behalf of the Company that is unrelated to its purpose as set forth in the Agreement or Certificate of Formation or that otherwise contravenes this Agreement; or (f) authorize any act that would make it impossible to carry on the ordinary business of the Company.

Pursuant to the TLLCL, consent of all of the Members is required to amend the Certificate of Formation if any capital has been paid into the Company. If no capital has been paid into the Company, a Required Interest of the Members may amend the Certificate of Formation.

7.07 Classes of Members; Voting. At an annual or special meeting called for that purpose, the Members may from time to time establish classes or groups of Members. One or more of the Members' groups or classes may have certain expressed relative rights, powers, and duties, including voting rights, to be established at the time when the classes or groups are created, with seniority granted to one or more class or group as designated by the Members.

ARTICLE VIII

INDEMNIFICATION

8.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in this Article VIII, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “Proceeding”), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a Person of whom he or she is the legal representative, is or was a Member of the Company and was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Company to the fullest extent permitted by the TLLCL, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorney’s fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article VIII shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article VIII shall be deemed contract rights, and no amendments, modification or repeal of this Article VIII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article VIII could involve indemnification for negligence or under theories of strict liability.

8.02 **Advance Payment.** The right to indemnification conferred in this Article VIII shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Person of the type entitled to be indemnified under Section 8.01 who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Person’s ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such Person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such Member of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article VIII and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article VIII or otherwise.

8.03 **Indemnification of Officers, Employees and Agents.** The Company, by adoption of a resolution of the Members, may indemnify and advance expenses to an officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Members under this Article VIII; and, the Company may indemnify and advance expenses to Persons who are not or were not Members, officers, employees, or agents of the Company but who are or were serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person to the same extent that it may indemnify and advance expenses to Members under this Article VIII.

8.04 **Appearance as a Witness.** Notwithstanding any other provision of this Article VIII, the Company may pay or reimburse expenses incurred by a Member in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

8.05 **Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article VIII shall not be exclusive of any other right which a Member or other Person indemnified pursuant to Section 8.03 may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation, this Agreement, agreement, vote of disinterested Members or otherwise.

8.06 **Insurance.** The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is a Member or was serving as an officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article VIII.

8.07 **Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member in accordance with this Article VIII shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the twelve month period immediately following the date of the indemnification or advance.

8.08 **Savings Clause.** If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Member or any other Person indemnified pursuant to this Article VIII as to costs, charges, and expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit or Proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article VIII that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE IX TAXES

9.01 **Tax Returns.** The Members shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in Section 9.02. Each Member shall furnish to the Members all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.02 **Tax Elections.** The Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;
- (c) if a distribution of Company property as described in Section 734 of the Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Code, to adjust the basis of Company properties;
- (d) to elect to amortize the organizational expenses of the Company and the startup

expenditures of the Company under Section 195 of the Code ratably over a period of sixty months as permitted by Section 709(b) of the Code; and

(e) any other election the Members may deem appropriate and in the best interest of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 subtitle A of the Code or any similar provisions of applicable state law, and no provision of this Agreement (including, without limitation, Section 2.08) shall be construed to sanction or approve such an election.

9.03 **“Tax Matters Partner”.** A Required Interest of the Members shall designate one Member to be the “tax matters partner” of the Company pursuant to Section 6231(a)(7) of the Code. Any Member who is designated “tax matters partner” shall take such action as may be necessary to cause each other Member to become a “notice partner” within the meaning of Section 6223 of the Code. Any Member who is designated “tax matters partner” shall inform each other Member of all significant matters that may come to its attention in its capacity as “tax matters partner” by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. Any Member who is designated “tax matters partner” may not take action contemplated by Section 6222 through 6232 of the Code without the consent of a Required Interest.

ARTICLE X BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

10.01 **Maintenance of Books.** The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members and each Committee of the Members. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the capital accounts of the Members shall be maintained in accordance with Section 4.06. The calendar year shall be the accounting year of the Company.

10.02 **Reports.** On or before the 120th day following the end of each fiscal year during the term of the Company, the Members shall cause each Member to be furnished with a balance sheet, an income statement, and a statement of changes in Members’ capital of the Company for, or as of the end of, that year in form and substance satisfactory to Members who hold more than fifty percent (50%) of all Membership Interests. These financial statements must be prepared in accordance with accounting principles generally employed for cash-basis records consistently applied. The Members also may cause to be prepared or delivered such other reports as they may deem appropriate. The Company shall bear the costs of all these reports.

10.03 **Accounts.** The Members shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Members determine. The Members may not commingle the Company’s funds with the funds of any Member; however, Company funds may be invested in a manner the same as or similar to the Members’ investment of their own funds or investments by their Affiliates.

ARTICLE XI BANKRUPTCY OF A MEMBER

11.01 **Bankrupt Members.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Members to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member or its representative shall sell, its Membership Interest. The purchase price shall be an amount equal to the fair market value thereof determined by agreement by the Bankrupt Member (or its representative) and the Members; however, if those Persons do not agree on the fair market value on or before the thirtieth day following the exercise of the option, either such Person, by notice to the other, may require the determination of fair market value to be made by an independent appraiser specified in that notice. If the Person receiving that notice objects on or before the tenth day following receipt to the independent appraiser designated in that notice, and those Persons otherwise fail to agree on an independent appraiser, either such Person may petition the United States District Judge who is then senior in service, for the District and Division in which the registered office is located, to designate an independent appraiser. The determination of the independent appraiser, however designated, is final and binding on all parties. The Bankrupt Member and the Company each shall pay one-half of the costs of the appraisal. The purchaser shall pay the fair market value as so determined in four equal cash installments, the first due on closing and the remainder (together with accumulated interest on the amount unpaid at the General Interest Rate) due on each of the first three anniversaries thereof. The payment to be made to the Bankrupt Member or its representative pursuant to this Section 11.01 is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its representative (and of all Persons claiming by, through, or under the Bankrupt Member and its representative) in and in respect of the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members, and constitutes a compromise to which all Members have agreed pursuant to the TLLCL.

ARTICLE XII WINDING UP, LIQUIDATION, AND TERMINATION

12.01 **Events requiring wind up.** The Company shall be wound up on the first to occur of any one or more of the following:

- (a) the written consent of the Required Interest;
- (b) at such time as there is no Member remaining;
- (c) the expiration of the period fixed for the duration of the Company set forth in the Certificate of Formation;
- (d) entry of a judicial order to wind up the Company.

12.02 **Winding Up Affairs and Distribution of Assets.**

(a) If an event requiring the winding up of the Company occurs, the Members shall designate a Person (the Person so designated being called the “*liquidating Agent*”), as soon as practicable to wind up the affairs of the Company and sell and/or distribute the assets of the Company. The Liquidating Agent shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the liquidation and termination of the Company that the Member would have with respect to the assets and liabilities of the Company during the term of the Company, and the Liquidating Agent is expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation and termination of the Company and the transfer of any assets. The Liquidating

Agent shall apply and distribute the proceeds of the sale or liquidation of the assets and property of the Company in the following order of priority, unless otherwise required by non-waivable provisions of applicable law:

(i) the liquidator shall cause the notice described in the TLLCL to be mailed to each known creditor of and claimant against the Company in the manner described in the TLLCL and shall pay (or make provision for the payment of) all creditors of the Company (including Members who are creditors of the Company) and any other liabilities or obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.05 of this Agreement) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine) in the order of priority provided by law or otherwise, in satisfaction of all debts, liabilities or obligations of the Company due its creditors;

(ii) after the payment (or the provision for payment) of all debts, liabilities and obligations of the Company in accordance with clause (i) above, any balance remaining shall be distributed to the Members having positive Capital Accounts in relative proportion to those Capital Accounts and except as required by nonwaivable provisions of the TLLCL, no Member shall have any obligation at any time to contribute any funds to replenish any negative balance in its Capital Account.

(b) as promptly as possible after final liquidation, the liquidator shall cause a proper accounting to be made of the Company's assets, liabilities, and operations through the last day of the calendar month in which the winding up occurs or the final liquidation is completed, as applicable;

(c) the Liquidating Agent shall have sole discretion to determine whether to liquidate all or any portion of the assets and property of the Company and the consideration to be received for that property.

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.02 and shall constitute a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented within the meaning of the TLLCL. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

12.03 Certificate of Termination. On compliance with the distribution plan described in Section 12.02, the Liquidating Agent shall execute, acknowledge and cause to be filed a certificate of termination, pursuant to the TLLCL, with the Secretary of State of Texas, at which time the Company shall cease to exist as a limited liability company.

ARTICLE XIII GENERAL PROVISIONS

13.01 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

13.02 **Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the Person to receive it. All notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Exhibit A, or such other address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company must be given to the Members at the following address, 25011 Shuman Creek, San Antonio, Texas 78255. Whenever any notice is required to be given by law, the Certificate of Formation or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

13.03 **Entire Agreement.** This Agreement includes the entire Agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or Agreements with respect to the Company, whether oral or written.

13.04 **Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

13.05 **Amendment or Modification.** This Agreement may be amended or modified from time to time only by a written instrument adopted by the Members and executed and agreed to by a Required Interest; provided, however, that (a) an amendment or modification reducing a Member's Sharing Ratio or increasing its Commitment (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent, (b) an amendment or modification reducing the required Sharing Ratio or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Sharing Ratio or other measure theretofore required, and (c) amendments of the type described in Section 3.03(c) may be adopted as herein provided, (d) amendments to establish the relative rights and preferences of the Membership Interests of any class or series may be made by a committee of Members, within the authority of Members or otherwise provided in the Certificate of Formation, the TLLCL, or resolutions by Members forming the committee.

13.06 **Binding Effect.** Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

13.07 **Governing Law; Severability.** THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and (a) any provision of the Certificate of Formation, or (b) any mandatory provision of the TLLCL or (to the extent such statutes are incorporated into the TLLCL) the TBOC or the Texas Miscellaneous Corporation Laws Act, the application provision of the Certificate of Formation, the TLLCL, the TBOC or the Texas Miscellaneous Corporation Laws Act shall control. If any provision of this Agreement or the application thereof to any Person or circumstance is held

invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

13.08 **Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

13.09 **Waiver of Certain Rights.** Each Member irrevocably waives any right it may have to maintain any action for the winding up of the Company or for partition of the property of the Company.

13.10 **Indemnification.** To the fullest extent permitted by law, each Member shall indemnify the Company and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

13.11 **Notice to Members of Provisions of this Agreement.** By executing this Agreement, each Member acknowledges that it has actual notice of (a) all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III, and (b) all of the provisions of the Certificate of Formation, including, without limitation, the fact that the Certificate of Formation provides that no Member shall have the preemptive right to acquire any Membership Interests or securities of any class that may at any time be issued, sold or offered for sale by the Company. Each Member hereby agrees that this Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the TBOC and Chapter 8 of the Texas Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

13.12 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

IN WITNESS HEREOF, following adoption of this Agreement by the Members, the Members have executed this Agreement as of the date first set forth above.

MEMBER(S):

Thaxter D. Price

Steve Rice

Richard Anderson

Jacob Garza

David Dennard

EXHIBIT A

LOS CIELOS FLYERS, LLC

Member's Name and Address	Initial Commitment/ Capital Contribution	Initial Sharing Ratio
Thaxter D. Price 25011 Shuman Creek San Antonio, Texas 78255	\$ 23,500.00	20.0%
Steve Rice 153 Michelle Lane Boerne, TX 78806	\$ 23,500.00	20.0%
Richard Anderson 1350 Arrow Stone San Antonio, TX 78258	\$ 23,500.00	20.0%
Jacob Garza 5825 Callaghan Road, Suite 200 San Antonio, TX 78228	\$ 23,500.00	20.0%
David Dennard	\$ 23,500.00	20.0%