

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**AMENDMENT TO BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C915291-02-15**

Westwood Country Club

DEC Site No: C915291

Located at: 772 North Forest Road, Williamsville, Erie County, NY 14221
Hereinafter referred to as "Site"

by:

Mensch Capital Partners, LLC

10 Lafayette Square, Suite 1900, Buffalo, NY 14203

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Department and the Applicant seek to amend the existing BCP Agreement for the Site, based on the 2015 changes to the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Tax Credit Status & Deadline for receipt of Certificate of Completion (COC)

Based on the fact that the Site did not receive a COC by December 31, 2019, it is hereby subject to the terms of the BCP in effect as of July 1, 2015, including, but not limited to, the tax credit structure and the deadline of March 31, 2026.

With respect to eligible costs incurred under the BCP, this Amendment shall not change the effective date of the Agreement, and otherwise eligible costs incurred from the original effective date of the agreement will still be eligible costs for tax credit purposes.

II. Miscellaneous

A. Except for the modifications set forth herein, the original Agreement shall

remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Amendment. The terms of the original Agreement, including all exhibits, appendices and subsequent modifications, are not otherwise modified or expanded in any way.

B. The terms herein shall constitute this complete and entire Amendment of the Agreement. No term, condition, understanding or agreement purporting to modify the terms of the Agreement shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

C. The effective date of this Amendment is the date it is signed by the Commissioner or the Commissioner's designee.

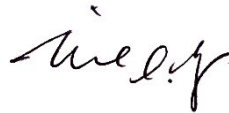
D. This Amendment may be signed in counterparts.

DATED:

June 16, 2020

THIS BROWNFIELD CLEANUP AGREEMENT
AMENDMENT IS HEREBY APPROVED, Acting by and
Through the Department of Environmental Conservation as
Designee of the Commissioner,

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement Amendment, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Amendment.

Mensch Capital Partners, LLC

By: 

Title: EV

Date: 20MAR2020

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 20 day of March in the year 2020, before me, the undersigned, personally appeared Daniel Hamister, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

BRIAN THOMAS PLEBAN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02PL6144316
Qualified in Erie County
Commission Expires April 24, 2022

Hamister Development Company, LLC

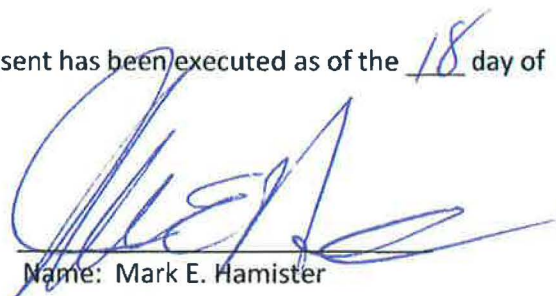
Action of Managing Partner Without a Meeting

The undersigned, being the Managing Partner of Hamister Development Company, LLC (the "Company"), a Delaware limited liability company, hereby consents to the adoption of the following resolutions pursuant to the Limited Liability Company Agreement and consent of the Company's Managing Member without a meeting as provided for by the Delaware Limited Liability Company Act:

RESOLVED, that effective as of the date hereof, the following persons shall be, and they hereby are, appointed and elected to the offices of Hamister Development Company, LLC (the "Company") set forth opposite their names, to hold such positions until their successors have been elected and qualified or, if earlier, until their death, resignation or removal:

<u>Name</u>	<u>Title</u>
Mark E. Hamister	Chairman & CEO
Jack A. Turesky	President & COO
W. Earl McCartney	Executive VP & CFO
Daniel M. Hamister	Senior VP
Cheryl A. Green	Senior VP & General Counsel

IN WITNESS WHEREOF, this written consent has been executed as of the 18 day of October, 2013.



Name: Mark E. Hamister

Managing Partner

OPERATING AGREEMENT

OF

HAMISTER DEVELOPMENT COMPANY II, LLC

a New York Limited Liability Company

OPERATING AGREEMENT

OF

HAMISTER DEVELOPMENT COMPANY II, LLC

THIS OPERATING AGREEMENT (this “Agreement”) of is entered into as of the 28th day of March, 2008, by and among (1) those Persons whose names are set forth on Schedule A to this Agreement and who have executed a counterpart of this Agreement as a Member and (2) those Persons whose names are set forth on Schedule B to this Agreement as the Managers of the Company and who have executed a counterpart of this Agreement as a Manager.

Recitals

WHEREAS, the parties hereto desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Law in connection with the Company.

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following capitalized terms when used in this Agreement shall have the respective meanings specified below. Those capitalized terms which are used but not defined herein shall have the respective meanings given those terms in the Act.

“**Act**” means the New York Limited Liability Company Law and any successor statute, as amended from time to time.

“**Affiliate**” means, with respect to any Person, any other Person which is controlled by, or is under common control with, such Person. For this purpose: (a) “control” means ownership (direct or through another Affiliate) of fifty percent (50%) or more of the voting stock of a corporation, fifty percent (50%) or more of the capital or profits interests of a partnership, or fifty percent (50%) or more of any ownership interest of any other Person; and (b) any ownership interest owned by a Person shall be deemed to be owned by any relative of such Person.

“**Articles of Organization**” means the Articles of Organization of the Company filed with the New York Secretary of State pursuant to the Act, as amended or restated from time to time.

“**Capital Account**” means the account maintained for each Member in accordance with the following provisions:

(a) each such Member's Capital Account shall be increased by:

(i) such Member's Capital Contributions (including but not limited to the initial Capital Contributions made on the date hereof as set forth on Schedule A hereof, and any additional Capital Contributions made after the date hereof);

(ii) the amount of any Company liabilities which are assumed by such Member (or which are secured by Company property distributed to such Member by the Company); and

(iii) such Member's distributive share of Profit and any item in nature of income or gain specially allocated to such Member pursuant to the provisions of this Agreement or as required by the Code or Regulations.

(b) each such Member's Capital Account shall be decreased by:

(i) the amount of money and the fair market value of any Company property distributed to or withdrawn by such Member;

(ii) the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by such Member to the Company); and

(iii) the distributive share of Loss and any item in the nature of expenses or losses specially allocated to such Member pursuant to the provisions of this Agreement or as required by the Code or Regulations.

On the date of each Valuation of the Company's assets pursuant to Article 9 hereof, the Capital Account of each Member shall be adjusted as of such Valuation Date to reflect such Valuation.

"Capital Contribution" means, with respect to any Member, any contribution made by such Member to the capital of the Company in cash, property or services rendered or a promissory note or other binding obligation to contribute cash or property or to render services.

"Code" means the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

"Company" means Hamister Development Company II, LLC, a limited liability company formed under the laws of the State of New York on March 28, 2008, and any successor limited liability company thereto.

"Company Offer" shall have the meaning ascribed to such term in Section 6.3 hereof.

"Company Refusal Period" shall have the meaning ascribed to such term in Section 6.3 hereof

“Defaulting Event” means the occurrence of any event which deprives or divests any Member of any of his right, title or interest in or to his Membership Interests, including but not limited to, the following:

- (a) the Member makes a general assignment for the benefit of creditors;
- (b) the Member files a voluntary petition of bankruptcy;
- (c) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (e) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member’s properties and assets;
- (f) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in subsections (a) through (e) above;
- (g) any proceeding against the Member seeking reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, continues for one hundred and twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver or liquidator for the Member of all or any substantial part of the Member’s properties without the Member’s agreement or acquiescence, which appointment is not vacated or stayed within one hundred and twenty (120) days or, if the appointment is stayed, such appointment is not vacated within one hundred and twenty (120) days after the expiration of the stay;
- (h) any Transfer of a Member’s Membership Interests to a unit of government or to a public officer or agency pursuant to any statute pertaining to escheat or abandoned property;
- (i) a Marital Termination;
- (j) if the Member is an individual, a Disabling Event which results in or as a consequence of which any of such Member’s Membership Interests are distributed or otherwise transferred to any Non-Permitted Transferee; or
- (k) if the Member is other than an individual, including but not limited to a corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership or otherwise, the dissolution, termination, revocation of its legal existence, or commencement of winding up of such Member which results in or as a consequence of which

any of such Member's Membership Interests are distributed or otherwise transferred to any Non-Permitted Transferee.

"Defaulting Member" and **"Defaulting Membership Interests"** shall have the meanings ascribed to such terms in Section 6.4 hereof.

"Disabling Event" means, with respect to a Member or Manager which is an individual, the death, legal or mental incapacity, or Permanent Disability of such Member or Manager.

"Distribution" means any cash or property paid or transferred by the Company to a Member on account of such Member's Membership Interests, in accordance with the terms of this Agreement.

"Extraordinary Matters" shall have the meaning ascribed to such term in Section 3.13 hereof.

"Fiscal Year" means the calendar year commencing on each January 1 and ending on the following December 31.

"GAAP" means, as of the date of any determination, generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, consistently applied and maintained throughout the relevant periods and from period to period.

"Initial Manager" shall have the meaning ascribed to such term in Section 3.2 hereof.

"Involuntary Transferee" shall have the meaning ascribed to such term in Section 6.4 hereof.

"Manager(s)" shall mean the Initial Manager and any Successor Manager of the Company appointed, elected or otherwise serving pursuant to the provisions of Article 3 hereof, and who executes a counterpart of this Agreement as a Manager of the Company.

"Marital Termination" means that a Member and his spouse have been divorced pursuant to a final order of a court in any divorce proceeding or have been legally separated pursuant to a separation agreement, and the terms and conditions of such final order or separation agreement: (a) direct the transfer of all or any part of the Membership Interests held by a Member to his spouse; or (b) permit a spouse who is not a Member to otherwise retain any Membership Interests of the Company.

"Member" means each Person listed on Schedule A to this Agreement and who has executed a counterpart of this Agreement as a Member, and each other Person who may hereafter be admitted as a Member in accordance with the terms and conditions hereof and who executes a counterpart of this Agreement as a Member.

"Member Offer" shall have the meaning ascribed to such term in Section 6.3 hereof.

“Member Refusal Period” shall have the meaning ascribed to such term in Section 6.3 hereof

“Membership Interest” means a Member’s aggregate rights in the Company, including but not limited to: (a) the right to share in the Profits and Losses of, and to receive Distributions from, the Company; (b) the right to vote in matters coming before the Company and participate in the management of the Company as provided in this Agreement; and (c) all other designations, rights, powers and preferences, and restrictions, limitations and qualifications, granted to the Member under this Agreement, the Act or any other applicable law.

“Non-Liquid Assets” and **“Non-Liquid Asset Disposition Date”** shall have the meanings ascribed to such terms in Section 9.2 hereof.

“Non-Permitted Transferee” shall have the meaning ascribed to such term in Section 6.1 hereof.

“Offered Membership Interests” shall have the meaning ascribed to such term in Section 6.3 hereof.

“Officer” and **“Officers”** shall have the meanings ascribed to such terms in Section 3.13 hereof.

“Permanent Disability” means that a Person has been physically or mentally incapacitated for (a) a period of forty (40) consecutive days, or (b) for any sixty (60) days within a one hundred (100) day period.

“Permitted Transfer” and **“Permitted Transferee”** shall have the meanings ascribed to such terms in Section 6.2 hereof.

“Person” means any person or entity, whether an individual, trustee, corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership or otherwise. For purposes of convenience, the singular masculine pronoun (“he”) is used in this Agreement to refer to any Person, including references to individual Members, regardless of the gender of such Person.

“Profits and Losses” or **“Profit or Loss”** means, for each Fiscal Year (or other period for which Profit and Loss must be computed), the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(b) any tax-exempt income of the Company, not otherwise taken into account in computing taxable income or loss shall be included in computing taxable income or loss;

(c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)), not otherwise taken into account in computing Profit and Loss, shall be subtracted from taxable income or loss;

(d) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of such property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;

(e) in lieu of depreciation, amortization or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) notwithstanding any other provisions of this definition, any items which are specially allocated pursuant to Article 8 shall not be taken into account in computing Profit or Loss.

“Prospective Purchaser” shall have the meaning ascribed to such term in Section 6.3 hereof.

“Regulations” means any proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

“Related Party” means, with respect to any Person:

(a) any direct lineal ancestor or direct lineal descendant of such Person;

(b) a trust or custodial account solely for the benefit of such Person and/or such Person’s direct lineal ancestors, direct lineal descendants; and

(c) any other Person owned beneficially solely by and for the benefit of such Person, such Person’s direct lineal ancestors and/or direct lineal descendants, including an Affiliate.

“Selling Member” shall have the meaning ascribed to such term in Section 6.3 hereof.

“Successor Manager” shall have the meaning ascribed to such term in Section 3.3 hereof.

“Third Party Offer” shall have the meaning ascribed to such term in Section 6.3 hereof.

“Transfer” means any transfer of any Membership Interests, including any sale, exchange, gift, assignment, pledge, mortgage or other disposition, whether voluntary or involuntary, including a disposition under judicial order or legal process, by execution, attachment or enforcement of a pledge, trust or other encumbrance, or by testamentary disposition or pursuant to the laws of intestate succession.

“Valuation” and **“Valuation Date”** shall have the meanings ascribed to such terms in Section 9.1 hereof.

“Valuation Report” shall have the meaning ascribed to such term in Section 9.3 hereof.

ARTICLE 2 FORMATION

2.1. ORGANIZATION. The Company was organized by the filing of Articles of Organization with the New York State Secretary of State pursuant to the Act on March 28, 2008.

2.2. NAME. The name of the Company is Hamister Development Company II, LLC.

2.3. PRINCIPAL PLACE OF BUSINESS. The principal place of business of the Company shall be located in Erie County, New York. The Company may establish such other places of business as the Managers deem appropriate.

2.4. PURPOSE. The Company is formed to engage in any lawful business purpose or purposes except to do any business for which another statute specifically requires some other business entity or natural person to be formed or used for such business.

ARTICLE 3 MANAGEMENT

3.1. MANAGEMENT. Except as otherwise specifically limited in this Agreement, the Act or any other applicable law, the Managers shall have the exclusive right to manage the affairs and business of the Company. The Managers shall be subject to all of the duties and liabilities of managers which are contained in this Agreement, the Act and any other applicable law. Managers may, but shall not be required to, be Members of the Company.

3.2. NUMBER OF MANAGERS; TERM.

(a) Initial. The total number of Managers shall be fixed at one (1). Mark Hamister shall be the initial Manager of the Company (the “Initial Manager”) and shall serve as the Manager unless and until the occurrence of: (i) his resignation as the Manager (which resignation shall not constitute a resignation or withdrawal as a Member unless expressly provided in such written resignation notice); or (ii) he is unable to serve due to the occurrence of a Disabling Event.

(b) Increase or Decrease in Number. Upon the vote or written consent of the Members holding at least Seventy-Five Percent (75%) of the Membership Interests, the number of Managers may be increased or decreased, provided that there shall always be at least one (1) Manager. Any vacancies created by the provisions of this Section 3.2(b) shall be filled pursuant to the provisions of Section 3.3 below.

3.3. ELECTION OF MANAGERS.

(a) There shall be no election of the Initial Manager, who shall serve in such capacity as provided in Section 3.2 above.

(b) All other Managers (each a "Successor Manager") shall be elected to serve by the vote or written consent of the Members holding at least Seventy-Five percent (75%) of the Membership Interests. Each Successor Manager shall serve in such capacity unless and until the occurrence of: (i) his resignation as Manager (which resignation shall not constitute a resignation or withdrawal as a Member unless expressly provided in such written resignation notice); (ii) he is unable to serve due to the occurrence of a Disabling Event; or (iii) he is removed as a Manager as provided in Section 3.5 below.

3.4. VACANCIES. In the event of any vacancy in a Manager position, such vacancy shall be filled by the Members in accordance with Section 3.3 above.

3.5. REMOVAL. Notwithstanding anything to the contrary in the foregoing, any Successor Manager may be removed at any time by the unanimous vote or written consent of the Members, excluding the vote of such Manager if he or she is also a Member. The removal of a Manager shall not affect such Manager's rights as a Member, if any, and shall not constitute a withdrawal of such Manager as a Member.

3.6 AUTHORITY TO BIND THE COMPANY. Unless expressly authorized to do so by the written consent of the Managers, no Member or any other Person who is not a Manager of the Company shall have any authority to act on behalf of or to bind the Company.

3.7. RESIGNATION. A Manager may resign at any time by giving written notice thereof to the Members. The resignation of a Manager shall take effect at the time provided in such notice and no acceptance of the resignation shall be necessary. The resignation of a Manager shall not affect such Manager's rights as a Member, if any, and shall not constitute a withdrawal as a Member.

3.8. ACTIONS AND MEETINGS OF MANAGERS.

(a) Except as otherwise provided herein, in the event that there is more than one (1) Manager, management decisions shall be made by the vote or written consent of a majority of the Managers. Each Manager shall be empowered to act individually on behalf of the Company with third parties to implement any management decision.

(b) (i) In the event that there is more than one (1) Manager, meetings of the Managers shall be held at such time as the Managers shall determine. Meetings of the Managers, both regular and special, shall be held at the principal offices of the Company or such other location as shall be fixed by the Managers. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of any Manager. No notice shall be required for regular meetings for which the time and place

have been fixed. Written, oral or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the Managers. The notice of the meeting need not specify the purpose of the meeting. Attendance of a Manager at a meeting of the Managers shall constitute waiver of notice of such meeting, except when the Manager attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not properly called or convened.

(ii) Any Manager may participate in a meeting of the Managers by means of telephone conference or similar communications equipment and such participation shall constitute presence in person at such meeting.

(iii) Any action required or permitted to be taken at any meeting of the Managers may be taken without a meeting if a majority of the Managers consent thereto in writing and the writing is filed with the minutes of proceedings of the Managers.

3.9. MANAGERS SHALL ACT IN GOOD FAITH. The Managers shall perform their duties in good faith, in the manner they reasonably believes to be in the best interests of the Company and with such degree of care as an ordinarily prudent person in a similar position would use under like circumstances. A Manager who so performs his duties shall have no liability by reason of being or having been a Manager and shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, except as otherwise provided in the Act or any other applicable law. The Members acknowledge and agree that the Managers do not guaranty or otherwise make any representation or warranty to the Company or any Member with regard to the performance of the Company or profits to be derived from any or all of its investments or other activities.

3.10. NO EXCLUSIVE DUTY TO COMPANY; CONFLICTS. The Managers shall not be required to manage the Company as their sole and exclusive function and may have other business interests other than those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities of any Manager or to the income or proceeds derived therefrom. The Managers shall not incur any liability to the Company or any Member as a result of engaging in any other business interests or activities.

3.11. INDEMNIFICATION. The Company shall indemnify, defend and hold harmless the Managers for all costs, losses, liabilities and damages paid or incurred by the Managers in the performance of their duties in such capacity, to the fullest extent provided or permitted by the Act or other applicable laws.

3.12. COMPENSATION; EXPENSE REIMBURSEMENT. The Managers shall be reimbursed for reasonable expenses incurred in performing their duties pursuant to this Agreement. No Manager shall be compensated for attendance at any meeting of the Managers.

3.13. OFFICERS.

(a) Appointment of Officers. The Managers may elect or appoint a Chief Executive Officer, President, one or more Vice Presidents, a Secretary, a Chief Financial Officer and/or a Treasurer and such other officers of the Company (each an "Officer", and collectively, the "Officers") as the Managers may in their sole discretion determine. Any number of offices may be held by the same person. The titles and names of the initial Officers of the Company are identified on Schedule C hereto, as amended from time to time, and shall have such authority as the Managers may, from time to time in accordance with the provisions of this Agreement, specify.

(b) Term of Office. Unless otherwise provided in the resolution of the Managers providing for the election or appointment of an officer and subject to the provisions of Section 3.13(c) of this Agreement, each officer shall hold office until his successor has been elected or appointed and qualified.

(c) Removal; Resignation. The Managers may remove any officer at any time with or without cause. Any officer may resign at any time by giving written notice to the Managers, which resignation shall take effect upon receipt of such notice by the Managers. Unless otherwise specified in such notice, the acceptance thereof shall not be necessary to make such resignation effective.

(d) Authority and Duties. With respect to other than Extraordinary Matters and except as limited by the Managers or by this Agreement, all officers shall have the authority to execute and deliver documents, agreements and instruments and to perform such other duties for and on behalf of the Company which are within the regular powers, duties and responsibilities as are customarily possessed by such officers and are related to matters affecting the Company.

With respect to Extraordinary Matters, an officer shall have only such authority to execute and deliver documents, instruments and agreements and to perform such other duties for and on behalf of the Company as has been expressly authorized by the Managers in writing. For purposes of this Agreement "Extraordinary Matters" are (i) any matters which are material to the Company's business and (ii) any matters which are not effected or carried out in the ordinary course of conduct of the Company's business. If any officer or officers have expressly been delegated the power to bind the Company with respect to any Extraordinary Matter, then both the Manager and any such officer or officers shall have authority to bind the Company with respect to any such Extraordinary Matter.

ARTICLE 4 ACCOUNTS, REPORTS AND NOTICES

4.1. ACCOUNTS. The Company will maintain a system of accounts in accordance with GAAP, to keep full and complete financial records and to furnish to each Member the following reports after the end of each Fiscal Year and upon receipt of the foregoing information: (a) a copy of the balance sheet of the Company as at the end of such year, and (b)

statements of income, such Member's equity and cash flow for such year, all in reasonable detail, prepared by the Company's accountants.

4.2. INSPECTION. Any Member, individually or through his legal or accounting representative, shall have the right at any reasonable time during normal business hours, and upon ten (10) days notice to the Company, to inspect and audit the books and records of the Company at the Company's principal offices.

ARTICLE 5 MEMBERS

5.1. CLASSES OF MEMBERS.

(a) The Membership Interests of the Company shall be comprised of a single class of membership interests, having the designations, rights and powers, and the qualifications, limitations and restrictions in respect thereof, as provided herein, and as required by the Act or any other applicable law.

(b) The Members agree that all allocations of Profits and Losses shall be made in accordance with the provisions of Section 8.1 hereof and all Distributions shall be made in accordance with the provisions of Sections 8.2 and 8.3 hereof.

5.2. VOTING. On each matter upon which Members are required or permitted to vote and except as otherwise provided herein or as required by the Act or other applicable law, each Member shall vote in proportion to his Membership Interests. Unless a greater percentage is required pursuant to this Agreement or the Act, the affirmative vote of Members holding not less than a majority of the Membership Interests shall be necessary to take or authorize any such action.

ARTICLE 6 MEMBERSHIP INTERESTS AND TRANSFERS THEREOF

6.1. GENERAL RESTRICTIONS.

(a) Except as otherwise provided in and pursuant to the provisions of this Article, no Member shall Transfer, directly or indirectly, any of his Membership Interests to any Person who is not a Member (each, a "Non-Permitted Transferee"). Any attempted Transfer of Membership Interests in violation of this Article shall be void ab initio and that Person so attempting to violate this provision shall be liable for all costs and losses suffered by the Company or any Member as a result thereof.

(b) In the event that any provision of this Section 6.1 is held to be invalid or unenforceable, the Non-Permitted Transferee shall only be entitled to the rights of an "assignee" provided in Section 604 of the Act.

6.2. PERMITTED TRANSFERS.

(a) The following Transfers ("Permitted Transfers") to the following Persons ("Permitted Transferees") shall not be subject to the restrictions of Section 6.1 above:

(i) any Transfer by a Member during his lifetime to a Related Party or any trust or other legal entity owned solely by and for the benefit of the Member and any Related Party of the Member, and which trust or other legal entity is and remains at all times during the Member's lifetime controlled by the Member;

(ii) any Transfer upon the death of a Member to a Related Party by distribution pursuant to the provisions of such Member's will, or in the absence thereof, the laws of intestate succession;

(iii) if the Member is an individual, any Transfer upon a Disabling Event which results in, or as a consequence of which, any of such Member's Membership Interests are distributed or otherwise transferred to any Person who would otherwise be a Permitted Transferee under the terms of this Agreement;

(iv) if the Member is a corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership or other Person, the dissolution, termination, revocation of its legal existence, or commencement of winding up of such Member which results in, or as a consequence of which, any of such Member's Membership Interests are distributed or otherwise transferred to any Person who would otherwise be a Permitted Transferee under the terms of this Agreement; and

(v) any Transfer by a Member to an Affiliate or other Member.

(b) In the event of any Permitted Transfer, the transferred Membership Interests shall remain subject to this Agreement and, as a condition of the validity of such Permitted Transfer, each Permitted Transferee shall be required to execute and deliver a counterpart of this Agreement as a Member hereunder and shall thereafter be deemed to be a Member for all purposes of this Agreement.

(c) In the event of any Permitted Transfer during any Fiscal Year, the profits, gains, losses, deductions and credits during such Fiscal Year shall be allocated to the Membership Interests being so transferred in proportion to the actual number of days that each of the transferor Member and Permitted Transferee was recognized as the Member during such Fiscal Year, or in any other proportion permitted by the Code and selected by the Managers, without regard to results of the Company's performance during the respective periods in which each of the transferor Member and Permitted Transferee was recognized as the owner of the Membership Interests during such Fiscal Year, and without regard to the date, amount or actual recipient of any Distributions which may have been made in respect of such Membership Interests.

(d) In the event that any Member desires to Transfer any of his Membership Interests to a Permitted Transferee pursuant to this Section, such Member shall be required to provide written notice thereof to the Managers not less than thirty (30) days prior to the proposed date of the Permitted Transfer.

(e) If the consummation of such Permitted Transfer, either alone or in combination with any other Permitted Transfer(s), would result in the “termination” of the Company under Section 708 of the Code and the Regulations promulgated thereunder, such Permitted Transfer shall not be consummated except at such times and to such extent as would not cause such a “termination”, unless unanimously approved in writing by the Managers. Any attempted Permitted Transfer by any Member in violation of the provisions of this subsection (e) shall be void ab initio, and the Member attempting such a Permitted Transfer shall be fully liable to the Company and the other Members for any and all damages, costs and losses incurred by them as a result thereof.

6.3. RIGHTS OF FIRST REFUSAL UPON THIRD PARTY OFFER.

(a) In the event that a Member desires to Transfer his Membership Interests to any Person other than a Permitted Transferee, such Member (hereinafter called the “Selling Member”) shall first obtain a bona fide written offer which he desires to accept (hereinafter called the “Third Party Offer”) to purchase all (but not less than all) of his Membership Interests (such Membership Interests are hereinafter called the “Offered Membership Interests”) for a fixed cash price, which may be payable over time. The Third Party Offer shall set forth its date, the price and the other terms and conditions upon which the purchase is proposed to be made, as well as the name and address of the Prospective Purchaser. The term “Prospective Purchaser” as used herein shall mean the prospective record owner or owners of the Offered Membership Interests and all other Persons proposed to have a beneficial interest in the Offered Membership Interests.

(b) The Selling Member shall transmit, within seven (7) days after his receipt of the Third Party Offer, a copy thereof to the Managers and to each other Member, which transmittal shall constitute offers by the Selling Member to sell all of the Offered Membership Interests first to the Company (the “Company Offer”) at the price and upon the terms set forth in the Third Party Offer, and then, in the event that the Company does not accept the Company Offer, to the other Members, in proportion to their Membership Interests in the Company or in such other ratio as the Members shall unanimously agree (the “Member Offers”) at the price and upon the terms set forth in the Third Party Offer.

(c) The Company shall have a period of fifteen (15) days after the transmission by the Selling Member of the Company Offer (the “Company Refusal Period”) in which to accept the Company Offer by providing a written notice of such acceptance to the Selling Member.

(d) If the Company accepts the Company Offer within the Company Refusal Period, then the closing of the purchase of the Offered Membership Interests by the Company shall occur within thirty (30) days following the expiration of the Company Refusal Period. All settlements for the purchase and sale of Offered Membership Interests shall, unless otherwise

agreed to by the Company and the Selling Member, be held at the principal offices of the Company during regular business hours. The precise date and hour of settlement shall be fixed by the Company (within the time limits allowed by the provisions of this Agreement) by notice in writing to the Selling Member given at least five (5) days in advance of the settlement date specified.

(e) If the Company does not accept the Company Offer within the Company Refusal Period, then the Company Offer shall terminate, and the Members shall then have a period of fifteen (15) days following the date of the expiration of the Company Refusal Period in which to accept the Member Offers (the "Member Refusal Period") by providing a written notice of such acceptance to the Selling Member.

(f) If all of the Member Offers are accepted within the Member Refusal Period, then the closing of the purchase of the Offered Membership Interests by the Members shall occur within thirty (30) days following the expiration of the Member Refusal Period. All settlements for the purchase and sale of Offered Membership Interests shall, unless otherwise agreed to by the purchasing Members and the Selling Member, be held at the principal offices of the Company during regular business hours. The precise date and hour of settlement shall be fixed by the purchasing Members (within the time limits allowed by the provisions of this Agreement) by notice in writing to the Selling Member given at least five (5) days in advance of the settlement date specified.

(g) If all of the Member Offers are not accepted within the Member Refusal Period, then the Member Offers shall terminate, and the Selling Member shall consummate, in accordance with the terms and conditions of the Third Party Offer, the Transfer to the Prospective Purchaser. Upon the consummation thereof and execution by such Prospective Purchaser of a counterpart to this Agreement as a Member, such Prospective Purchaser shall have all of the rights of a Member of the Company pursuant to this Agreement, the Act and any other applicable laws. If, for whatever reason, the Selling Member fails to consummate the sale to the Prospective Purchaser, then the Selling Member shall not be entitled to Transfer the Offered Membership Interests unless he again complies with the procedures of this Section 6.3.

(h) At any settlement, the Offered Membership Interests being sold shall be delivered by the Selling Member to the purchasers thereof duly endorsed for Transfer and free and clear of all liens, encumbrances or other restrictions whatsoever except as provided herein. In connection with, and as a condition of, permitting any Transfer of Offered Membership Interests pursuant to this Section 6.3, the Company may require the Selling Member to pay to it a sufficient sum to enable it to pay, or to reimburse it for any payment made in respect of, any stamp tax or other governmental charge in connection with such Transfer.

(i) If the consummation of any Transfer pursuant to this Section, either alone or in combination with any other Transfer(s), would result in the "termination" of the Company under Section 708 of the Code and the Regulations promulgated thereunder, such Transfer shall not be consummated except at such times and to such extent as would not cause such a "termination", unless unanimously approved in writing by the Managers. Any attempted Transfer by any Member in violation of the provisions of this subsection (i) shall be void ab initio, and the

Member attempting such a Transfer shall be fully liable to the Company and the other Members for any and all damages, costs and losses incurred by them as a result thereof.

6.4. RIGHTS OF FIRST REFUSAL UPON DEFAULTING EVENT.

(a) Notwithstanding the occurrence of any Defaulting Event, all of the Membership Interests of the Member (the “Defaulting Member”) which are subject to such Defaulting Event (the “Defaulting Membership Interests”) shall remain subject to all of the terms and conditions of this Agreement. In the event that any Defaulting Membership Interests shall for any reason be assigned or otherwise transferred to any Person by the Defaulting Member (an “Involuntary Transferee”), then unless and until such time as the Managers consent to the admission of the Involuntary Transferee as a Member:

(i) the Involuntary Transferee shall not be eligible to be a Manager or be entitled to participate in the management and affairs of the Company or to become or to exercise any rights or powers of a Member; and

(ii) the only effect of such Transfer shall be to entitle the Involuntary Transferee to receive, to the extent of the Transfer, the Distributions and allocations of Net Profits and Net Losses to which the Defaulting Member would have been entitled with respect to such Defaulting Membership Interests.

(b) Notwithstanding the provisions of Section 6.4(a) above with respect to the rights and limitations of any Involuntary Transferee, upon the occurrence of any Defaulting Event, the Defaulting Member or Involuntary Transferee, as the case may be, shall be required to offer to sell all of the Defaulting Membership Interests in the same manner as any proposed voluntary Transfer by such Defaulting Member governed by Section 6.3 above, except that: (i) the periods within which such rights must be exercised shall run from the date actual notice of the Defaulting Event is received by the other Member; (ii) in the event there is an Involuntary Transferee, then such first refusal rights shall be exercised by providing the written notice of acceptance to the Involuntary Transferee rather than to the Defaulting Member; and (iii) the purchase price of the Defaulting Membership Interests shall be an amount equal in cash to the fair value of the Defaulting Membership Interests, as reasonably determined by the Managers, which determination shall be final and binding on all parties.

(c) Closing. The closing date of any purchase under this Section 6.4 shall not be later than sixty (60) days after the expiration of the time periods described in Section 6.4(b) above or such other date upon which the purchasers of the Defaulting Membership Interests and the Defaulting Member or Involuntary Transferee, as applicable, agree. At such closing, the Defaulting Member or Involuntary Transferee, as applicable, shall deliver the Defaulting Membership Interests duly endorsed for Transfer and accompanied by all requisite transfer taxes. Such Defaulting Membership Interests shall be free and clear of any liens, claims, options, charges, encumbrances or rights of others arising through the action or inaction of the Defaulting Member and, if applicable, the Involuntary Transferee, and such Defaulting Member or Involuntary Transferee, as applicable, shall so represent and warrant and shall further represent and warrant that he is the sole beneficial owner of such Defaulting Membership Interests. At

such closing, all parties to the transaction shall execute such additional documents as may be necessary or desirable in the opinion of counsel for the Company and the purchasers to effect the Transfer of such Defaulting Membership Interests in accordance with the terms of this Agreement.

(d) **Unenforceability.** In the event that the provisions of this Section 6.4 shall be held to be unenforceable with respect to any particular Defaulting Event, the Defaulting Membership Interests retained by the Defaulting Member or Involuntary Transferee, as applicable, shall be subject to all of the restrictions set forth in this Agreement; in particular, the Company and the remaining Members shall have rights of first refusal with respect to such Defaulting Membership Interests if the Defaulting Member or Involuntary Transferee, as applicable, subsequently obtains a Third Party Offer for and desires to transfer such Defaulting Membership Interests pursuant thereto, in which event the Defaulting Member or Involuntary Transferee, as applicable, shall be deemed to be the Selling Member under Section 6.3 above and shall be bound by all of the other provisions of said Section 6.3.

6.5. PAYMENT OF PURCHASE PRICE. In the event that a Member elects to exercise the rights provided in Section 6.3 or Section 6.4 above to purchase another Member's Membership Interest, such Member may elect to pay for the Offered Membership Interests being purchased pursuant to either (i) the payment terms of the Third Party Offer or (ii) upon such mutually acceptable terms as may be established by the selling Member and the purchasing Member.

6.6. LIMITATION OF LIABILITY. No Member shall be personally liable for any indebtedness, liability or obligation of the Company, except as otherwise expressly required by this Agreement or any other applicable law.

ARTICLE 7 CAPITAL CONTRIBUTIONS

7.1. INITIAL CONTRIBUTIONS. Each Member shall make or has made an initial Capital Contribution to the Company as set forth opposite such Member's name on Schedule A of this Agreement. In consideration of such Capital Contributions, each Member shall receive the Membership Interests as set forth in Schedule A. The Members agree that any property or other consideration described in Schedule A which is other than cash, has the fair market value (net of liabilities assumed or taken subject to by the Company to which such property is subject) listed opposite such property or consideration and that each Member's Capital Account shall be credited with an initial Capital Contribution equal to the value listed opposite his name in Schedule A. Each Member warrants good and marketable title to the property he is contributing to the Company, and further represents and warrants that such property is free of all liens and encumbrances at the time of delivery to the Company, except as fully disclosed and set forth in Schedule A prior to the making of such Capital Contribution and accepted by the Managers subject to such disclosures.

7.2. ADDITIONAL CONTRIBUTIONS. The Members shall not be required to make any additional Capital Contribution to the Company.

7.3. CAPITAL ACCOUNTS. A Capital Account shall be maintained for each Member in accordance with the terms and conditions of this Agreement.

7.4. DEFICIT CAPITAL ACCOUNT. Except as otherwise expressly required by the Act, this Agreement or other applicable laws, no Member shall have any liability to restore all or any portion of a deficit balance in his Capital Account. Upon the liquidation of the Company within the meaning of Section 704 of the Code, if any Member has a deficit Capital Account (after giving effect to all Capital Contributions, Distributions, allocations and other adjustments for all fiscal years, including the fiscal year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contributions, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

7.5. INTEREST ON CAPITAL CONTRIBUTIONS. No Member shall be entitled to earn any interest on any Capital Contributions, and may only receive a return of its Capital Contributions where all indebtedness, liabilities and obligations of the Company have been paid or there remains property of the Company which the Managers have determined is sufficient to pay them. Notwithstanding the foregoing, Capital shall not be returned to any Member unless all other Members receive a proportionate return of their Capital at the same time, subject to otherwise applicable limitations set forth in this Agreement.

7.6. WITHDRAWAL OF CAPITAL. No Member shall be entitled to withdraw any portion of his Capital Contributions without the prior written consent of the Managers. Any attempted withdrawals of capital in violation of the provisions of this section shall be void ab initio, and the Member attempting such a withdrawal of capital shall be fully liable to the Company and the Members for any and all damages, costs and losses incurred by them as a result thereof.

7.7. MODIFICATIONS. The manner in which Capital Accounts are to be maintained pursuant to this Article is intended to comply with the requirements of Section 704(b) of the Code and the Regulations promulgated thereunder. If, in the opinion of the Managers, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified in order to comply with Section 704(b) of the Code and the Regulations promulgated thereunder, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic arrangement or agreement between or among the Members.

ARTICLE 8 ALLOCATIONS AND DISTRIBUTIONS

8.1. ALLOCATIONS.

(a) Allocations of Profits and Losses. Subject to the limitations as provided in this Article, in any Fiscal Year in which there is a Profit or Loss, such Profit or Loss, as the case may be, shall be allocated to the Members in accordance with their respective Membership Interests.

(b) Property Contributions. In accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company by any Member shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value. Any elections or decisions relating to such allocations shall be made by the Managers, in any manner that reasonably reflects the purpose and intention of this Agreement.

(c) Special Allocations. All capitalized terms used in this Section not otherwise defined in this Agreement shall have the meaning set forth in the Regulations promulgated pursuant to Section 704 of the Code. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 8.1, if there is a net decrease in Partnership Minimum Gain during any Adjustment Period, each Member shall be specially allocated items of gross income and gain for such period (and, if necessary, subsequent periods) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 8.1(c)(i) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 8.1, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any period, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Adjustment Period (and, if necessary, subsequent Adjustment Periods) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto.

The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(4) and 1.704-2(j)(2) of the Regulations. This Section 8.1(c)(ii) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(l)(4) of the Regulations and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 8.1(c)(iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.1(c)(iii) have been tentatively made as if this Section 8.1(c)(iii) were not in the Agreement.

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any period shall be specially allocated among the Members in proportion to their Membership Interests.

(v) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's Membership Interests, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in proportion to their Membership Interests in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(vii) Compensation Income. If any Member is determined to recognize compensation income upon his receipt of a Membership Interest, such Member shall be allocated all corresponding items of Company deduction.

8.2. DISTRIBUTIONS; OFFSET. The Company shall make Distributions to the Members, from time to time, as provided in this Section 8.2.

(a) Unless prohibited by the terms of this Agreement or by operation of law, the Company shall make a Distribution, at least annually, to each Member, in proportion to their respective Membership Interests, in an amount which, at a minimum, is sufficient to permit each Member to pay any applicable income tax liabilities they may owe due to their income from the

Company. Notwithstanding the foregoing, the Company shall be required to offset all amounts owing to the Company by any Member against any Distribution to be made to such Member.

(b) Upon the approval of the Managers, the Company may make Distributions in such amounts as shall be determined by the Managers, which Distributions shall be made to all Members in accordance with the positive balance of each Member's Capital Account in proportion to the total positive Capital Account balances of all Members.

8.3. LIMITATION UPON DISTRIBUTIONS. Notwithstanding the foregoing, no Distribution shall be declared and paid (a) if such Distribution were to violate any applicable law, (b) unless after such Distribution were to be made, the fair market value of the assets of the Company would be in excess of all liabilities, and (c) unless such Distribution is also declared and paid simultaneously to all other Members in proportion to their respective Membership Interests.

ARTICLE 9 VALUATION OF COMPANY ASSETS

9.1. VALUATIONS. The assets of the Company shall be valued and appraised by the Managers, or caused to be valued and appraised by the Managers (each, a "Valuation", as of the following dates (each, a "Valuation Date")):

(a) Mandatory. Valuations shall be required to be made as of (i) the date of dissolution of the Company; (ii) the date of any disposition of Non-Liquid Assets, and (iii) on such other dates as required by this Agreement.

(b) Discretionary. The Managers may make or cause to be made additional Valuations as of (i) the date any Distribution is made, (ii) the date any withdrawal of capital is made, or (iii) the date any additional Capital Contribution is made. In the event the Managers elect not to make or cause to be made a Valuation on any of the foregoing dates, the most recent Valuation shall be applicable on such dates.

9.2. METHODS OF VALUATION. Each Valuation shall be performed in accordance with the following methods:

(a) Liquid Assets. Liquid assets shall be valued at their fair market value.

(b) Securities Maintained in Managed Accounts. Securities which are maintained in managed accounts shall be valued in accordance with the American Institute of Certified Public Accountants as recited in its Audit Guide of Investment Companies.

(c) Other Assets. Each asset of the Company which is non-liquid or non-marketable in nature (each, a "Non-Liquid Asset") which the Managers determine is not practicably capable of being valued pursuant to the foregoing subsections (a) and (b), shall: (i) not be subject to any of the Valuations required by this Article until the actual date of the disposition of such Non-

Liquid Asset by the Company (the “Non-Liquid Asset Disposition Date”); or (ii) shall be valued by the Managers as they may reasonably determine in their discretion from time to time.

9.3. VALUATION REPORTS. Upon any Valuation, the Managers shall prepare and deliver, or cause to be prepared and delivered, to each of the Members a report (each, a “Valuation Report”) setting forth:

(a) the net worth of the Company showing the value of each asset on each Valuation Date as pursuant to Section 9.2 above; and

(b) the changes to and resulting balances in the Capital Accounts of each of the Members, including opening capital, Capital Contributions made, capital withdrawn, realized gains and losses, unrealized gains and losses and closing capital as of the Valuation Date.

A copy of each Valuation Report shall be forwarded to each Member as soon as practicable, but in no event later than forty-five days following each Valuation Date, together with copies of any communications received by the Company regarding the investments.

ARTICLE 10 TAXES

10.1. TAX RETURNS. Subject to the receipt of necessary financial information from any Person the Company has invested in, the Managers shall cause to be timely prepared and filed, and shall have the authority to make all tax elections in connection therewith, all necessary federal and state income tax returns for the Company. Each Member shall cooperate in furnishing all information relating to the Company reasonably necessary with respect thereto.

10.2. TAX MATTERS PARTNER. Mark Hamister shall be the “tax matters partner” of the Company pursuant to Section 6231(a)(7) of the Code. The “tax matters partner” shall take any action as may be necessary to cause each Member to become a “notice partner” within the meaning of Section 6223 of the Code.

10.3. PARTNERSHIP TAXATION. It is intended by the Members that the Company be taxed as a partnership and neither the Company nor any Member or Manager shall make or cause to be made any election for the Company to be excluded from the application of Subchapter K of Chapter I of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

ARTICLE 11 WITHDRAWAL; DISSOLUTION

11.1. WITHDRAWAL. No Member may voluntarily withdraw from the Company. In the event this provision is held invalid or unenforceable by a court of competent jurisdiction, the Members agree that the Distribution and/or return of Capital Contribution that the

withdrawing Member is deemed to be entitled to shall be payable by the Company by delivery to the withdrawing Member or his personal representative of a promissory note providing for payments of principal and interest, at the HSBC Bank's prime rate in effect from time to time, payable over a five (5) year term, with no penalty for prepayment. Subject to the provisions of applicable law, any Distribution and/or return of Capital Contribution that the withdrawing Member is deemed to be entitled to shall be subordinate to the Company's obligations to its institutional lenders. Notwithstanding the foregoing provisions of this Section or anything else contained in this Agreement, no Member may withdraw as a Member in any manner which would result in the "termination" of the Company under Section 708 of the Code and the Regulations promulgated thereunder, except in such proportions and at such times as would not result in such a "termination", unless the Managers approve such withdrawal.

11.2. DISSOLUTION. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The vote or written consent of all of the Members.
- (b) Any event which makes it unlawful or impossible to carry on the Company's business;
- (c) The entry of a decree of judicial dissolution under the Act;
- (d) A material breach of this Agreement by any Member, unless the non-breaching Members elect not to dissolve the Company;
- (e) The Managers determine that the Purpose of the Company, as set forth in Section 2.4 hereof, has been accomplished; or
- (f) The entry of an arbitration determination that the Company shall be dissolved.

Notwithstanding any provision of the Act to the contrary, the Company shall continue and not dissolve as a result of the bankruptcy, dissolution, death, expulsion, incapacity or withdrawal of either Member or the occurrence of any other event that terminates the continued membership of either Member.

11.3. WINDING UP. Upon the dissolution of the Company, the Managers shall, in the name and on behalf of the Company, take all actions reasonably necessary to wind up the Company pursuant to the Act.

11.4. ARTICLES OF DISSOLUTION. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time that there are no Members, articles of dissolution shall be filed with the New York State Secretary of State in accordance with the Act.

11.5. DISTRIBUTIONS UPON DISSOLUTION. Upon the winding up of the Company after the payment in full of all obligations by the Members to the Company, the assets shall be distributed as follows:

(a) First, to creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, including liabilities pursuant to any loans made to the Company by any Manager or any Member, whether by payment or by establishment of adequate reserves, other than liabilities for Distributions to Members under Section 507 or Section 509 of the Act;

(b) Second, to Members and former Members in satisfaction of liabilities for Distributions which may be due under Section 507 and Section 509 of the Act; and

(c) Third, to Members in accordance with the provisions of Section 8.1(a) relating to allocations of Profits and Losses.

11.6. NONRECOURSE TO OTHER MEMBERS. Except as otherwise expressly required by the Act or applicable law, if, upon the dissolution of the Company, the assets of the Company remaining after the payment or discharge of the Company's debts and liabilities are insufficient to return any Capital Contributions to any Member, in whole or in part, such Member shall have no recourse against any other Member or any Manager or the Company therefor.

11.7. TERMINATION. Upon completion of the dissolution and winding up, liquidation, and distribution of the Company's assets, the Company shall be deemed terminated.

ARTICLE 12 MISCELLANEOUS

12.1. AFTER ACQUIRED MEMBERSHIP INTERESTS. Whenever any Member acquires any Membership Interests other than Membership Interests owned at the time of execution of this Agreement, such Membership Interests acquired after execution of this Agreement shall be subject to all of the terms and conditions of this Agreement

12.2. ADDITIONAL ACTIONS AND DOCUMENTS. Each of the parties hereto hereby agrees to take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further statements, assignments, agreements, proxies and other instruments, and to use reasonable best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

12.3. NOTICES. All notices, requests, demands or other communications which may be or are required to be given, served or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand-delivered or mailed by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile or e-mail

transmission to the address of the appropriate Member as appears on the Company's books and records, as amended from time to time, and any notices to be given to the Company shall be sent in the same way to the Company's principal office. Each Member may designate by notice in writing (with a copy to be sent to the Managers) a new address to which any notice, request, demand or other communication may thereafter be so given. Each notice, request, demand or other communication which shall be transmitted in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

12.4. SEVERABILITY. If any part of any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provisions of this Agreement.

12.5. WAIVERS. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default, or as a waiver of any such rights, privileges or provisions thereunder.

12.6. ASSIGNMENT. Rights or obligations under this Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto except to the extent otherwise expressly permitted or required by this Agreement.

12.7. LIMITATION ON BENEFITS. It is the express intention of the parties hereto that no Person other than the parties hereto is or shall be entitled to rely on or bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors, personal representatives and permitted assigns.

12.8. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement among the parties hereto with respect to the subject matter hereof and supersede each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by any party with respect thereto, whether or not relied or acted upon.

12.9. HEADINGS. Article, Section and subsection headings contained in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

12.10. BINDING EFFECT. Subject to any provision hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, permitted transferees, heirs, devisees, legatees, personal representatives and permitted assigns.

12.11. GOVERNING LAW. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

12.12. COUNTERPARTS. This Agreement may be executed in two or more counterparts, none of which need contain the signatures of all parties and each of which shall be deemed an original.

12.13. GENDER. For purposes of convenience, the singular masculine pronoun ("he") is used in this Agreement to refer to any Person, including references to individual Members, regardless of the gender of such Person.

12.14. CONFLICTS OF INTEREST.

(a) A Member or a Manager shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to the Company, it being expressly understood that a Member or Manager may enter into transactions that are similar to the transactions into which the Company may enter.

(b) A Member or Manager does not violate any duty or obligation to the Company merely because the Member's or Manager's conduct furthers the Member's or Manager's own interests. No transaction with the Company shall be voidable solely because a Member or Manager has a direct or indirect interest in the transaction if either the transaction is fair to the Company, therein, or the disinterested Managers or Members, knowing the material facts of the transaction and the Manager's or Member's interest therein, authorize, approve or ratify the transaction.

12.15. ACKNOWLEDGEMENT AND WAIVER OF CONFLICTS OF INTEREST. By executing this Agreement, each of the parties hereto: (a) confirm and acknowledge that Lippes Mathias Wexler Friedman LLP ("LMWF") has represented (i) the Company, (ii) the Initial Manager, and (iii) each of the Members in connection with the negotiation, execution and delivery of this Agreement; (b) acknowledge and agree that LMWF has advised each of them that the Company's, the Manager's and each of the Member's interests may be inconsistent with each other and that each party should have independent legal counsel review this Agreement; and (c) hereby waives, releases and forever discharges LMWF, or any partner or associate of that firm, from any claim, demand or suit of any kind that any party has or may have for any conflict of interest or other matter arising out of this representation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first above written.

MANAGER:



Mark Hamister

MEMBER:



Mark Hamister

SCHEDULE A

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>
Mark Hamister	100%	\$ [100.00]

SCHEDULE B

MANAGERS

- 1. Mark Hamister**

SCHEDULE C

OFFICERS

<u>Title</u>	<u>Name</u>
CEO	Mark Hamister
President	John Havrilla
Executive Vice President and CFO	W. Earl McCartney
Vice President	Scott Piper

**FIRST AMENDMENT TO THE OPERATING AGREEMENT
OF
MENSCH CAPITAL PARTNERS, LLC**

This First Amendment to the Mensch Capital Partners, LLC (the “Company”) Operating Agreement (the “Operating Agreement”) is made effective as of the 22nd day of May, 2019 (the “Effective Date”), pursuant to Section 6.15 of the Operating Agreement. Any capitalized terms not otherwise defined shall have the meaning ascribed to such term in the Operating Agreement. This First Amendment to the Operating Agreement amends the Operating Agreement as follows:

Section 1.13 is removed in its entirety and is replaced by the following:

1.13 “Manager” means Hamister Development Company, LLC and any additional or successor Person elected as manager in accordance with this Agreement

Section 5.1 is removed in its entirety and is replaced by the following:

5.1 Management of Company. The Company shall be managed by a single Manager who need not be a Member of the Company. The initial Manager shall be Hamister Development Company, LLC, who shall serve in that capacity until he shall either resign or be discharged by the vote or consent of a Majority in Interest of the Members. If the Initial Manager or any subsequent Manager shall resign or be discharged, his successor shall be appointed by the vote or consent of a Majority in Interest of the Members.

Section 10.3 is removed in its entirety and is replaced by the following:

10.3 Tax Matters.

a) Appointment. Daniel Hamister is hereby appointed as the “tax matters partner” (as defined in Code Section 6231 prior to its amendment by the Bipartisan Budget Act of 2015 (“BBA”)) (the “Tax Matters Member”) and the “partnership representative” (the “Partnership Representative”) as provided in Code Section 6223(a) (as amended by the BBA). The Tax Matters Member or Partnership Representative may resign at any time. The Tax Matters Member or Partnership Representative may be removed at any time by the Manager. Upon resignation, death, or removal of the Tax Matters Member or Partnership Representative, the Manager will select the successor Tax Matters Member or Partnership Representative.

b) Tax Examinations and Audits. The Tax Matters Member and Partnership Representative are each authorized and required to represent the Company (at the Company’s expense) in connection with all examinations of the Company’s affairs by any taxing authority, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and

costs associated therewith. Each Member agrees that such Member will not independently act with respect to tax audits or tax litigation of the Company, unless previously authorized to do so in writing by the Tax Matters Member or Partnership Representative, which authorization may be withheld by the Tax Matters Member or Partnership Representative in its sole discretion. The Tax Matters Member or Partnership Representative has sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority.

c) Income Tax Elections. Except as otherwise provided herein, each of the Tax Matters Member and Partnership Representative has the sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company, including (1) the election out of the partnership audit procedures enacted under Section 1101 of the BBA (the “BBA Procedures”) for tax years beginning on or after January 1, 2018 pursuant to Code Section 6221(b) (as amended by the BBA); and (2) for any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, the election of the alternative procedure under Code Section 6226, as amended by Section 1101 of the BBA.

d) Tax Returns. Each Member agrees that such Member will not treat any Company item inconsistently on such Member’s federal, state, foreign or other income tax return with the treatment of the item on the Company’s return.

e) Survival of Obligations. The obligations of each Member or former Member under this Section survive the transfer or redemption by such Member of its membership interests and the termination of this Operating Agreement or dissolution of the Company. Each Member acknowledges and agrees that, notwithstanding the transfer or redemption of all or a portion of its membership interest in the Company, it may remain liable for tax liabilities with respect to its allocable share of income and gain of the Company for the Company’s taxable years (or portions thereof) prior to such transfer or redemption.

Schedule A is removed in its entirety and is replaced by the Schedule A, attached hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 22nd day of May, 2019.

MANGING MEMBER:

HAMISTER DEVELOPMENT COMPANY, LLC

By _____

Name: Mark E. Hamister

Title: Manager

MEMBERS:

ESSJAY MENSCH PARTNERS, LLC

By  _____

Name: Paul J. Kolkmeier

Title: Manager

772 NORTH FOREST ACQUISITION, LLC

By  _____

Name: Paul F. Ciminelli

Title: Managing Member

HAMISTER HOSPITALITY HOPEWELL, LLC

By _____

Name: Daniel M. Hamister

Title: Manager

MEH HOLDING LLC COMPANY, LLC

By _____

Name: Mark E. Hamister

Title: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 22nd day of May, 2019.

MANGING MEMBER:

HAMISTER DEVELOPMENT COMPANY, LLC

By 
Name: Mark E. Hamister
Title: Manager

**SIGN
HERE**

MEMBERS:

ESSJAY MENSCH PARTNERS, LLC

By _____
Name: Paul J. Kolkmeyer
Title: Manager

772 NORTH FOREST ACQUISITION, LLC

By _____
Name: Paul F. Ciminelli
Title: Managing Member

HAMISTER HOSPITALITY HOPEWELL, LLC

By 
Name: Daniel M. Hamister
Title: Manager

MEH HOLDING LLC COMPANY, LLC

By 
Name: Mark E. Hamister
Title: Manager

**SIGN
HERE**

SCHEDULE A

PERCENTAGE INTERESTS

<u>Member</u>	<u>Percentage Interest</u>
Essjay Mensch Partners, LLC	26.5%
772 North Forest Acquisition, LLC	33.0%
Hamister Hospitality Hopewell, LLC	24.0%
MEH Holding LLC Company, LLC	16.5%
TOTAL	100%