

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

*Plaintiff,*

v.

**TIMOTHY BARTON, et al.**

*Defendants.*

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**C.A. No. 3:22-cv-2118-X**

**APPENDIX IN SUPPORT OF RECEIVER’S SUPPLEMENTAL BRIEF IN SUPPORT  
OF MOTION TO SUPPLEMENT ORDER APPOINTING RECEIVER**

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce

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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary, because this document is being filed with the Court’s electronic-filing system.

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGES</u></b>
A	Declaration of Cortney C. Thomas	APP000001-0018
A-1	SEC Subpoena	APP000019-0046
A-2	Email dated May 23, 2016 from Tim Barton to Sakya Bedoya making Max Barton owner in TRTX Properties	APP000047-0048
A-3	Excerpts of testimony of Saskya Bedoya, taken March 10, 2022	APP000049-0057
A-4	Bedoya emails regarding transfers	APP000058-0062
A-5	Excerpts of testimony of Tim Barton, taken May 24, 2021	APP000063-0067
A-6	Resolutions of TRTX Properties, LLC dated December 17, 2020	APP000068-0070
A-7	Certificate of Amendment for TRTX Properties, LLC dated July 20, 2020	APP000071-0074
A-8	Statement of Change of Registered Office/Agent dated May 2, 2022	APP000075-0077
A-9	Warranty Deed with Vendor's Lien of TRTX Properties, LLC dated May 29, 2020	APP000078-0082
A-10	<p><b><u>GILLESPIE VILLAS</u></b> Amended and Restated Company Agreement of Gillespie Villas LLC dated April 28, 2022</p> <ul style="list-style-type: none"> <li>• Certificate of Formation Limited Liability Company for Gillespie Villas, LLC, filed on April 18, 2022</li> <li>• Deed of Trust and Security Agreement dated May 11, 2022, between Broadview Holdings and Gillespie Villas, LLC</li> <li>• Broadview Holdings checks referencing "Gillespie"</li> <li>• Guaranty dated August 23, 2022 between Gillespie Villas, LLC ("Borrower"), Xiao-En Fang ("Lender") and Enoch Investments, LLC ("Guarantor") signed by Maximilien Barton as President</li> <li>• Subordination Agreement dated August 23, 2022, between Broadview Holdings, LLC and Gillespie Villas, LLC</li> </ul>	<p>APP000083-0117</p> <p>APP000118-0120</p> <p>APP000121-0140</p> <p>APP000141-0146</p> <p>APP000147-0151</p> <p>APP000152-0156</p>
A-11	<p><b><u>ONE SF RESIDENTIAL</u></b></p> <ul style="list-style-type: none"> <li>• Corporate Entity Name List</li> <li>• Certificate of Formation – ONE SF Residential</li> </ul>	<p>APP000157-0159</p> <p>APP000161-0162</p>

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	<ul style="list-style-type: none"> <li>• Texas Franchise Tax PIR – ONE SF Residential</li> </ul>	APP000163
A-12	<p><b><u>VENUS59 LLC</u></b></p> <ul style="list-style-type: none"> <li>• VENUS59 EIN</li> <li>• Certificate of Formation – VENUS59, LLC</li> <li>• Company Agreement – Venus59, LLC</li> <li>• Texas Franchise Tax PIR – VENUS59, LLC</li> <li>• Broadview Holdings check to VENUS59, LLC</li> <li>• Funding Agreement – Venus59, One SF Residential</li> </ul>	APP000164-0171 APP000171A-B APP000172-0204 APP000205-0207 APP000208 APP000209-0261
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A-14	<p><b><u>MXBA LLC</u></b></p> <ul style="list-style-type: none"> <li>• EIN – MXBA – Maximilien Barton sole member</li> <li>• Broadview Holdings checks to MXBA LLC</li> </ul>	APP000313 APP000316
A-15	<p><b><u>TITAN INVESTMENTS</u></b></p> <ul style="list-style-type: none"> <li>• Statement of Organizer – Titan Investments</li> <li>• State of Delaware Certificate of Formation – Titan Investments, LLC</li> <li>• Limited Liability Company Agreement – Titan Investments</li> <li>• Application for Registration of Foreign LLC – Titan Investments</li> <li>• Contract of Sale between First Development Co. of Ohio and Titan Investments, LLC</li> <li>• Letter of Intent – Titan Investments and Datavault Joint Venture</li> <li>• Letter of Intent – Titan Investments and First Development Co. of Ohio</li> <li>• Resignation of Tim Barton from Titan Investments</li> <li>• Contract of Sale between Kingdom Road Equities and Titan Investments</li> </ul>	APP000317-0318 APP000319  APP000320-0323 APP000324-0325 APP000326-0347 APP000348-0351 APP000352-0356 APP000357 APP000358-0373 APP000374-0376

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A-17	<p><b><u>TC HALL, LLC</u></b></p> <ul style="list-style-type: none"> <li>• Limited Liability Company of TC Hall, LLC</li> <li>• Texas Secretary of State – TC Hall, LLC</li> <li>• 07.19.22 Email from Tim Barton to Area Pamenari</li> <li>• 06.30.22 Letter from Louisiana National Bank to Enoch Investments</li> <li>• Broadview Holdings checks re: Hall Street</li> <li>• Prosperity Bank – Receipts and Disbursements Ledger</li> <li>• Commonwealth Title – Single Ledger Balance</li> <li>• Vista Bank statements</li> <li>• Commonwealth Title of Dallas Substitution Form 1099-S</li> <li>• 08.24.22 Email from Barton regarding wiring instructions</li> <li>• Broadview Holdings checks referencing TC Hall</li> </ul>	APP000414 APP000420 APP000421 APP000422-0423 APP000424-0426 APP000427-0428 APP000429-0432 APP000433-0442 APP000443 APP000444 APP000444A-B
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A-19	<p><b><u>LC ALEDO TX, LLC</u></b></p> <ul style="list-style-type: none"> <li>• Statement of Change of Registered Agent – LC Aledo TX, LLC</li> <li>• Texas Secretary of State Registered Agent – LC Aledo TX, LLC</li> <li>• Excerpts from Supplement to Amended Motion to Compel, <i>Somerset-Lost Creek Golf, Ltd. v. LC Aledo TX, LLC</i>, Cause No. 096-319595-20</li> <li>• Affidavit of Timothy Barton - <i>Somerset-Lost Creek Golf, Ltd. v. LC Aledo TX, LLC</i>, Cause No. 096-319595-20</li> </ul>	APP000449-0451 APP000452-0454 APP000455-0458 APP000459-466
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A-23	Communications between Receiver counsel and Barton counsel	APP000481-487

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
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**SECURITIES AND EXCHANGE  
COMMISSION,**

*Plaintiff,*

v.

**TIMOTHY BARTON, et al.**

*Defendants.*

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**No. 3:22-cv-2118-X**

**DECLARATION OF CORTNEY C. THOMAS  
IN SUPPORT OF MOTION TO SUPPLEMENT RECEIVERSHIP ORDER**

1. My name is Cortney C. Thomas. I have personal knowledge of the matters set forth in this Declaration, I am of sound mind, and I am otherwise competent to testify to these matters.

2. I am an attorney licensed to practice law in the State of Texas. On October 18, 2022, I was appointed Receiver in the above-styled case and ordered to take exclusive possession and control over all assets belonging to or under the control of the Receivership Entities. *See* Order Appointing Receiver (the “Receivership Order”) ¶1.

3. This Declaration supplements the information provided in support of the Motion (the “Original Declaration”), and is provided in support of the Motion and in response to the Objection filed by Max Barton regarding Gillespie Villas LLC, Venus 59 LLC, TRTX Properties LLC, MXBA LLC, and Titan Investments LLC (collectively the “Disputed Entities”), as well as my request to identify TC Hall, LLC, Titan 2022 Investment, LLC,<sup>1</sup> Marine Creek SP, LLC, and LC

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<sup>1</sup> As demonstrated below, Titan 2022 Investment, LLC is the same entity as Titan Investments, LLC. The former is the name under which the entity is registered to conduct business in Texas, while the latter is the entity’s name based on its Delaware incorporation.

Aledo TX, LLC (collectively the “Additional Entities”) as Barton-controlled entities within the scope of the Receivership Order.

4. As explained in the Original Declaration, on October 18, 2022, and the days following, my team and I travelled to the Turtle Creek Property utilized by JMJ Development, LLC and most Receivership Entities as their office location. While there, my counsel or I interviewed two attorneys who provided legal services to Barton and the Receivership Entities. We also spoke to both attorneys subsequently in person, over the phone, and communicated by emails. In those conversations, one or both of the attorneys informed me or my counsel (1) that certain entities, including but not limited to TC Hall, LLC, had been created by Barton with Max placed in charge to create distance between the deals and Barton as a result of the SEC’s investigation and (2) that Receivership Entities had contributed capital and, indirectly, collateral towards the purchase of assets by TC Hall, LLC.

5. Notably, a subpoena the SEC served on Barton in December 2020 reveals that Barton was aware of the Commission’s investigation at least by that date. A true and correct copy of a Subpoena the Commission served on Barton on December 11, 2020 is attached as Exhibit A-1. As discussed below, additional documents support the information I obtained in these interviews, that not later than December 2020, Barton began structuring deals and creating or using certain entities to obscure his involvement by identifying Max as the owner or manager of the entities.

6. Similarly, but perhaps even more importantly, other documents demonstrate that Barton shifted ownership of entities to Max his son, at least on paper, to obtain more favorable financing. For instance, in an email to his administrative assistant following instructions from another person regarding how to obtain favorable refinancing, Barton instructed her to “Do as Robert says and make Max owner in TRTX and we will make him sign and then I will be added



as guarantor.” A true and correct copy of this email, which was discovered in the Turtle Creek Property, is attached as Exhibit A-2. Transferring ownership for the reasons and in the manner demanded by Barton demonstrates he treated the Disputed Entities, like all Receivership Entities, as nothing more than his alter egos and that he must have known that in transferring ownership he was not giving up control.

7. Through her attorney, Saskya Bedoya informed my counsel that she served as Barton’s employee (through various entities) and followed his instructions in setting up entities, obtaining bank accounts and tax IDs for them. True and correct copies of excerpted pages from Ms. Bedoya’s testimony to the SEC, where she testified about the same practice for various Wall Entities and her role with Barton generally, are also attached as Exhibit A-3. True and correct copies of emails the SEC submitted in support of the Motion to Appoint which demonstrate Barton’s control over Bedoya regarding treatment of funds received from investors, are attached as Exhibit A-4. Similarly, in testimony before the Commission, Barton identified Bedoya as his personal assistant. True and correct copies of relevant pages from Barton’s testimony regarding Bedoya’s role is attached as Exhibit A-5.

8. My team and I continued investigating the Receivership Entities, their assets and operations and determined it was necessary to obtain an order clarifying their inclusion in the Receivership Order. Before filing the Motion, my counsel sent a preliminary list of supplemental entities to all counsel. Barton’s counsel identified several entities that Barton claimed he did not control, or regarding which Barton otherwise objected to inclusion but did not object to the majority of the entities included in the list as subject to his control.

9. Additional email conferences followed during which I or my counsel provided additional evidence and my rationale for including the Disputed Entities. Because agreement was

not reached, and although my investigation was ongoing and suggested additional entities not included in the Motion would need to be identified on a later date, I filed the Motion.

10. One entity that we conferred about, but did not include initially, was TC Hall, LLC. We continued investigating that entity and as described below, have now obtained sufficient information demonstrating Barton's control over it to warrant its inclusion in the Receivership Order as an entity controlled by Barton.

11. In the initial days of the Receivership, my counsel and I also interviewed Max Barton, together with his counsel, primarily to discuss management and operations of a property owned by Goldmark Hospitality, LLC, the "Amerigold Suites." We also discussed TC Hall, LLC, an entity Max claimed he together with an individual who invested in TC Hall, LLC, controlled.

12. During the interview, Max disclosed that although he had been placed in charge of the Amerigold Suites by his father, he had been unable to manage it profitably and had requested his father's intervention and assistance. An additional individual I spoke with in person also stated that Max was not capable of running any of the businesses operated by the Receivership Entities. I find it extremely unlikely that Max controls, alone, the real estate investment deals for any of the Disputed Entities. As described below, documents and Barton's role in each of the Disputed Entities supports my conclusion in this regard.

13. Based on the information described below and attached as exhibits, I have concluded that each of the Disputed Entities and the Additional Entities are controlled by Barton and are properly included within the Receivership Order as Receivership Entities. My investigation has revealed that regardless of who is identified in corporate records as the "manager," or officer of any such entity, Barton controls each, either directly or indirectly. As one example only of Barton's disregard for authority or control as reflected in corporate records relates to TRTX

Properties, LLC, Barton and Max were both initially designated as managers. App. 302-304. As of July 20, 2020, MXBA Trust, however, was designated as the “Manager” for TRTX Properties, App. 71-74. A December 17, 2020 Resolution removed Max as President and appointed Barton in that role, App. 18-70. Copies of documents reflecting Max’s title as President and the Resolution by which he was purportedly removed are attached as Exhibits A-6 and A-7; App. 68-74. As reflected in Exhibit A-8, on May 2, 2022, Barton signed a Statement Change of Registered Officer/Agent for TRTX, thereby reflecting his continuing control, App. 75-77, despite substitution of MXBA Trust as the Manager. Similarly, although Max was purportedly President of TRTX until December 17, 2020, on June 9, 2020, Barton signed a Warranty Deed on behalf of TRTX. A true and correct copy of the Warranty Deed is attached as Exhibit A-9; App. 75-82.

14. As to each of the Disputed Entities listed below, I and my team discovered corporate formation binders and other documents that were housed in the office of Barton’s primary administrator, Saskya Bedoya. There was no distinction between the Disputed Entities and the other Receivership Entities; rather, the binders for each entity were kept in alphabetical order over a series of multiple drawers.

15. The documents in the binders, for instance correspondence with the IRS regarding EIN numbers, or mail found at the Turtle Creek Location demonstrate that most entities, including the Disputed Entities and the Additional Entities, generally use a UPS store address at 13901 Midway Rd., Ste. 102-243, Dallas, TX 75244 (the “Midway Address”). Based on notices received from banks and vendors, I believe that Gillespie Villas and perhaps one or more of the Disputed Entities changed their mailing address after entry of the Receivership Order.

16. After I began collecting mail from the Midway Address, the proprietor of the UPS store informed me that Tim Barton had demanded the proprietor “close” that mailbox when the

proprietor refused to provide all mail delivered to that address directly to Barton rather than the Receiver. Through counsel, I demanded that Barton cease and desist from this activity, which directly violates ¶¶ 30-32A of the Receivership Order. In response, Barton denied having interfered with the mail delivery.

17. More specifically regarding each of the Disputed Entities, I have discovered the following information and documents demonstrating Barton's control over each.

18. **Gillespie Villas, LLC**

- Texas entity formed April 18, 2022; uses 2999 Turtle Creek as its address, the location from which JMJ Development operated. Real estate purchased by Gillespie Villas, LLC is only blocks away from 2999 Turtle Creek.
- MXBA, LLC is identified as only member in Amended Company Agreement, executed April 28, 2022. [Dkt. 53-1, pdf pg. 33]; App. 116.
- The Certificate of Formation filed for the entity, on April 13, 2022, however, reflects MXBA, LLC and One SF Residential, LLC, which is admittedly controlled by Barton. [Dkt. 7-1, pdf pg. 24]<sup>2</sup>.
- Property owned by Gillespie Villas is subject to a lien held by Broadview Holdings, LLC, an entity that Barton admitted he controlled.
- On September 9, 2022, Broadview Holdings paid Stone Street Development LLC \$15,000 for "Gillespie."
- On September 15, 2022, Broadview Holdings paid Texas Brand Bank \$17,100 for "Cashier CK in the name of Gillespie Villas LLC." Checks from the Broadview account at Texas Brand Bank evidence similar and additional payments made by Broadview Holdings on behalf of Gillespie Villas, as if the two entities were one and the same.
- Gillespie borrowed \$550,000 from a third-party lender, secured by real estate purchased by Gillespie with a loan from Broadview Holdings.
- Enoch Investments, LLC, an entity Barton admits controlling, [Dkt. 7-1, pdf pg. 24; Dkt. 42, pdf pg. 39], guaranteed the loan.

True and correct copies of documents evidencing these facts related to Gillespie Villas, LLC are attached as Exhibit A-10; App. 83-156.

19. **Venus59, LLC**

- Texas entity formed June 1, 2020; uses Midway Address.

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<sup>2</sup> For ease of reference, the list of entities over which Barton conceded control which was included in the SEC's Appendix filed in support of its Motion to Appoint is also include as an exhibit here, and is attached as Exhibit A-9.

- ONE SF Residential, LLC, an entity Barton admits he controls. [Dkt. 7-1, pdf pg. 24; Dkt. 42, pdf pg. 39], is the current manager, [Dkt. 53-1, pdf pg. 69]. In an earlier Company Agreement, MJJ Residential, LLC (an entity also controlled by Barton) is identified as a Member.
- The Certificate of Formation filed for the entity, on April 13, 2022, reflects MXBA, LLC and One SF Residential, LLC as the Governing Authority.
- Form SF-4 filed with the IRS on June 11, 2020 lists Tim Barton as the sole member.
- Officers identified in the Company Agreement were Max Barton as President, and Saskya Bedoya as Treasurer/Secretary.
- On September 15, 2022, Broadview Holdings paid \$23,325.62 to Venus 59, LLC in reference to a loan.
- On August 31, 2021, Venus 59 entered into a funding agreement with Daniel Crow, which provided that the funding agreement was “consented to by One SF Residential, LLC . . . (as the manager and a member of the Company) and MXBA, LLC (“MXBA”) (collectively, “Members”) as the members in the Company.”
- Despite not being identified as an officer or manager in the Company Agreement, on October 31, 2022, after the Receivership Order was entered, Barton resigned as an officer or agent. [Dkt. 53-1, pdf pg. 72].
- The property purchased by Venus59, LLC in Johnson County is part of (and essential to) a larger planned development by Barton. Barton controlled the development as a whole and was negotiating a development agreement on behalf of Venus59, LLC (which would then be the template for development agreements for the other properties that comprised the development) at the time of my appointment.
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True and correct copies of documents evidencing these facts related to Venus 59, LLC are attached as Exhibit A-12; App. 164-261.

## 20. **TRTX Properties, LLC**

- Texas entity formed August 20, 2010 [Dkt. 53-1, pdf pg. 115]; uses Midway Address.
- William Vance McMurry, an attorney who represented Barton and most Receivership Entities for many years and who officed at the Turtle Creek Property, was identified as the Managing Member in TRTX’s Certificate of Formation. In 2015, the members were changed to Enoch Investments, LLC and Max Barton. In later filings, TRWF, LLC was identified as a manager. [Dkt. 53-1, pdf pg. 115]] Barton admitted control over TRWF, LLC [Dkt. 7-1, pdf pg. 24].
- A 2016 email from Barton to employee Saskya Bedoya instructed her to “make Max owner in TRTX” to follow instructions of Barton’s attorney to facilitate refinancing debt owed by the entity. *See* Exhibit A-2, described above.
- Pursuant to an amendment, on July 7, 2020, TRWF, LLC was deleted as a manager and replaced with the MXBA Trust. [DKT 53-1, pdf page 116, 212].
- Tim Barton is the Grantor of the MXBA Trust, and his personal assistant and primary administrator, Saskya Bedoya, is the Trustee. [Dkt. 53-1, pdf. pg. 119]. As evidenced through Bedoya’s testimony, her statements through her attorney, and Barton’s own testimony, included in Exhibits A-3, A-4 and A-5 above, Barton controlled Bedoya.

- On October 4, 2022, in *In re FM 544 Park Vista, Ltd.*, Cause No. 17-34255-SGJ-11 and Cause No. 17-34274-SGJ-11, pending in the United States Bankruptcy Court for the Northern District of Texas, TRTX Properties, LLC and JMJ Development, Inc. filed a notice of appeal in which they identified Barton and counsel, McMurry as the “principals” of those entities.
- Timothy Barton signed the Statement of Change of Registered Office/Agent dated May 2, 2022, although he purportedly had no authority over the entity on that date.

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True and correct copies of documents evidencing these facts related to TRTX Properties, LLC are attached as Exhibit 13; App. 262-312.

#### 21. **MXBA, LLC**

- Delaware corporation formed on August 24, 2020, [DKT. 53-1, pdf pg. 160-212]; uses Midway Address
- The Company Agreement identifies MXBA Trust as the only member, on behalf of which Max Barton signed as *President*. Max Barton is not the President of the MXBA Trust, however. He is the beneficiary, and as such lacks authority to sign anything on behalf of the trust. *Compare* Dkt. 53-1, pdf pgs. 169-170 (member signature for MXBA Trust is “Max Barton, President”) and MXBA Trust, identifying Max as beneficiary and Saskya Bedoya as Trustee. [Dkt. 53-1, pdf. pg. 119].
- Tim Barton is the Grantor of the MXBA Trust, and his administrator, Saskya Bedoya, is the Trustee. [Dkt. 53-1, pdf. pg. 119]. As his employee, Barton controlled Bedoya and therefore also controlled the trust.

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True and correct copies of documents evidencing these facts related to MXBA, LLC are attached as Exhibit A-14; App. 313-314.

#### 22. **Titan Investments, LLC**

- Formed in Delaware on August 20, 2022 by Vance McMurry; uses 3600 Gillespie St., owned by Gillespie Villas, as its mailing address.
- In formative documents, Max Barton is identified as Manager and the only officer.
- Filed Application of Registration in Texas on October 5, 2022, using Titan Investments 2022, LLC as its name.
- On January 17, 2022, Barton signed a contract for Titan to purchase real estate, as Titan’s President, although corporate records reflect that Max held that position as of that date.
- Tim Barton again signed a purchase contract on February 10, 2022 as President, although Max is listed as the only officer in the company documents.
- On January 12 and 18, 2022, on behalf of Titan Investments, Barton also signed two Letters of Intent for Titan to purchase property.
- Tim Barton signed resignation from role as signatory/agent *effective* October 6, 2022. [Dkt. 53-1, pdf pg. 177]

- On February 23, 2022, Titan contracted to purchase real estate from Patricia Butler. The earnest money and extension fees were provided by Broadview Holdings, LLC, which is a Receivership Entity that was controlled by Barton.

True and correct copies of documents evidencing these facts related to Titan Investments, LLC are attached as Exhibit A-15, App. 317-383.

#### Continuing Investigation and the Additional Entities

23. My preliminary investigation revealed that Barton used *many* additional entities—on top of those specifically listed in the Receivership Order—to spend, hide, and improperly use investor funds, the proceeds of investor funds, or funds so commingled with investor funds—as to render tracing or segregation nearly impossible, particularly at this early juncture.

24. For example, I discovered several instances in which a Receivership Entity sold property into which the SEC had traced investor funds and identified in Exhibit B to the Hahn Declaration, [Dkt. 7-1, pdf pg. 17] where Barton, through the selling entity or another Barton-controlled entity, for instance Marine Creek SP, LLC, entered into “Participation Agreements” by which he retained entitlement to future profits in the properties he purchased with commingled investor funds, and sold. A true and correct copy of one such Participation Agreement is attached as Exhibit A-16; App. 384-413.

25. Although my team and I have worked tirelessly and diligently to discover the current assets and liabilities of all Receivership Entities and uses of the funds Barton received from the investors, Barton has refused to comply with many of the Receivership Order’s terms intended to provide more specific information that would inform the Court’s decision here. For instance, despite numerous requests and in violation of ¶ 18 B. 3, Barton, his counsel, and an IT vendor have to date failed to provide the Receiver with the access information—user-names and passwords—

necessary for my retained IT professional to access the Receivership Entities' servers, cloud storage, emails and other electronic information.

26. Neither has Barton provided the documents or information required by Paragraphs 8, 9, 10, and 18B of the Receivership Order.

27. And despite repeated requests for credentials and access information to the entities' Quickbook accounts, Defendant Barton, his children and former employees all either professed ignorance or refused to provide that information. I was instead forced to task an attorney with communicating with Intuit, the entity that owns that accounting service, to obtain access. Although Intuit is cooperating, due to technological issues, it has yet to provide that access and thus my accountants have not been able to review the entities' accounting records at this early stage of the Receivership.

28. Despite these limitations, I and my team have identified at least four Additional Entities that are controlled "directly or indirectly" by Barton. More specifically and accordingly, I believe that TC Hall, LLC, Titan 2022 Investment, LLC, Marine Creek SP, LLC, and LC Aledo TX, LLC fall within the scope of the Receivership Order based on the following evidence that Tim Barton controls each Additional Entity:

29. **TC Hall, LLC**

- Formed in Texas July 16, 2022; uses New Hampshire address.
- Sole member and manager is MF Container, LLC, a Delaware company, which in turn was formed July 11, 2022.
- In communications with a lender, Louisiana National Bank, the bank offered a loan to Enoch Investments, LLC (admittedly a Barton controlled entity), or a TBD entity, but corresponded with Barton about the loan.
- On May 6, 2022, Broadview Holdings paid Commonwealth Title \$100,000 for "Earnest Money Deposit for 3407 & 3409 N. Hall St."
- On May 25, 2022, Broadview Holdings paid Commonwealth Title \$100,000 for "Earnest Money Deposit-3407 & 3409 N. Hall St."
- On July 25, 2022, Broadview Holdings paid Commonwealth Title \$40,000 for "Earnest Money Deposit-3407 & 3409 N. Hall St."



- On August 9, 2022, Broadview Holdings paid Commonwealth Title \$40,000 for “Extension for 3407 & 3409 N. Hall St.”
- On or about August 24, 2022, TC Hall, LLC purchased property at 3407 and 3409 N. Hall Street Dallas, Texas. The purchase was funded, at least in part, by \$545,806.40 received from Gillespie Villas, LLC, which in turn had borrowed \$550,000 from a third party, after obtaining Barton’s Guaranty on that loan and subordinating Broadview’s lien on the collateral.
- Barton controlled the flow of money on behalf of TC Hall as evidenced by an email from Barton to his attorney Randy Marx in which Barton provided instructions about where to originate payments for the benefit of TC Hall.
- On May 6, May 10, 2022 and June 8, 2022, Broadview Holdings made payments to James Langford, an architect, in the amounts of \$3,500, \$6,150, and \$3,850 for “Turtle Creek Hall.”
- However, long before TC Hall was formed, and continuing after it was formed, Broadview Holdings, LLC and MJJ Development spent over \$1.4M on the same Hall Street property. *See* summary attached as Exhibit 22; App. 475-480.
- As explained in more detail below, an August 24, 2022 refinance of 3600 Gillespie, owned by Gillespie Villas, LLC was used for the TC Hall purchase of 3407 & 3409 N. Hall St.
- A Confidential Offering Memorandum located at 2999 Turtle Creek shows proposed uses for the property purchased by TC Hall, LLC, and references MJJ Development as the developer of the property and Tim Barton as the point of contact.
- 

True and correct copies of documents evidencing these facts related to TC Hall, LLC are attached as Exhibit A-17. App. 414-444B.

**30. Titan 2022 Investment, LLC**

- Titan 2022 Investment, LLC is the same entity as Titan Investments, LLC. The former is the name under which the entity is registered to conduct business in Texas, while the latter is the entity’s name based on its Delaware incorporation.

True and correct copies of documents evidencing these facts related to Titan 2022 Investment, LLC are attached as Exhibit A-15; App. 324-325.

**31. Marine Creek SP, LLC**

- The date the entity was formed is unknown. Contracts, however, identify it as a Delaware entity, with Barton as President.
- Marine Creek SP, LLC received a contractual Participation Interest when the Mansions Apartment Homes at Marine Creek LLC (admittedly a Barton-controlled entity, Dkt. 7-1, pdf pg. 24), sold property into which the SEC had traced investor funds.

True and correct copies of documents evidencing these facts related to Marine Creek SP, LLC is attached as Exhibit A-16; App. 384-413; *see also*, Dkt. 7-1 pdf pgs. 14-15, 17.

32. **LC Aledo TX, LLC**

- Barton admits control over this entity. [Dkt. 7-1 pdf pgs. 14-15, 17]. *See also* App. 449-451.
- In February 2019 Wall10, LLC loaned Somerset-Lost Creek Golf Course \$300,000 (“Somerset Loan”). As evidenced by an Affidavit signed by Barton in the case referenced below, Wall10 then conveyed the note for the Somerset Loan to LC Aledo TX, LLC, and the note is purportedly still outstanding. App. 459-466.
- The transaction is tied up in litigation styled as *Somerset-Lost Creek Golf, LTD v. Tim Barton, LC Aledo TX, LLC, JMJ Acquisitions, LLC and Wall10, LLC.*, Cause no. 096-319595-20 in the 96<sup>th</sup> District Court for Tarrant County.

•  
True and correct copies of documents evidencing these facts related to Marine Creek SP, LLC are attached as Exhibit A-19; App. 449-466.

33. In furtherance of his effort to support the illusion that he did not control the Disputed Entities and in violation of the Receivership Order, on an unknown date, Barton signed documents with effective dates immediately before and after the date of the Receivership Order, resigning from authority that did not exist on paper. [Dkt. 53-1, pdf. pg. 72, 177].

34. Barton also paid expenses and made purchases for most of the Disputed Entities using Broadview Holdings’ funds, which included the proceeds of property sales funded at least in part from investor funds. True and correct copies of wire transfers evidencing funds received from Mansions Apartment Homes at Marine Creek, LLC, Orchard Farms Village, LLC and AVG West, LLC transferred to Broadview Holdings and JMJ VC Management, LLC’s<sup>3</sup> accounts at Texas Brand Bank are attached as Exhibit A-20; App. 467-472. The SEC traced investor funds to

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<sup>3</sup> The SEC traced investor funds to Mansions Apartment Homes at Marine Creek, LLC Orchard Farms Village, LLC, and JMJ Acquisitions LLC a/k/a AVG West LLC. [Dkt. 7-1, pdf pg. 10, 16-17]. Barton admitted his control over JMJ VC Management LLC and the Mansions Apartment Homes and Orchard Farms entities are identified as Receivership Entities. Receivership Order ¶ 1. I have not yet obtained bank records for JMJ VC Management LLC’s accounts.

Mansions Apartment Homes at Marine Creek and LLC Orchard Farms Village. Dkt. 7-1, ¶ 36, pdf pg. 14-15 (“36. There were also numerous other properties acquired, at least in part, with Wall Entity investor funds, or where investor funds used in connection with the properties, that were sold, some within the last year, but Commission staff has not traced the disposition of the proceeds from those sales. These sold properties are also included on Exhibit B.”). True and correct copies of checks issued from the Broadview Holdings account for expenses or purchases made for the benefit of Gillespie Villas, LLC, TC Hall, LLC, Titan Investments, LLC, MXBA, LLC and Venus 59, LLC are included in Exhibits A-10, A-12, A-14, A-15, A-17 at App. 141-146; 208; 316; 377-383; and 424-426.

35. Based on the use of Broadview Holdings’ Texas Brand Bank account to fund and operate the Disputed and Additional Entities as evidenced just in the last few months of statements, it is likely that substantial and additional comingling occurred. To date, however, I have only received a few months of the statements for these accounts and have not yet had my accountant review them.

36. The SEC alleges that Barton used comingled funds to pay his personal expenses and fund his lifestyle. While my investigation is still in its early stages, it appears that this is correct. For instance, Barton used funds in the Broadview Holdings, LLC account to pay his personal attorneys in this lawsuit. A true and correct copy of one such check evidencing these payments is attached as Exhibit A-21; App. 473-474. Bank records I have reviewed also reflect continued and substantial payments for Barton’s personal expenses.

37. As reflected in the Exhibits attached above related to Barton’s control over Gillespie Villas, Barton also would use one Receivership Entity, including the Disputed Entities, to fund others. For instance, Gillespie Villas, LLC purchased 3600 Gillespie Street, using a \$1.4M note

(the “Broadview Loan”) obtained from Broadview Holdings, LLC. Gillespie Villas then refinanced the purchase using a \$550,000 loan from a third-party in favor of whom Broadview Holdings subordinated its loan and lien. Through a series of bank transfers, the proceeds of the Broadview Loan were then used to purchase 3407 and 3409 N. Hall Street by TC Hall, LLC. *See* Exhibit A-10; App. 121-140; 147-156.

38. Similarly, a spreadsheet found in the Turtle Creek Property attached as Exhibit A-22 summarizes \$1,401,914.40 in payments made from Broadview Holding’s bank account at Texas Brand Bank, and on various credit cards owned by JMJ Development, LLC (a Receivership Entity) for TC Hall’s purchase of 3407 and 3409 Hall Street. App. 467-472.

39. Although I have not yet received all relevant records (due in part to Barton’s refusal to produce any and to identify the banks at which the various Receivership Entities maintained accounts) neither I nor my accountants have had an adequate opportunity to review all bank records. Nonetheless, in the short time since my appointment, I have discovered additional transfers between and among Gillespie Villas, Broadview Holdings, and TC Hall, LLC. For instance, on August 22, 2022, Gillespie Villas received a \$100,000 loan from a third party. On August 23, 2022, Gillespie transferred \$70,000 from its new account at Vista Bank to Broadview Holdings, LLC, potentially in repayment of some of the payments Broadview made as reflected in the summary attached as Exhibit A-22; App. 475-480. On August 25, 2022, as part of the purchase of 3407 & 3409 N. Hall St., Commonwealth Title transferred \$132,138.55 to TC Hall, LLC’s newly opened bank account at Vista Bank. On August 26, 2022, TC Hall, LLC transferred \$100,000 from its Vista Bank account to Gillespie Villas, LLC, which likely served as reimbursement for the transfer from Gillespie Villas to Broadview Holdings. On September 16,

2022, Gillespie Villas repaid the \$100,000 loan to the third party. True and correct copies of documents evidencing these transactions are included in Exhibit A-17; App. 429-432, 433, 448.

40. Barton's indirect control over Gillespie (through One SF Residential and use of Broadview Holdings to fund it) and TC Hall (as evidenced, among other things, by his role in obtaining the loan from Louisiana National Bank and his control over the funds TC Hall used to purchase the property), and Barton's use of JMJ Development (another Receivership Entity) to develop and solicit investors for both Gillespie and TC Hall properties, demonstrates a shell game of comingled fund, including funds that originated from investors, the interdependency of the Receivership Entities, the Disputed Entities and the Additional Entities, and Barton's disregard for the corporate existence of these entities.

41. As reflected in the summary above for each Disputed and Additional Entity, the Disputed Entities and most of the Additional Entities use, or recently used, the same mailing or physical address as all other Receivership Entities. None appears to have any outside directors, managers, or officers, and each is undercapitalized or capitalized through loans from other Receivership Entities (although TC Hall apparently also received investment capital from a third party). Each of the Disputed Entities and the Additional Entities appear to have all been incorporated by either Ms. Bedoya, or one of two attorneys who worked for Barton.

42. Documents evidencing formation, tax information, bills, contracts, or mail for the Disputed Entities was found at the Turtle Creek Location, and all are used for real estate investments or activities incident to real estate investments. *Id.* Other than documents evidencing incorporation and tax ID numbers, very few documents suggest observation of any corporate formalities.

43. Based on my review of the bank records received to date, purchase agreements, communications with or documents received from lenders, settlement statements and related documents and information received from title companies, it is currently impossible to determine whether any of the funds used to operate, fund, or purchase assets for any of the Disputed Entities or the Additional Entities originated from any untainted source, i.e., projects, accounts, or properties that were not purchased with funds comingled with investor funds or the proceeds of properties purchased with investor funds. Based on the SEC's investigation, however, investor funds or their proceeds appear to have been the primary source of cash used by Barton, other than third party loans. Dkt. 7-1, pdf pgs. 14, 17.

44. As stated in my Initial Report, most properties owned by Receivership Entities, including some owned by the Disputed or Additional Entities, are highly leveraged. The equity, and indeed ownership interest held by the Receivership Entities and the Disputed and Additional Entities is in many instances questionable. Although Barton contends the sale of just two properties would provide more than enough to repay the defrauded investors, as my counsel informed him, he is ignoring the debt on those properties. A true and correct copy of an email communication from my counsel to Barton, responding to his letter suggesting that the sale of two properties would allow a speedy end to the receivership, as well as Barton's letter, are attached as Exhibit A-23. App. 481-487. I also explained many of these details in my Initial Status Report [Dkt. 67].

45. Based on liens, ownership disputes, and other facts that complicate the potential recovery of any net equity in the assets owned by the Receivership Entities, including properties owned by the Disputed and Additional Entities, if third-parties are successful in defeating Receivership Entity's ownership or contractual rights, as discussed in my Initial Report, far less

than the \$26M necessary to repay the investors will be recovered. These estimates also do not account for the cost and expenses of administering a claims process and the receivership estate, nor the claims of a host of other creditors who have indicated that they will be submitting several million dollars in claims.

46. Accordingly, and as outlined above, inclusion of the Disputed and Additional Entities (as well as the entities identified originally in the Motion) is not only within the plain language of the Receivership Order, but essential to protect potential recoveries for the investors. For instance, Gillespie Villas owns 3600 Gillespie Street, but purchased that property, in part, with assets obtained from Broadview Holdings, which in turn received proceeds from the sale of property the Mansions Apartment Homes at Marine Creek, LLC purchased with investor funds. Gillespie funds in turn, funded, in part, TC Hall's purchase of property, and I understand that Gillespie's property was used as collateral for TC Hall's loan. Marine Creek SP, LLC holds valuable contractual rights in the form of a Participation Agreement, related to the sale of real estate by the Mansions Apartment Homes at Marine Creek, LLC, real estate which the SEC alleges was purchased with investor funds, and those rights are, unlike virtually every other property interest included in the estate, unencumbered.

47. I declare under penalty of perjury that the foregoing is true and correct.

November 30, 2022

/s/ Cortney C. Thomas  
CORTNEY C. THOMAS

# **EXHIBIT A-1**





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
BURNETT PLAZA, 801 CHERRY STREET, SUITE 1900, UNIT 18  
FORT WORTH, TX 76102

Jason A. Braun  
Attorney  
(817) 978-1419

December 11, 2020

**VIA E-MAIL (smetzger@pmklaw.com)**

Timothy Barton  
c/o Steven C. Metzger  
Metzger Law PLLC  
3626 N. Hall Street, Suite 800  
Dallas, Texas 75219-5133

Re: *In the Matter of JMJ Holdings, LLC*; File No. FW-04420

Dear Mr. Metzger:

The staff of the Fort Worth Regional Office of the United States Securities and Exchange Commission is conducting an investigation in the matter identified above. The enclosed subpoena has been issued to Timothy Barton as part of this investigation. The subpoena requires Mr. Barton to give us records. In connection with this investigation, the staff requests that Mr. Barton **provide us documents no later than Friday, January 8, 2021.**

Please read the subpoena and this letter carefully. This letter answers some questions your client may have about the subpoena. Your client should also read the enclosed SEC Form 1662. If Mr. Barton does not comply with this subpoena, the SEC may bring an action in Federal Court to enforce this subpoena. Failure to comply with a court order enforcing this subpoena may result in the court imposing a fine, imprisonment or both.

**Producing Documents**

*What materials do I have to produce?*

The subpoena requires Mr. Barton to provide us the documents described in the attachment to the subpoena. The attachment to the subpoena defines some terms (such as “document”) before listing what must be provided.

Mr. Barton should produce each and every document in his possession, custody, or control, including any documents that are not in his immediate possession but that he has the ability to obtain. All responsive documents shall be produced as they are kept in the usual course of business, and shall be organized and labeled to correspond with the numbered paragraphs in the subpoena attachment. In that regard, documents should be produced in a unitized manner, *i.e.*, delineated with staples or paper clips to identify the document boundaries.

APP000020

Timothy Barton  
December 11, 2020  
Page 2

Documents responsive to this subpoena may be in electronic or paper form. Electronic documents such as email should be produced in accordance with the attached document entitled SEC Data Delivery Standards (the “Standards”). If Mr. Barton has any questions concerning the production of documents in an electronic format, please contact me as soon as possible but in any event before producing documents. **All electronic documents responsive to the document subpoena, including all metadata, must also be secured and retained in their native software format and stored in a safe place.** The staff may later request or require that Mr. Barton produce the native format.

For documents in paper format, Mr. Barton may send the originals, or, if he prefers, Mr. Barton may send copies of the originals. The Commission cannot reimburse Mr. Barton for the copying costs. If Mr. Barton is sending copies, the staff requests that he scan (rather than photocopy) hard copy documents and produce them in an electronic format consistent with the Standards. Alternatively, he may send us photocopies of the documents in paper format. **If he chooses to send copies, Mr. Barton must secure and retain the originals and store them in a safe place.** The staff may later request or require that it produce the originals.

Whether you scan or photocopy documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a document differ in any way, they are considered separate documents and Mr. Barton must send each one. For example, if Mr. Barton has two copies of the same letter, but only one of them has handwritten notes on it, he must send both the clean copy and the one with notes.

If Mr. Barton does send us scanned or photocopied documents, please put an identifying notation on each page of each document to indicate that Mr. Barton produced it, and number the pages of all the documents submitted. (For example, if Jane Doe sends documents to the staff, she may number the pages JD-1, JD-2, JD-3, etc., in a blank corner of the documents.) Please make sure the notation and number do not conceal any writing or marking on the document. If Mr. Barton sends us originals, please do not add any identifying notations.

In producing a photocopy of an original document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original document, photocopies of the original document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.

*Do I need to send anything else?*

Mr. Barton should enclose a list briefly describing each item you send. The list should state to which numbered paragraph(s) in the subpoena attachment each item responds. A copy of the subpoena should be included with the documents that are produced.

Passwords for documents, files, compressed archives, and encrypted media should be provided separately either via email addressed to [ENF-CPU@sec.gov](mailto:ENF-CPU@sec.gov), or in a separate cover letter mailed separately from the data. **Password correspondence should reference case number, case name and requesting SEC staff member.**

APP000021

Timothy Barton  
December 11, 2020  
Page 3

Please include a cover letter stating whether Mr. Barton believes he has met his obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us. Please also provide a duplicate copy of any cover letters to Jason A. Braun at braunj@sec.gov and Jamie Haussecker at hausseckerj@sec.gov. **Correspondence should reference case number, case name and requesting SEC staff member.**

Please also provide a narrative description describing what Mr. Barton did to identify and collect documents responsive to the subpoena. At a minimum, the narrative should describe:

- who searched for documents;
- who reviewed documents found to determine whether they were responsive;
- what sources were searched (e.g., computer files, CDs, DVDs, thumb drives, flash drives, online storage media, hard copy files, diaries, datebooks, planners, filing cabinets, home office, work office, voice mails, home email, webmail, work email, backup tapes or other media);
- what third parties, if any, were contacted to obtain responsive documents (e.g., phone companies for phone records, brokerage firms for brokerage records); and
- where the original electronic and hardcopy documents are maintained and by whom.

For any documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please complete a business records certification (a sample of which is enclosed) and return it with the document production.

*What if I do not send everything described in the attachment to the subpoena?*

The subpoena requires Mr. Barton to send all the materials described in it. If, for any reason – including a claim of attorney-client privilege – Mr. Barton does not produce something called for by the subpoena, he should submit a list of what he is not producing. The list should describe each item separately, noting:

- its author(s);
- its date;
- its subject matter;
- the name of the person who has the item now, or the last person known to have it;
- the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
- the reason Mr. Barton did not produce the item; and
- the specific request in the subpoena to which the document relates.

Timothy Barton  
December 11, 2020  
Page 4

If Mr. Barton withheld anything on the basis of a claim of attorney-client privilege or attorney work product protection, he should identify the attorney and client involved. If he withheld anything on the basis of the work product doctrine, he should also identify the litigation in anticipation of which the document was prepared.

If documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, Mr. Barton should identify such documents and give the date on which they were lost, discarded or destroyed.

*Where should I send the materials?*

Please send the materials to:

ENF-CPU  
U.S. Securities and Exchange Commission  
6315 Bren Mar Drive, Suite 175  
Alexandria, VA 22312

For smaller electronic productions under 10MB in size, the materials may be emailed to the following email address: [ENF-CPU@sec.gov](mailto:ENF-CPU@sec.gov).

### **Other Important Information**

*May I have a lawyer help me respond to the subpoena?*

Yes. Mr. Barton has the right to consult with and be represented by his own lawyer in this matter. We cannot give Mr. Barton legal advice.

*What will the Commission do with the materials I send and/or the testimony I provide?*

The enclosed SEC Form 1662 explains how we may use the information Mr. Barton provides to the Commission. This form also has other important information for Mr. Barton. Please read it carefully.

*Has the Commission determined that anyone has done anything wrong?*

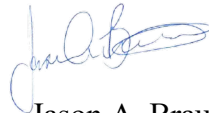
This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that Mr. Barton or anyone else has violated the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security.

Timothy Barton  
December 11, 2020  
Page 5

*Important Policy Concerning Settlements*

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

Sincerely,



Jason A. Braun  
Attorney  
Division of Enforcement

Enclosures: Subpoena and Attachment  
SEC Data Delivery Standards  
SEC Form 1662  
Business Records Certification



## SUBPOENA

# UNITED STATES OF AMERICA SECURITIES AND EXCHANGE COMMISSION

**In the Matter of JMJ Holdings, LLC (FW-04420)**

To: Timothy Barton  
c/o Steven C. Metzger  
Metzger Law PLLC  
3626 N. Hall Street, Suite 800  
Dallas, Texas 75219-5133

**YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

ENF-CPU, U.S. Securities and Exchange Commission, 6315 Bren Mar Drive, Suite 175,  
Alexandria, VA 22312, **no later than January 8, 2021 at 9:30 a.m.**

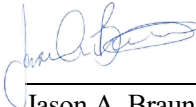
**YOU MUST TESTIFY**

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### FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.

If you do not comply with this subpoena, the SEC may bring an action in Federal Court to enforce this subpoena. Failure to comply with a court order enforcing this subpoena may result in the court imposing a fine, imprisonment, or both.

By: \_\_\_\_\_

  
Jason A. Braun, Attorney  
U.S. Securities and Exchange Commission  
Fort Worth Regional Office  
Burnett Plaza, 801 Cherry Street, Suite 1900  
Fort Worth, TX 76102

Date: December 11, 2020

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934.

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NOTICE TO WITNESS: If you claim a witness fee or mileage, submit this subpoena with the claim voucher.

APP000025

**U.S. SECURITIES AND EXCHANGE COMMISSION**  
**SUBPOENA ATTACHMENT**

**TIMOTHY BARTON**

**A. DEFINITIONS**

1. “Timothy Barton,” “you,” or “your,” means Timothy Barton and anyone acting on his behalf other than a lawyer retained by Mr. Barton.
2. “Michael Fu,” means Michael Fu and anyone acting on his behalf other than a lawyer retained by Mr. Fu.
3. “Steven Wall,” means Steven Wall and anyone acting on his behalf other than a lawyer retained by Mr. Wall.
4. “JMJ Holdings,” means JMJ Holdings, LLC and its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers.
5. “JMJ Development,” means JMJ Development, LLC and its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers.
6. “Wall Entities,” means, both individually and collectively, Wall007, LLC; Wall009, LLC; Wall010, LLC; Wall011, LLC, Wall012, LLC; Wall016, LLC; Wall017, LLC; Wall018, LLC; Wall019, LLC; and any of their parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers.
7. “Carnegie,” means Carnegie Development, Inc., its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers.
8. “Platinum Investment,” means Platinum Investment Corporation, its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers
9. “Silverland,” means Silverland Finance Ltd., its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers
10. “TRWF Lodge,” means TRWF Lodge, LLC, its parents, managing members or members, subsidiaries, predecessors, successors, affiliates, employees, and officers
11. “Document” shall include, but is not limited to, any written, printed, or typed matter including, but not limited to all drafts and copies bearing notations or marks not found in the original, letters and correspondence, interoffice communications, slips, tickets, records, worksheets, financial records, presentations, accounting documents, bookkeeping documents, memoranda, reports, manuals, telephone logs, telegrams, facsimiles, messages of any type, telephone messages, voice mails, tape recordings, notices, instructions, minutes, summaries, notes of meetings, file folder markings, and any other organizational

- indicia, purchase orders, information recorded by photographic process, including microfilm and microfiche, computer printouts, spreadsheets, and other electronically stored information, including but not limited to writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that are stored in any medium from which information can be retrieved, obtained, manipulated, or translated.
12. “Communication” means any correspondence, contact, discussion, e-mail, instant message, or any other kind of oral or written exchange or transmission of information (in the form of facts, ideas, inquiries, or otherwise) and any response thereto between two or more Persons or entities, including, without limitation, all telephone conversations, face-to-face meetings or conversations, internal or external discussions, or exchanges of a Document or Documents.
  13. “Concerning” means directly or indirectly, in whole or in part, describing, constituting, evidencing, recording, evaluating, substantiating, concerning, referring to, alluding to, in connection with, commenting on, relating to, regarding, discussing, showing, describing, analyzing or reflecting.
  14. An “Agreement” means any actual or contemplated (i) written or oral Agreement; (ii) term or provision of such Agreement; or (iii) amendment of any nature or termination of such Agreement. A request for any Agreement among or between specified parties includes a request for all Documents concerning (i) any actual or contemplated Agreement among or between such parties, whether or not such Agreement included any other Person; (ii) the drafting or negotiation of any such Agreement; (iii) any actual or contemplated demand, request or application for any such Agreement, and any response thereto; and (iv) any actual or contemplated objection or refusal to enter into any such Agreement, and any response thereto.
  15. The terms “Reviewed” means examined, assessed, considered, analyzed or evaluated.
  16. The term “you” and “your” means the Person or entity to whom this request was issued.
  17. To the extent necessary to bring within the scope of this request any information or Documents that might otherwise be construed to be outside its scope:
    - a. the word “or” means “and/or”;
    - b. the word “and” means “and/or”;
    - c. the functional words “each,” “every” “any” and “all” shall each be deemed to include each of the other functional words;
    - d. the masculine gender includes the female gender and the female gender includes the masculine gender; and
    - e. the singular includes the plural and the plural includes the singular.
  18. Defined terms are to be given their meanings set forth above whether capitalized or not.
  19. “Possession, custody, or control” of documents means documents within the actual or constructive possession, custody or control or within the possession, custody or control of the



subpoenaed entity or individual, his/her employer, or any department, officer, employee, agent or attorney thereof.

20. "Person" refers to any natural person, company, or business.
21. "Representative" of a Person means any present or former family members, officers, executives, partners, joint-venturers, directors, trustees, employees, consultants, accountants, attorneys, agents, or any other representative acting or purporting to act on behalf of the Person.
22. "Payment" or "Payments" shall mean anything of value, including money or other compensation.

**B. Instructions**

1. Unless otherwise specified, the subpoena calls for production of the original Documents and all copies and drafts of same. Documents responsive to this subpoena may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached Document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document subpoena, including all metadata, should also be produced in their native software format.
2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, the staff requests that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. The staff may later request or require that you produce the originals.
3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.
4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.
5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, i.e., delineated

with staples or paper clips to identify the Document boundaries.

6. Documents should be labeled with sequential numbering (bates-stamped).
7. You must produce all Documents created during, or Concerning, the period January 1, 2017 to the present, unless otherwise specified.
8. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.
9. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff **in connection with this matter**. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.
10. For any Documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please complete a business records certification (a sample of which is enclosed) and return it with the Document production.
11. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what you are not producing. The list should describe each item separately, noting:
  - a. its author(s);
  - b. its date;
  - c. its subject matter;
  - d. the name of the Person who has the item now, or the last Person known to have it;
  - e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
  - f. the basis upon which you are not producing the responsive Document;
  - g. the specific request in the subpoena to which the Document relates;
  - h. the attorney(s) and the client(s) involved; and
  - i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.
12. If Documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

**C. Documents to be Produced**

1. A list of all JMJ Holdings, JMJ Development, and Wall Entities' investors broken down for each investor by the following categories:
  - a. Investor name, address and telephone number;
  - b. Amount invested;
  - c. Date invested;
  - d. Repayment maturity date; and
  - e. Whether, when, and how much of each investors' principal has been returned to them.
2. For each investor identified in response to Request No. 1 above, all Documents concerning Agreements or contracts between or involving JMJ Holdings, JMJ Development, the Wall Entities, and the investor and all Documents that reflect the terms of the investments.
3. For each investor identified in response to Request No. 1 above, all periodic or other account statements.
4. For each investor identified in response to Request No. 1 above, all Documents concerning the investment of (or other use of) their funds by JMJ Holdings, JMJ Development, or the Wall Entities, and the current location of investor funds.
5. All Agreements to which JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities is a party and which reference or relate to investments or real estate concerning the Wall Entites.
6. To the extent not already produced, all Agreements concerning JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities and which reference or relate to any investments or real estate concerning the Wall Entites.
7. Documents sufficient to identify all offerings by JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, or the Wall Entities (including, but not limited to, private placement memorandums, executive summaries, partnership agreements, construction contracts, and all other such documents).
8. Documents sufficient to disclose all domestic and foreign bank, brokerage, investment or other financial accounts held currently or previously in JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities' name, or in which any of them has or has had a beneficial interest, or over which any of them exercises or has exercised any discretion, authority, or control, from January 1, 2017 to present.
9. Documents sufficient to identify all entities owned or controlled by JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities.

10. For each year from January 1, 2017 through present, Documents sufficient to disclose JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, or the Wall Entities' revenue and all sources of revenue.
11. Documents sufficient to disclose all other assets held by or on behalf of JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, or the Wall Entities.
12. For each year from January 1, 2017 through present, documents sufficient to disclose your annual income and all sources of income.
13. Documents sufficient to identify all auditors or persons who performed auditing-related services and that were retained, employed, or paid by JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities.
14. Documents sufficient to identify all individuals and entities for whom JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities performs or has performed services of any kind and the nature of the services performed.
15. Documents sufficient to identify all individuals or entities who were solicited as potential investors but did not ultimately invest in JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, or the Wall Entities.
16. Documents sufficient to identify all Payments concerning the Wall Entities which were received by JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities.
17. All Documents concerning Communications (including the Communications) sent to, or received by, JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, Michael Fu, Timothy Barton, Steven Wall, or the Wall Entities, and which reference or relate to investments or real estate concerning the Wall Entities.
18. Documents sufficient to identify all officers, directors, members, principals, owners, shareholders, employees, and all others acting on behalf of JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, and the Wall Entities, and Documents sufficient to disclose the following, for each individual identified in response to this Item:
  - a. title;
  - b. dates of affiliation with JMJ Holdings, JMJ Development, TRWF Lodge, Carnegie, Platinum Investment, Silverland, and the Wall Entities;
  - c. current or last known home address and telephone number;
  - d. current or last known employment address and telephone number; and
  - e. salary or other compensation for each year from January 1, 2017 through present.



**U.S. Securities and Exchange Commission**

**Data Delivery Standards**

This document describes the technical requirements for paper and electronic document productions to the U.S. Securities and Exchange Commission (SEC). **\*\*Any questions or proposed file formats other than those described below must be discussed with the legal and technical staff of the SEC Division of Enforcement prior to submission.\*\***

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**General Instructions**

Due to COVID-19 restrictions the current, temporary mailing address for all physical productions sent to the SEC is: **ENF-CPU, 6315 Bren Mar Drive, Suite 175, Alexandria, VA 22312**

Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*

In the event produced files require the use of proprietary software not commonly found in the workplace, the SEC will explore other format options with the producing party.

The proposed use of file de-duplication methodologies or *computer-assisted review* or *technology-assisted review* (TAR) during the processing of documents must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF). If your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name and file location and, 2) make that unique metadata part of your production to the SEC.

General requirements for **ALL** document productions are:

1. A cover letter must be included with each production and should include the following information:
  - a. Case number, case name and requesting SEC staff member name
  - b. A list of each piece of media included in the production with its unique production volume number
  - c. A list of custodians, identifying the Bates range for each custodian
  - d. The time zone in which the emails were standardized during conversion
  - e. Whether the production contains native files produced from Mac operating system environments
2. Data can be produced on CD, DVD, thumb drive, etc., using the media requiring the least number of deliverables and labeled with the following:
  - a. Case number
  - b. Production date
  - c. Producing party
  - d. Bates range (if applicable)
3. All submissions must be organized by **custodian** unless otherwise instructed.
4. All document family groups, i.e. email attachments, embedded files, etc., should be produced together and children files should follow parent files sequentially in the Bates numbering.
5. All load-ready collections should include only one data load file and one image pointer file.
6. All load-ready text must be produced as separate document-level text files.
7. All load-ready collections should account for custodians in the custodian field.
8. All load-ready collections must provide the extracted contents of any container files to ensure all relevant files are produced as separate records.
9. Audio files should be separated from data files if both are included in the production.
10. Only alphanumeric characters and the underscore character are permitted in file names and folder names. Special characters are not permitted.
11. All electronic productions submitted on media must be produced using industry standard self-extracting encryption software.
12. The SEC uses 7zip to access compressed files. Note that the SEC **cannot** accept files that use AES-256 Jpeg or pkAES-256-Cert Deflate compression methods, even if the files are created with 7zip. If you have any questions or need additional information, please reach out to the requesting SEC staff member.
13. Electronic productions of 20 GB or less are strongly encouraged to be submitted via Secure File Transfer. All Secure File Transfers should be sent to the SEC Centralized Production Unit ([ENF-CPU@sec.gov](mailto:ENF-CPU@sec.gov)) with a CC to the requesting SEC staff member. If you do not have your own Secure File Transfer application, you may reach out to the requesting SEC staff member for a link to the SEC system in order to upload your production. If using the SEC Secure File Transfer system, you will NOT be able to CC individuals outside the SEC on your upload transmission. Note that the SEC **cannot** accept productions made using file sharing sites such as Google Drive, Microsoft Office 365 or Dropbox.
14. Productions containing BSA or SAR material must be delivered on encrypted physical media. The SEC **cannot** accept electronic transmission of BSA or SAR material. Any BSA or SAR material produced should be segregated and appropriately marked as BSA or SAR material, or should be produced separately from other case related material.
15. Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately either via email or in a cover letter apart from the media.
16. All electronic productions should be produced free of computer viruses.
17. Before producing forensically collected images, parties should reach out to the requesting SEC staff member in order to discuss appropriate handling.
18. Before producing unique data sets (large sets of relational data, website reconstruction, chat room data, etc.), parties should reach out to the requesting SEC staff member in order to discuss an appropriate production format.
19. Additional technical descriptions can be found in the addendum to this document.

**\*Please note that productions sent to the SEC via United States Postal Service are subject to Mail Irradiation, and as a result electronic productions may be damaged.\***

**Delivery Formats****I. Imaged Productions**

The SEC prefers that all scanned paper and electronic file collections be produced in a structured format including industry standard load files, Bates numbered image files, native files and searchable document-level text files.

**1. Images**

- a. Black and white images must be 300 DPI Group IV single-page TIFF files
- b. Color images must be produced in JPEG format
- c. File names cannot contain embedded spaces or special characters (including the comma)
- d. Folder names cannot contain embedded spaces or special characters (including the comma)
- e. All image files must have a unique file name, i.e. Bates number
- f. Images must be endorsed with sequential Bates numbers in the lower right corner of each image
- g. The number of image files per folder should not exceed 2,000 files
- h. Excel spreadsheets should have a placeholder image named by the Bates number of the file
- i. AUTOCAD/photograph files should be produced as a single page JPEG file

**2. Image Cross-Reference File**

The image cross-reference file (.LOG or .OPT) links the images to the database records. It should be a comma-delimited file consisting of seven fields per line with a line in the cross-reference file for every image in the database with the following format:

*ImageID,VolumeLabel,ImagePath,DocumentBreak,FolderBreak,BoxBreak,PageCount*

**3. Data File**

The data file (.DAT) contains all of the fielded information that will be loaded into the database.

- a. The first line of the .DAT file must be a header row identifying the field names
- b. The .DAT file must use the following *Concordance*® default delimiters:
  - Comma ¶ ASCII character (020)
  - Quote ¢ ASCII character (254)
- c. If the .DAT file is produced in Unicode format it must contain the byte order marker
- d. Date fields should be provided in the format: mm/dd/yyyy
- e. Date and time fields must be two separate fields
- f. The time zone must be included in all time fields
- g. If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments
- h. An OCRPATH field must be included to provide the file path and name of the extracted text file on the produced storage media. The text file must be named after the FIRSTBATES. Do not include the text in the .DAT file.
- i. For productions with native files, a LINK field must be included to provide the file path and name of the native file on the produced storage media. The native file must be named after the FIRSTBATES.
- j. BEGATTACH and ENDATTACH fields must be two separate fields
- k. A complete list of metadata fields is available in **Addendum A** to this document

**4. Text**

Text must be produced as separate document-level text files, not as fields within the .DAT file. The text files must be named per the FIRSTBATES/Image Key and the full path to the text file (OCRPATH) should be included in the .DAT file. Text files may be in either ANSI or Unicode format, however, ALL text files must be in the same format within the same production. Note that productions containing text with foreign characters must produce text files in Unicode format to preserve the foreign characters. Text files must be in a separate folder, and the number of text files per folder should not exceed 2,000 files. There should be no special characters (including commas) in the folder names. For redacted documents, provide the full text for the redacted version.

**5. Linked Native Files**

Copies of original email and native file documents/attachments must be included for all electronic productions.

- a. Native file documents must be named per the FIRSTBATES number
- b. The full path of the native file must be provided in the .DAT file for the LINK field
- c. The number of native files per folder should not exceed 2,000 files

**II. Native File Production without Load Files**

With prior approval, native files may be produced without load files. The native files must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. When approved, native email files (.PST or .MBOX) may be produced. A separate folder should be provided for each custodian.

**III. Adobe PDF File Production**

With prior approval, Adobe PDF files may be produced in native file format.

1. All PDFs must be unitized at the document level, i.e., each PDF must represent a discrete document.
2. PDF files should be produced in separate folders named by the custodian. The folders should not contain any special characters (including commas).
3. All PDF files must contain embedded text that includes all discernible words within the document, not selected text or image only. This requires all layers of the PDF to be flattened first.
4. If PDF files are Bates endorsed, the PDF files must be named by the Bates range.

**IV. Audio Files**

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

- 1) Caller Name: Caller's name or account/identification number
- 2) Originating Number: Caller's phone number
- 3) Called Party Name: Called party's name
- 4) Terminating Number: Called party's phone number
- 5) Date: Date of call
- 6) Time: Time of call
- 7) Filename: Filename of audio file

**V. Video Files**

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

**VI. Electronic Trade and Bank Records**

When producing electronic trade records, bank records, or financial statements, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

**VII. Electronic Phone Records**

When producing electronic phone records, provide the files in the following format:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeroes as text).
  - a. The metadata that must be included is outlined in **Addendum B** of this document. Each field of data must be loaded into a separate column. For example, Date and Start\_Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed in **Addendum B** must also be loaded into separate columns.



**VIII. Audit Workpapers**

The SEC prefers for workpapers to be produced in two formats: (1) With Bates numbers in accordance with the SEC Data Delivery Standards; and (2) in native format or if proprietary software was used, on a standalone laptop with the appropriate software loaded so that the workpapers may be reviewed as they would have been maintained in the ordinary course of business. The laptop must have printing capability, and when possible, the laptop should be configured to enable a Virtual Machine (VM) environment.

**IX. Mobile Device Data**

Before producing mobile device data (including but not limited to text messages) parties should reach out to the requesting SEC staff member in order to discuss the appropriate production format.

**ADDENDUM A**

The metadata of electronic document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

<b>Field Name</b>	<b>Sample Data</b>	<b>Description</b>
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: Mailbox where the email resided Native: Name of the individual or department from whose files the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple entries
CC	Frank Thompson [mailto:frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
FILE_NAME	BoardMeetingMinutes.docx	Native: Name of the original native file, including extension
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT/TIME_ZONE	07:05 PM GMT	Email: Time the email was sent/ Time zone in which the emails were standardized during conversion. Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
TIME_ZONE	GMT	The time zone in which the emails were standardized during conversion. Email: Time zone Native: (empty)

LINK	D:\001\EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	application/msword	The content type of an email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the email or native file document; will vary depending on the format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
LAST_AUTHOR	Jane Doe	Email: (empty) Native: Last Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created
TIME_CREATED/TIME_ZONE	10:25 AM GMT	Email: (empty) Native: Time the document was created including time zone **This data must be a separate field and cannot be
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD/TIME_ZONE	07:00 PM GMT	Email: (empty) Native: Time the document was last modified including the time zone **This data must be a separate field and cannot be
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD/TIME_ZONE	07:00 PM GMT	Email: (empty) Native: Time the document was last accessed including the time zone **This data must be a separate field and cannot be
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b\$75977050\$cb8306d1@MSN>	Email: Unique Message ID Native: (empty)

HEADER	Return-Path: <example_from@dc.edu> X-SpamCatcher-Score:1[X] Received:from[136.167.40.119] (HELO dc.edu) by fe3.dc.edu (CommuniGate Pro SMTP4.1.8) with ESMTP-TLS id 61258719 for example_to@mail.dc.edu; Mon, 23 Aug 2004 11:40:10 - 0400 Message-ID: <4129F3CA.2020509@dc.edu> Date: Mon, 23 Aug 2005 11:40:36 -400 From: Taylor Evans <example_from@dc.edu> User-Agent:Mozilla/5.0 (Windows;U; Windows NT 5.1; en-US;rv:1.0.1) Gecko/20020823 Netscape/7.0 X-Accept-Language:en-us,en MIME-Version:1.0 To: Jon Smith <example_to@mail.dc.edu> Subject:Business Development Meeting Content-Type: text/plain;charset=us-ascii; format=flowed Content-Transfer-Encoding:7bit	Email: The email header information Native: (empty)
MD5HASH	d131dd02c5e6ecc4693d9a069 8aff95c 2fcab58712467eab4004583eb 8fb7f89	MD5 Hash value of the document.
OCRPATH	TEXT/001/EDC0000001.txt	Path to extracted text of the native file

Sample Image Cross-Reference File:

```

IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000004.TIF,Y,,,
IMG0000005,,E:\001\IMG0000005.TIF,Y,,,
IMG0000006,,E:\001\IMG0000006.TIF,,,,
    
```

**ADDENDUM B**

For Electronic Phone Records, include the following fields in separate columns:

For Calls:

- 1) Account Number
- 2) Connection Date – Date the call was received or made
- 3) Connection Time – Time call was received or made
- 4) Seizure Time – Time it took for the call to be placed in seconds
- 5) Originating Number – Phone that placed the call
- 6) Terminating Number – Phone that received the call
- 7) Elapsed Time – The length of time the call lasted, preferably in seconds
- 8) End Time – The time the call ended
- 9) Number Dialed – Actual number dialed
- 10) IMEI Originating – Unique id to phone used to make call
- 11) IMEI Terminating– Unique id to phone used to receive call
- 12) IMSI Originating – Unique id to phone used to make call
- 13) IMSI Terminating- Unique id to phone used to receive call
- 14) Call Codes – Identify call direction or other routing information
- 15) Time Zone – Time Zone in which the call was received or placed, if applicable

For Text messages:

- 1) Account Number
- 2) Connection Date – Date the text was received or made
- 3) Connection Time – Time text was received or made
- 4) Originating Number – Who placed the text
- 5) Terminating Number – Who received the text
- 6) IMEI Originating – Unique id to phone used to make text
- 7) IMEI Terminating– Unique id to phone used to receive text
- 8) IMSI Originating - Unique id to phone used to make text
- 9) IMSI Terminating- Unique id to phone used to receive text
- 10) Text Code – Identify text direction, or other text routing information
- 11) Text Type Code – Type of text message (sent SMS, MMS, or other)
- 12) Time Zone – Time Zone in which the call was received or placed, if applicable

For Mobile Data Usage:

- 1) Account Number
- 2) Connection Date – Date the data was received or made
- 3) Connection Time – Time data was received or made
- 4) Originating number – Number that used data
- 5) IMEI Originating – Unique id of phone that used data
- 6) IMSI Originating - Unique id of phone that used data
- 7) Data or Data codes – Identify data direction, or other data routing information
- 8) Time Zone – Time Zone in which the call was received or placed, if applicable

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Supplemental Information for Persons Requested to Supply  
Information Voluntarily or Directed to Supply Information  
Pursuant to a Commission Subpoena**

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Section 1519 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . . , or in relation to or contemplation of any such matter.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

Whoever--

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify

truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

### **C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

### **D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self-addressed envelope.

#### **E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

#### **F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, Section 21(c) of the Securities Exchange Act of 1934, Section 42(c) of the Investment Company Act of 1940, and Section 209(c) of the Investment Advisers Act of 1940 provide that fines and terms of imprisonment may be imposed upon any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

#### **G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

#### **H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.
4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.



6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).
7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.
17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.
19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.
20. To respond to subpoenas in any litigation or other proceeding.
21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

\* \* \* \* \*

*Small Business Owners:* The SEC always welcomes comments on how it can better assist small businesses. If you would like more information, or have questions or comments about federal securities regulations as they affect small businesses, please contact the Office of Small Business Policy, in the SEC's Division of Corporation Finance, at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

**DECLARATION CERTIFYING RECORDS  
OF REGULARLY CONDUCTED ACTIVITY**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746  
(Insert the name of the company representative signing the declaration) declare that:

1. I am employed by \_\_\_\_\_ (the “Company”). By  
(Insert the company name)

reason of my position within the Company, I am authorized and qualified to make this  
declaration.

2. I am familiar with the recordkeeping practices and systems of the Company.

3. Submitted herewith are true and correct copies of records serially numbered from

\_\_\_\_\_ to \_\_\_\_\_ or otherwise described in  
(Insert beginning Bates number) (Insert ending Bates number)

the optional attachment, Exhibit A.<sup>1</sup>

4. As to each record submitted herewith, I hereby certify that:

- a. the record was made at or near the time of the act, event, condition, or opinion reflected therein by—or from information transmitted by—someone with knowledge;
- b. the record was kept in the course of a regularly conducted activity of the Company; and
- c. making the record was a regular practice of that activity.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_.  
(Insert date of signing in blank above)

\_\_\_\_\_  
(Sign name on blank above)

\_\_\_\_\_  
(Print name and Company position on blank above)

<sup>1</sup> If all the records are Bates numbered and the beginning and ending Bates numbers have been included, then no Exhibit A is necessary. For records that are not Bates numbered, please include as Exhibit A a brief description of the records by kind and number. For electronic records that are not Bates numbered, please attach as Exhibit A a list or screenshot of the file names containing the electronic records.

# EXHIBIT A-2

**Saskya Bedoya**

---

**From:** Tim Barton  
**Sent:** Monday, May 23, 2016 6:39 PM  
**To:** Saskya Bedoya

Saskya

Do as Robert says and make Max owner in trtx and we will make him sign and then I will be added as guarantor if needed

T:b

You could make Max a co-owner -member in TRTX properties that way when you go to refinance it in his name personally the lender treats ur as a refinance and he won't have to put any money down Plus it's easier to get a loan refinanced.

Sent from my BlackBerry 10 smartphone.

Resolution  
↓  
JB Guarantor  
MB CO - Owner  
needs to be for this  
one  
Charter  
Owners is —  
—  
—

# EXHIBIT A-3

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION:

2

3 In the Matter of: )

4 ) File No. FW-04420-A

5 JMJ HOLDINGS, LLC )

6

7 WITNESS: Saskya Bedoya

8 PAGES: 1 through 235

9 PLACE: Securities and Exchange Commission

10 801 Cherry Street, Suite 1900

11 Fort Worth, Texas

12 DATE: Thursday, March 10, 2022

13

14 The above-entitled matter came on for hearing,

15 pursuant to notice, at 10:16 a.m. Central Time.

16

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23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 Q Same question, you weren't the  
2 treasurer of Carnegie Development, LLC and you  
3 weren't the treasurer of Wall 12, LLC, either one,  
4 correct?

5 A That's correct.

6 Q I'm showing you what's been marked as  
7 Exhibit 175, Resolutions of Wall 16. Do you  
8 recognize this document?

9 A Yes, sir.

10 Q And that's your signature, correct?

11 A Yes, sir.

12 Q And you, in fact, were not the  
13 treasurer despite that statement; is that correct?

14 A Yes, sir.

15 Q Going to Exhibit 176. So, these  
16 are -- this is an actual Regulations of Wall 17.  
17 October 3rd, 2008 is the date of the document. And  
18 I'm going to go to the very bottom of Exhibit 176.  
19 Well, close to the bottom.

20 I'm on page 34 of Exhibit 176 and you  
21 are listed here as the secretary for Wall 17, LLC.  
22 That in fact is incorrect, correct?

23 A Correct.

24 Q I'm showing you what's been marked as  
25 Exhibit 177, Resolutions of Wall 19, LLC. Do you



1 why -- now we're creating some confusion again  
2 because now -- when you say, Just initially, that  
3 says that you in fact were the secretary for the  
4 company. So, were you or were you not?

5 A Well, I think we did that just to  
6 open the bank account.

7 Q And that's what we've been talking  
8 about this for all these other entities. There's a  
9 distinction between you putting down something that  
10 says secretary, but not really being the secretary,  
11 but just putting it down, but helping to set the  
12 entity up in your capacity as this other role that  
13 you served for all these different entities.

14 So far I -- I believe you've been  
15 really consistent that you weren't serving as the  
16 secretary for these companies and that's not what  
17 you were doing. That wasn't your role, but you were  
18 helping in your capacity as this kind of a catchall,  
19 Jack of all trades for all these other companies you  
20 were working for. Is that still correct?

21 A So, I mean, in performing the tasks  
22 as the -- as I was initially the secretary, isn't  
23 that -- I guess my question is, if -- if I'm  
24 initially the secretary to open the bank account, it  
25 was for that task.

1 Q Well, I'm trying to figure out, Ms.  
2 Bedoya, for your background questionnaire in  
3 particular, what your employment activities were.  
4 And, you know, you don't list being a secretary or  
5 having all these other roles for all of these other  
6 entities. And so, I'm trying to figure out, you  
7 know, were you the secretary of all these different  
8 companies and the treasurer and that was one of your  
9 jobs or did you not work for those companies?

10 A I didn't --

11 Q So --

12 A I didn't work for them. I was just  
13 listed as the secretary really to -- to perform that  
14 task initially.

15 Q Okay. So, all these entities we've  
16 been talking about that were -- that list you, for  
17 example, as treasurer were you the treasurer for  
18 those entities?

19 A I guess that's where my confusion is  
20 because, I mean, I -- I was -- to do the tasks I was  
21 initially named those titles, but they weren't --  
22 there wasn't much more fulfillment operationally or  
23 anything other than that.

24 Q Okay.

25 MR. BRAUN: Let's go off the record

1 at 1:22 p.m.

2 (Brief recess taken at 1:22 p.m. Central Time.)

3 MR. BRAUN: Let's go back on the  
4 record at 1:49 p.m.

5 BY MR. BRAUN:

6 Q Ms. Bedoya, we just took a brief  
7 break. Do you understand you're still under oath?

8 A Yes, sir.

9 Q We were talking off the record a  
10 little bit about some of this confusion about  
11 whether you actually were serving in the capacity as  
12 a treasurer or as a secretary for all these various  
13 companies we were talking about just before the  
14 break.

15 So, were you in fact the secretary or  
16 treasurer as -- you know, all these entities that we  
17 went through, all these documents that said you were  
18 the treasurer, you were the secretary, did you  
19 actually serve in those roles for those entities?

20 A Initially, yes.

21 Q For how long?

22 A Well, I'm not sure, but my role was  
23 to create the entities. And then, after that tasks  
24 were completed, those tasks to create the entities  
25 and create the bank account, after those tasks were

1 done then I would no longer have that role.

2 Q Okay. So, you -- you set the -- you  
3 set the -- you set the company up. That was one  
4 thing you did. Yes?

5 A Yes.

6 Q You got the EIN number. Yes?

7 A Yes.

8 Q What else?

9 A The -- first, was the state, the EIN  
10 and then the bank account.

11 Q Okay. So, you were -- you were just  
12 on -- you were -- so for one of the Wall entities,  
13 for example, those were all created I think in the  
14 2017, 2018 period. Yes?

15 A I'd have to look, but that sounds  
16 about right.

17 Q And so you would set the company up,  
18 get the EIN, set up a bank account and that's all  
19 you were doing. And then you are no longer serving  
20 in that capacity, correct?

21 A Right. That's correct.

22 Q Okay. So, let me show you what's  
23 been marked and I -- 'cause I want to clear some of  
24 this up because I want to show you one example of --  
25 so, here is one of the documents we were going over,

1 Exhibit 173. This is a Wall 10 resolution.

2 So, this is in November of 2020. So,  
3 this is, you know, a couple of years after the Wall  
4 10 entity was set up. Those Wall 10 agreements were  
5 entered into and the company was set up a couple of  
6 years before. And here you are still being referred  
7 to as the appointed treasurer of the company. And  
8 you're signing as the treasurer of the company a  
9 couple of years after the company was formed. So --

10 A I see that.

11 Q Yeah. And so, I'm just -- I'm not  
12 understanding what you're testifying to now that you  
13 were the treasurer or secretary for this brief  
14 moment in time to get the company set up, the  
15 initial bank account and then you weren't. You were  
16 done. Because now you're still listed here and  
17 signing as treasurer in 2020 years after the Wall 10  
18 entity was created.

19 And I'll represent to you, this is  
20 not an anomaly. There are other -- other documents,  
21 other scenarios like this where, you know, it's not  
22 -- you know, it's years later and you're still  
23 listed as the treasurer or secretary. So, I'm just  
24 trying to figure out, looking at your background  
25 questionnaire and trying to square that with, you

1 say you had this limited employment history, but  
2 then we're seeing all those companies where you are  
3 the treasurer or the secretary over and over and  
4 over and over again, but they're not showing up on  
5 your background questionnaire. And I'm just trying  
6 to understand why that is.

7 A Well, I imagine -- I mean, for --  
8 from my understanding was when I initially was the  
9 treasurer or secretary it was to create the company.  
10 And then, it was soon after I was no longer taking  
11 that role.

12 Q Did you -- did you ever handle the  
13 accounting for any of the Wall entities?

14 A No.

15 Q You were the signer on a lot of those  
16 bank accounts though, correct?

17 A Yes.

18 Q And you were -- you were handling  
19 transfers of money from all these various accounts,  
20 correct?

21 A Yes.

22 Q Weren't you doing that in your  
23 capacity as the treasurer or secretary for all of  
24 these different entities that you were serving on?

25 A I mean, I don't know that I was doing

# EXHIBIT A-4

**Re: :)**

---

**From:** Tim Barton <tbarton@jmjdevelopment.com>  
**To:** Saskya Bedoya <sbedoya@jmjdevelopment.com>  
**Date:** Tue, 27 Jun 2017 17:44:59 -0500

---

009 to JMJ to villita  
009 to carnigie to segoville

Sent from my BlackBerry 10 smartphone.

---

**From:** Saskya Bedoya  
**Sent:** Tuesday, June 27, 2017 6:29 PM  
**To:** Tim Barton  
**Subject:** :)

---

Need money in Seagoville (7,500)  
Need money in Villita (10,000)

Take from 007 or 009

Wall to Carnegie Development to Seagoville (or to JMJ then to Seagoville)?

Wall to Carnegie Development to JMJ to Villita





**Re: Invoice 1515 from BHEI**

---

**From:** Tim Barton <tbarton@jmjdevelopment.com>  
**To:** Saskya Bedoya <sbedoya@jmjdevelopment.com>  
**Date:** Wed, 09 Jan 2019 15:51:43 -0600

---

Wall

Sent from my BlackBerry 10 smartphone.

---

**From:** Saskya Bedoya  
**Sent:** Wednesday, January 9, 2019 3:46 PM  
**To:** Tim Barton  
**Subject:** RE: Invoice 1515 from BHEI

---

Use wall017 money or from lajolla ?

---

**From:** Tim Barton <TBarton@jmjdevelopment.net>  
**Sent:** Wednesday, January 9, 2019 3:41 PM  
**To:** Saskya Bedoya <SBedoya@jmjdevelopment.net>  
**Subject:** Re: Invoice 1515 from BHEI

Yes

Sent from my BlackBerry 10 smartphone.

---

**From:** Saskya Bedoya  
**Sent:** Wednesday, January 9, 2019 3:39 PM  
**To:** Tim Barton  
**Subject:** RE: Invoice 1515 from BHEI

Pay amex?

---

**From:** Tim Barton <TBarton@jmjdevelopment.net>  
**Sent:** Wednesday, January 9, 2019 3:38 PM  
**To:** Saskya Bedoya <SBedoya@jmjdevelopment.net>  
**Subject:** Re: Invoice 1515 from BHEI

Ok

Sent from my BlackBerry 10 smartphone.

---

**From:** Saskya Bedoya  
**Sent:** Wednesday, January 9, 2019 3:28 PM  
**To:** Tim Barton  
**Subject:** RE: Invoice 1515 from BHEI

23k?

I need to pay down amex 150k

---

**From:** Tim Barton <TBarton@jmjdevelopment.net>  
**Sent:** Wednesday, January 9, 2019 3:05 PM  
**To:** Saskya Bedoya <SBedoya@jmjdevelopment.net>  
**Subject:** Fw: Invoice 1515 from BHEI



Pay credit card

Sent from my BlackBerry 10 smartphone.

---

**From:** [mmatthews@cynergydev.com](mailto:mmatthews@cynergydev.com)  
**Sent:** Wednesday, January 9, 2019 2:28 PM  
**To:** Beverly Roberts  
**Cc:** Tim Barton  
**Subject:** FW: Invoice 1515 from BHEI

This is for Rogers JMR.  
Need to keep these guys working.

Michael Matthews  
Cynergy Development Advisors  
214.287.0090

---

**From:** Nichol Herron <[nichol@b-hei.com](mailto:nichol@b-hei.com)>  
**Sent:** Wednesday, January 9, 2019 2:09 PM  
**To:** [tbarton@mjdevelopment.net](mailto:tbarton@mjdevelopment.net)  
**Cc:** [mmatthews@cynergydev.com](mailto:mmatthews@cynergydev.com)  
**Subject:** Invoice 1515 from BHEI

**BHEI**

---

<b>Invoice</b> <small>Due:12/07/2018</small> 1515	<b>Amount Due: \$23,176.00</b>
--	--------------------------------

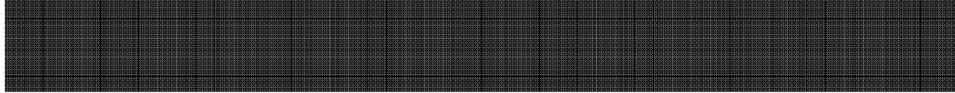
Dear Tim Barton:

Your invoice-1515 for 23,176.00 is attached. This is now 31 days past due. I was under the impression that it would be paid prior to the Holidays. Please remit payment at your earliest convenience.

Thank you for your business - we appreciate it very much.

Sincerely,  
BHEI

817-341-4242



# EXHIBIT A-5

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. FW-04420-A

5 JMJ HOLDINGS )

6

7 WITNESS: Timothy Barton

8 PAGES: 160 through 418

9 PLACE: Securities and Exchange Commission

10 801 Cherry Street, Suite 1900, Unit 18

11 Fort Worth, Texas 76102

12 DATE: Monday, May 24, 2021

13

14 The above-entitled matter came on for a

15 hearing via Webex, pursuant to notice, at 9:29 a.m.

16

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18

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22

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 know that -- that it's not used for my personal  
2 activities. So they can certainly give you  
3 that information on that account. As I said,  
4 it's on the list with the other bank accounts.

5 BY MR. BRAUN:

6 Q So, Mr. Barton, you -- a couple of  
7 times when you were talking just now about your  
8 personal accounts, you made -- you had made --  
9 you said a qualifier that, you know, you used  
10 for your personal activities. Getting rid of  
11 any personal activities, any -- you know, I  
12 don't really care about that. I just want to  
13 find out what accounts that you personally have  
14 at any bank account.

15 Other than the personal checking at  
16 Capital One and the Wells Fargo account you  
17 just mentioned, do you have any other accounts  
18 in your name at any other financial  
19 institutions?

20 A Sir, as far as I know, no, but  
21 every -- I told Mr. K., and I -- and I put  
22 together a list of every bank account. So once  
23 you have that list, I think that will be the  
24 most accurate list, but as I said, the only --  
25 the ones I use is Capital One. So no, none

1 that I know of.

2 Q How did you go about gathering the  
3 information to compile this list of bank  
4 accounts?

5 A I called Saskya Bedoya, and told her  
6 to put the information together.

7 Q Okay. And for the record, could you  
8 tell us the -- Ms. Saskya Bedoya, what her  
9 relationship is to you?

10 A She's been an administrative  
11 assistant, and involved with me probably for  
12 the last ten years.

13 Q And it -- an administrative assistant  
14 to you personally?

15 A Yes.

16 Q Does she also hold positions in any  
17 of your companies?

18 A I think from time-to-time, there's  
19 surgery secretary, or roles such as that, yes.

20 Q What is her role with each of the  
21 Wall entities?

22 A I have to look at the documents, but  
23 it's possible she was a secretary on those  
24 companies, I would -- I would surmise. I need  
25 to look at the documents, but...

1 Q Okay. Does Ms. Bedoya generally  
2 handle the accounting for all of the Wall  
3 entities?

4 A Correct.

5 Q Do you have a personal relationship  
6 with Ms. Bedoya?

7 A I do not have a personal-sexual  
8 relationship with Ms. Bedoya.

9 Q What about any type of a romantic  
10 relationship?

11 A I do not have a romantic, sexual -- I  
12 don't fantasize about her. We don't have  
13 interaction in a sexual way, and she's a -- you  
14 know, somebody that's been working for me for a  
15 long time, and has taken care of things for my  
16 children so we consider her a family friend.

17 Q Thank you.

18 A For the record, she's a married  
19 mother of three.

20 Q And how old is Ms. Bedoya?

21 A I don't know. I'm not -- I'm a  
22 Connecticut Yankee, but I'm a Texan now. So  
23 gentleman don't ask ages.

24 Q So let's go to Question Number 21,  
25 and I expect that we'll come back to some of



# EXHIBIT A-6

RESOLUTIONS  
OF  
TRTX Properties, LLC

December 17, 2020

RESOLVED, that the Manager on behalf of TRTX Properties, LLC, a Texas limited liability company (the "Company") hereby recognizes and approves that the Manager or any officer of the Company is authorized and directed to do any and all things deemed necessary or advisable in the best interest of the Company, in its or his sole discretion, in connection with the transaction(s) and to execute any and all documents necessary to complete the transaction(s) in the name of and on behalf of the Company;

Further RESOLVED, that Max Barton is removed as President and no longer carries the authority delegated to the position.

FURTHER RESOLVED, that Tim Barton is appointed as President and is authorized to (a) sign, execute, certify to, verify, acknowledge, deliver, accept, file and record any and all instruments and documents, and (b) take, or cause to be taken, any and all such action in the name and on behalf of the Company or otherwise, as in its or his judgment is necessary, desirable or appropriate in order to consummate the transaction(s), including forming special purpose entity(s) for this purpose contemplated by or otherwise to effect the purpose of the foregoing resolutions, including preparing and producing certified resolutions that conform to specific resolutions requested by a lender that do not materially or substantially differ from these resolutions, and all actions taken by the President or officers of the Company in connection with the transaction(s) referred to in the foregoing resolutions are hereby ratified and confirmed.


FURTHER RESOLVED, that in executing and delivering any and all such documents on behalf of the Company or doing any and all such things or taking any and all such actions on behalf of the Company, the President is acting on behalf of the Company and all such executions, deliveries, things and actions shall be effective on behalf of the Company regardless of the designation used by the President.

Executed as of December 17 2020,

MANAGER  
The MXBA Irrevocable Trust

By:   
Name: Saskya Bedoya  
Its: Trustee


**MANAGER:**



---

SASKYA BEDOYA, TRUSTEE  
THE MXBA TRUST  
13901 MIDWAY RD  
SUITE 102-243  
DALLAS TX 75244

**MEMBERS:**



---

SASKYA BEDOYA, TRUSTEE  
THE MXBA TRUST  
13901 MIDWAY RD  
SUITE 102-243  
DALLAS TX 75244

# EXHIBIT A-7

<p><b>Form 424</b> <b>(Revised 05/11)</b></p> <p>Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 <b>Filing Fee: See instructions</b></p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">   <b>Certificate of Amendment</b> </div>
---	---

### Entity Information

The name of the filing entity is:

TRTX Properties, LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- |   |   |
|---|---|
| <input type="checkbox"/> For-profit Corporation               | <input type="checkbox"/> Professional Corporation               |
| <input type="checkbox"/> Nonprofit Corporation                | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association              | <input type="checkbox"/> Professional Association               |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership                    |

The file number issued to the filing entity by the secretary of state is: 801308593

The date of formation of the entity is: 08/20/2010

### Amendments

#### 1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

TRTX Properties, LLC

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

#### 2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

**Registered Agent**

(Complete either A or B, but not both. Also complete C.)

A. The registered agent is an organization (cannot be entity named above) by the name of:

ONE Agent Texas, LLC

OR

B. The registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.			
C. The business address of the registered agent and the registered office address is:			
815 Brazos St., Suite 500		Austin	TX 78701
<i>Street Address (No P.O. Box)</i>		<i>City</i>	<i>State Zip Code</i>

**3. Other Added, Altered, or Deleted Provisions**

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

Add each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

The MXBA Trust  
 2999 Turtle Creek Blvd  
 Dallas TX 75219  
 Manager

Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

Delete each of the provisions identified below from the certificate of formation.

TRWF LLC as Manager

**Statement of Approval**

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

**Effectiveness of Filing** (Select either A, B, or C.)

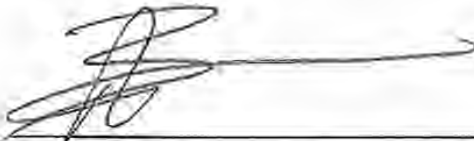
- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: 07/20/2020

By:  \_\_\_\_\_


\_\_\_\_\_  
Signature of authorized person

Max Barton, President

\_\_\_\_\_  
Printed or typed name of authorized person (see instructions)

# EXHIBIT A-8



<b>Form 401</b>  Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  <b>Filing Fee: See Instructions</b>	  <b>Statement of Change of Registered Office/Agent</b>	<p style="text-align: center;"><b>Filed in the Office of the Secretary of State of Texas</b></p> <p style="text-align: center;"><b>Filing #: 801308593 05/02/2022</b></p> <p style="text-align: center;"><b>Document #: 1144928130003</b></p> <p style="text-align: center;"><b>Image Generated Electronically for Web Filing</b></p>
<b>Entity Information</b>		
The name of the entity is :		
<b><u>TRTX Properties, LLC</u></b>		
The file number issued to the entity by the secretary of state is: <b><u>801308593</u></b>		
The registered agent and registered office of the entity as currently shown on the records of the secretary of state are:		
<b><u>ONE Agent Texas, LLC</u></b>		
<b><u>815 Brazos St, Suite 500, Austin, TX, USA 78701</u></b>		
<b>Change to Registered Agent/Registered Office</b>		
The following changes are made to the registered agent and/or office information of the named entity:		
Registered Agent Change		
<input checked="" type="checkbox"/> A. The new registered agent is an organization by the name of:		
<b><u>One Agent Texas, LLC</u></b>		
OR		
<input type="checkbox"/> B. The new registered agent is an individual resident of the state whose name is:		
Registered Office Change		
<input checked="" type="checkbox"/> C. The business address of the registered agent and the registered office address is changed to:		
<b><u>13901 Midway Rd, suite - 102, LB243, Dallas, TX, USA 75244</u></b>		
The street address of the registered office as stated in this instrument is the same as the registered agent's business address.		
Consent of Registered Agent		
<input type="checkbox"/> A. A copy of the consent of registered agent is attached.		
<input checked="" type="checkbox"/> B. The consent of the registered agent is maintained by the entity.		
<b>Statement of Approval</b>		
The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.		
<b>Effectiveness of Filing</b>		
<input checked="" type="checkbox"/> A. This document becomes effective when the document is filed by the secretary of state.		
<input type="checkbox"/> B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:		
<b>Execution</b>		
The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.		
Date: <b><u>May 2, 2022</u></b>		<b><u>Timothy Barton</u></b>

Signature of authorized person(s)

**FILING OFFICE COPY**

# EXHIBIT A-9

**Denton County  
Juli Luke  
County Clerk**

---

**Instrument Number:** 74240

ERecordings-RP

WARRANTY DEED

Recorded On: June 02, 2020 11:30 AM

Number of Pages: 4

---

**" Examined and Charged as Follows: "**

Total Recording: \$38.00

---

**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 74240  
Receipt Number: 20200602000226  
Recorded Date/Time: June 02, 2020 11:30 AM  
User: Debra B  
Station: Station 23

**Record and Return To:**

Corporation Service Company



STATE OF TEXAS  
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke  
County Clerk  
Denton County, TX

APP000079

GF No.: 662000662

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**WARRANTY DEED WITH VENDOR'S LIEN**  
(Vendor's Lien Reserved and Assigned to Third Party Lender)

THE STATE OF TEXAS  
COUNTY OF DENTON

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, TRTX Properties, LLC, hereinafter referred to as "Grantor", whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash, and other good and valuable consideration in hand paid by Maximilien Barton, a single man, hereinafter referred to as "Grantee", whether one or more, the receipt and sufficiency of which is hereby fully acknowledged, and a note of even date herewith in the principal amount Two Hundred Sixteen Thousand Two Hundred Eighteen And No/100 Dollars (\$216,218.00) payable to the order of SFMC, LP, dba Service First Mortgage Company (the "Lender"). The note is secured by the vendor's lien herein retained in favor of Lender, and is additionally secured by a deed of trust of even date herewith to J. Marc Hesse (the "Trustee") for the benefit of Lender. Lender, at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the property that is evidenced by the note described. It is expressly agreed that the vendor's lien, as well as superior title in and to the property is retained for the benefit of Lender and is transferred to that party without recourse on Grantor until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute.

**Property (including any improvements):** The real property situated in Denton County, Texas, and being more particularly described on Exhibit "A" (Legal Description) attached hereto and made a part hereof for all purposes (the "Property").

**Reservations from and Exceptions to Conveyances and Warranty:** This conveyance, however, is made and accepted subject to any and all restrictions, encumbrances, easements, covenants and conditions, if any, relating to the hereinabove described property and/or filed for record in the County Clerk's Office of Denton County, Texas; taxes for the current year, the payment of which Grantee assumes.

TO HAVE AND TO HOLD the above described premises, together with all the rights and appurtenances lawfully accompanying it, by the Grantee, Grantee's heirs, executors, administrators, successors and/or assigns forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors and/or assigns to WARRANT AND FOREVER DEFEND all the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof.

Current ad valorem taxes on said property having been prorated, the payment thereof is assumed by Grantee.

*Remainder of page intentionally left blank; signature page to follow*

EXECUTED on 5-29, 2020

TRTX Properties, LLC

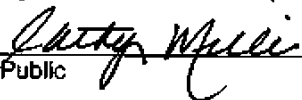
BY:   
Timothy Barton  
Managing Member

**ACKNOWLEDGMENT**

State of Texas

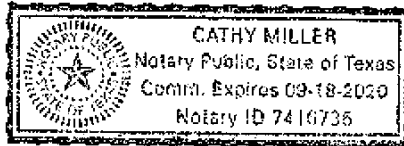
County of Denton

Signed and sworn to before me the 29 day of May, 2020, by Timothy Barton, the Managing Member of TRTX Properties, LLC, on behalf of the Limited Liability Company.

  
Notary Public

Affix stamp/seal:

**AFTER RECORDING. RETURN TO:**  
Maximilien Barton  
3926 Vista Woods  
Carrollton, TX 75007



**EXHIBIT "A"**  
**Legal Description**

Lot 20, Block N, of The Revised Plat of Phase I, High Country No. 3, an Addition to the City of Carrollton, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 101, Plat Records, Denton County, Texas.

# EXHIBIT A-10



**AMENDED AND RESTATED COMPANY AGREEMENT OF  
Gillespie Villas LLC,  
A TEXAS LIMITED LIABILITY COMPANY**

This Company Agreement of GILLESPIE VILLAS, LLC, a Texas limited liability company is executed as of APRIL 28, 2022 (the "Effective Date") by the persons who sign and are identified as "Members" and "Managers" in this Agreement.

**ARTICLE I  
DEFINITIONS**

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

"Affiliate" means, with reference to any person, any other person controlling, controlled by or under direct or indirect common control with such person.

"Agreement" means this Amended and Restated Company Agreement, as amended from time to time.

"Assignee" means a person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member.

"Bankrupt Member" means (except to the extent a Simple Majority consents otherwise) any Member (a) that (i) makes an 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, dissolution, termination, 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, dissolution, or similar relief under any law has been commenced and one hundred twenty (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 ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (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 Account" means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

"Capital Contribution" means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

"Capital Commitment" of a Member represents the aggregate amount of capital that such Member has agreed to contribute to the Company.

"Certificate of Formation" means the initial, amended, and restated certificate of formation of the Company.

"Company" means GILLESPIE VILLAS, LLC, a Texas limited liability company.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) ten percent (10%) plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"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; however, this term does not include a person who ceases to be a Member as a result of bankruptcy, default or expulsion.

"Fundamental Business Transaction" has that meaning assigned to it by the definitions in the TBOC, as may be amended from time to time, and includes (a) a merger, (b) an interest exchange, (c) a conversion, or (d) a sale of all or substantially all of an entity's assets (with or without good will), other than in the usual and regular course of the Company's business.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

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

"Manager" means any person named in the Certificate of Formation as an initial Manager of the Company and any person hereafter elected as a Manager of the Company as provided in this Agreement, but does not include any person who has ceased to be a Manager of the Company.

"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 the interest of a Member in the Company, including,

without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Percentage Interest" means the ratio in which the Members shall share profits and losses, as provided in this Agreement. The sum of the Members' Interests shall be one hundred percent (100%).

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

"Simple Majority" means one or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members.

"Super Majority" means one or more Members having among them more than sixty-six and sixty-seven hundredths percent (66.67%) of the Percentage Interests of all Members.

"TBOC" means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

"Transfer" means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor's lifetime or upon or after the transferor's death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

Other terms defined herein have the meaning so given them.

## ARTICLE II ORGANIZATION

**2.01 Formation.** The Company has been organized as a Texas limited liability company by filing a Certificate of Formation with the Secretary of State of Texas, which may be amended or restated from time to time.

**2.02 Name.** The name of the Company is "GILLESPIE VILLAS, LLC " and all Company business must be conducted in that name or such other names that comply with applicable law as the Managers may select from time to time.

**2.03 Registered Office and Registered Agent.** The registered office of the Company required by the TBOC 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 Managers 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 Managers may designate from time to time in the manner provided by law.

**2.04 Principal Office and Other Offices.** The principal office of the Company in the United States shall be at such place as the Managers may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Managers may designate from time to time.

**2.05 Purposes.** The primary purposes of the Company shall be any lawful purpose which may be undertaken by the company in accordance with the applicable provisions of the Texas Business Organizations Code.

**2.06 Powers.** The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the TBOC, (ii) any other laws in the State of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

**2.07 Foreign Qualification.** Prior to the Company's conducting business in any jurisdiction other than Texas, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Managers, each Member shall immediately 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.

**2.08 Term.** The Company will commence as provided in the Certificate of Formation for the Company filed with the Secretary of the State of Texas, and will continue until the Company terminates under the terms of this Agreement.

**2.09 Mergers and Exchanges.** The Company may be a party to a merger, an exchange, or acquisition under the TBOC, subject to the requirements of this Agreement.

**2.10 No State-Law Partnership.** The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

### ARTICLE III MEMBERSHIP

**3.01 Initial Members, Capital Commitments, and Percentage Interests.** The persons listed on Exhibit A are hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date of formation of the Company. Set forth opposite the name of each Member

listed on Exhibit A is such Member's Capital Commitment and its Percentage Interest. Exhibit A may be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Exhibit A shall (a) supersede all prior Exhibit A's, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not transfer such interest in contravention of that act or any applicable state or federal securities laws.

**3.02 Additional Members.** Additional persons may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by unanimous consent of the Managers. The terms of admission or issuance must specify the Percentage Interests and the Capital Commitments applicable thereto. The terms of admission or issuance may also provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Managers 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 Managers.

**3.03 Member Rights Specified in Agreement.** Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to sell, transfer or assign its interest in the Company; (b) to require partition of the property of the Company; (c) to compel the sale of Company assets; or (d) to cause the winding up of the Company.

**3.04 Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that, if that Member is a business entity: (a) that Member is duly organized, validly existing, and in good standing under the law of the state of its organization; (b) that Member is duly qualified to do business in the jurisdiction of its principal place of business; (c) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (d) all necessary actions by the board of directors, shareholders, members, managers or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; and (e) 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.

**3.05 No Authority.** Except as otherwise specifically provided in this Agreement, no Member (other than a Manager or an officer) has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

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

**3.07 Withdrawal.** A Member may withdraw from the Company with sixty (60) days written notice to the Managers of the Company, subject to winding up or termination as provided in Article XVI of this Agreement.

## ARTICLE IV

## CAPITAL CONTRIBUTIONS

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

**4.02 No Further Contributions.** No Member shall be required to make any Capital Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by the TBOC.

**4.03 Return of Contributions.** No Member is 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.

**4.04 Loans by Members.** If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so with the Managers' consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this paragraph 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.

**4.05 Capital Accounts.** A Capital Account shall be established and maintained for each Member. The Capital Account of each Member:

(a) shall consist of (i) the amount of money contributed by that Member to the Company, and (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 Internal Revenue Code);

(b) shall be increased by 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 Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation § 1.704-1(b)(4)(i); and

(c) 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 Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (c)(iii) above and loss or deduction described in Treasury Regulation § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation § 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 Treasury Regulation § 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 Treasury Regulation § 1.704-1(b)(2)(iv)(l).

## ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

### 5.01 Allocations.

(a) Except as may be required by Section 704(c) of the Internal Revenue Code and Treasury Regulation § 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 Percentage Interests.

(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 Internal Revenue Code and the regulations thereunder.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of the Company's income and gain shall be specially allocated as a qualified income offset to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this paragraph 5.01(c) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this paragraph 5.01(c) were not in this Agreement.

(d) For the purpose of determining the Members entitled to receive allocations as provided for in this Agreement, the Managers may fix in advance a record date for any such determination of Members, such date in any case to be set not more than (30) days and not less than (5) days prior to the date on which the action authorizing the allocation is taken. If no record date is fixed, then the date on which the Managers take action to authorize such an allocation pursuant to this Agreement and the Internal Revenue Code, shall be the record date for such determination of Members.

### 5.02 Distributions.

(a) From time to time (but at least once each calendar quarter) the Managers 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 Managers shall cause the Company to distribute to the Members, in accordance with their Percentage Interests, an amount in cash equal to that excess.

(b) From time to time the Managers 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 Percentage Interests 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 Treasury Regulation § 1.704-1(b)(2)(iv)(f).

(c) For the purpose of determining the Members entitled to receive a distribution as provided for in this Agreement, the Managers may fix in advance a record date for any such determination of Members, such date in any case to be set not more than (30) days and not less than (5) days prior to the date on which the action authorizing the distribution is taken. If no record date is fixed, then the date on which the Managers take action to authorize such a distribution pursuant to this Agreement and the Internal Revenue Code, shall be the record date for such determination of Members.

## ARTICLE VI MANAGEMENT

**6.01 Designation of Manager and Management by Managers.** MXBA, LLC is hereby designated by the Members as the Manager for the Company. Except for situations in which the approval of the Members is required by this Agreement or by non-waivable provisions of applicable law, and subject to the provisions of paragraph 6.02 of this Agreement, the Managers shall have the sole and exclusive control of the management, business and affairs of the Company, and the Managers shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) 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, including a Fundamental Business Transaction;

(b) 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;

(c) maintaining the assets of the Company in good order;

(d) collecting sums due the Company;

(e) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;

(g) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;



(h) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(i) obtaining insurance for the Company;

(j) determining distributions of Company cash and other property as provided in paragraph 5.02 of this Agreement;

(k) establishing a seal for the Company; and

(l) designating one or more committees, each of which shall be comprised of one or more Managers, to exercise any authority of the Managers in the management, business and affairs of the Company.

**6.02 Restrictions.** Notwithstanding the provisions of paragraph 6.01 of this Agreement, the Managers may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(a) enter into a Fundamental Business Transaction, without complying with the applicable procedures set forth in the TBOC regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(b) do any act in violation of this Agreement;

(c) admit a Member, except as expressly permitted by this Agreement;

(d) do any act which requires the prior approval of the Members;

(e) possess Company property or assign rights in Company property, other than for a Company purpose; or

(f) amend this Agreement, except as expressly permitted by this Agreement.

**6.03 Conflicts of Interest.** Subject to the other express provisions of this Agreement, each Manager, 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, Manager or officer the right to participate therein.

**6.04 Contracts or Transactions with Interested Directors or Officers.** This provision applies only to a contract or transaction between the Company and one or more of its Managers, Members or officers, or between the Company and an entity or other organization in which one or more of the Company's Managers, Members or officers is a managerial official or has a financial interest.

An otherwise valid contract or transaction is valid notwithstanding that a Manager, Member or officer of the corporation is present at or participates in the meeting of the Managers, Members or officers, or of a committee of the Managers, Members or officers that authorizes the contract or transaction,

or votes or signs, in the person's capacity as a Manager, Member or officer, a written consent of Managers, Members or officers to authorize the contract or transaction, if: (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by (a) the Managers, Members or officers or a committee of the Managers, Members or officers and the Managers, Members or officers or committee in good faith authorize the contract or transaction by the affirmative vote of the majority of the disinterested Managers, Members or officers or committee members, regardless of whether the disinterested Managers, Members or officers or committee members constitute a quorum; or (b) the Members of the Company, and the Members in good faith approve the contract or transaction by vote of the Members; or (2) the contract or transaction is fair to the Company when the contract or transaction is authorized, approved, or ratified by the Managers, Members or officers, a committee of the Managers, Members or officers, or the Members of the Company.

**6.05 Number and Term of Office.** The number of Managers of the Company shall be determined from time to time by resolution of the Managers, and shall consist of at least one (1); provided, however, that no decrease in the number of Managers that would have the effect of shortening the term of an incumbent Manager may be made by the Managers. If the Managers make no such determination, the number of Managers shall be the number set forth in the Certificate of Formation as the number of Managers constituting the initial Managers. Each Manager shall hold office for the term for which he is elected and thereafter until his successor shall have been elected and qualified, or until his earlier death, resignation or removal. Unless otherwise provided in the Certificate of Formation, Managers need not be Members or residents of the State of Texas.

**6.06 Vacancies; Removal; Resignation.** Any Manager position to be filled by reason of an increase in the number of Managers or other reason may be filled by election at an annual or special meeting of Members called for that purpose. A Manager elected to fill a vacancy occurring other than by reason of an increase in the number of Managers shall be elected for the unexpired term of his predecessor in office. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this Agreement, any Manager may be removed, with or without cause, by a Super Majority. Any Manager may resign 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 remaining Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**6.07 Compensation.** For their services in the management of the Company and its operations, the Managers may receive such compensation, if any, as may be designated from time to time by a Simple Majority of the Members.

**6.08 Reimbursement.** The Managers are not required to advance any funds to pay costs and expenses of the Company. However, in the event the Managers advance such funds, the Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder, including the portion of their overhead reasonably allocable to Company activities.

**6.09 Meetings.**

(a) Unless otherwise required by law or provided in the Certificate of Formation or this Agreement, a majority of the total number of Managers fixed by, or in the manner provided in, the Certificate of Formation or this Agreement shall constitute a quorum for the transaction of

business of the Managers, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Managers. A Manager who is present at a meeting of the Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

(b) Meetings of the Managers may be held at such place or places as shall be determined from time to time by resolution of the Managers. At all meetings of the Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Managers. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) In connection with any annual meeting of Members at which Managers were elected, the Managers may, if a quorum is present, hold their first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.

(d) Regular meetings of the Managers shall be held at such times and places as shall be designated from time to time by resolution of the Managers. Notice of such regular meetings shall not be required.

(e) Special meetings of the Managers may be called by any Manager on at least 24 hours written notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Certificate of Formation or this Agreement. Notice of special meetings may be given by facsimile or electronic message (e-mail).

**6.010 Approval or Ratification of Acts or Contracts by Members.** The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract. Any act or contract that shall be approved or be ratified by a majority of the Managers shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

**6.11 Action Without Meeting.** Any action permitted or required by the TBOC, the Certificate of Formation or this Agreement to be taken at a meeting of the Managers or any committee designated by the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Managers or members of such committee, as the case may be. Every written consent shall bear the date of signature of each Manager who signs the consent, and the consent may be in one or more counterparts. A telegram, telex, cablegram or similar transmission by a Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this paragraph. Such consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Texas, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Managers or any such



committee, as the case may be. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

**6.12 Action by Telephone Conference or Other Remote Communications Technology.** Subject to the requirements of the TBOC, the Certificate of Formation or this Agreement for notice of meetings, unless otherwise restricted by the Certificate of Formation, Managers, or members of any committee designated by the Managers, may participate in and hold a meeting of the Managers or any committee of Managers, as the case may be, 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 video-conferencing technology or the Internet, but only if each Manager 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 Manager 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.

**6.13 Broad Discretion and Authority of Managers.** Each Member acknowledges and understands that the Managers are granted broad discretion and authority under this Agreement and that the Managers' exercise of such broad discretion and authority may impair the value of the Membership Interest of the Member. Such Member further acknowledges and understands that the Managers would not cause the Company to issue a Membership Interest to the Member if the Managers did not have such broad discretion and authority, and such Member agrees not to challenge the Manager's exercise of such discretion and authority.

## ARTICLE VII CONFIDENTIAL INFORMATION

**7.01 Confidential Information.** The Members agree that the Managers from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information. 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 or a Manager, except for disclosures (i) compelled by law (but the Member must notify the Managers 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 transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this paragraph, 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.

7.02. **Specific Performance.** The Members acknowledge that breach of the provisions of paragraph 7.01 of this Agreement 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 paragraph 7.01 of this Agreement may be enforced by specific performance.

## ARTICLE VIII MEETING OF MEMBERS

### 8.01 Meetings.

(a) A quorum shall be present at a meeting of Members if the holders of a Simple Majority 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 Percentage Interests of all Members entitled to vote is required by the TBOC or this Agreement, the affirmative vote of a Simple Majority at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by another specific provision in this Agreement.

(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 outside 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 paragraph 8.06 of this Agreement.

(c) Notwithstanding the other provisions of the Certificate of Formation or this Agreement, the chairman of the meeting or the holders of a Super Majority 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 Super Majority. 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 election of the Managers and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or outside the State of Texas, on such date and at such time as the Managers shall fix and set forth in the notice of the meeting, which date shall be within thirteen (13) 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 Managers or the holders of at least ten percent of the Percentage Interests 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 given not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by

mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be given when deposited in the United States mail, addressed to the Member at his address on the voting list provided for in paragraph 8.02 of this Agreement, 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 Managers 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) Notice of meetings may be given to Members by facsimile or electronic message (e-mail).

**8.02 Voting List.** The Managers shall make, at least ten (10) 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 Percentage Interests held by each. For a period of ten (10) days prior to such meeting, such list 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 paragraph shall not affect the validity of any action taken at the meeting.

**8.03 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 paragraph. 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 Managers, 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 Managers, 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 (11) 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 Percentage Interests that are the subject of such proxy are to be voted with respect to such issue.

**8.04 Conduct of Meetings.** All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Manager (or representative thereof) designated by a majority

of the Managers. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion.

**8.05 Action by Unanimous Written Consent Without Meeting.**

(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, by unanimous written consent of the Members or committee members, as the case may be, setting forth the action so taken. No written consent shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the Company in the manner required by this paragraph, the signed consent or consents are delivered to the Company by delivery to its registered office, its principal place of business, or the Managers. 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 Managers. Each written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. 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 paragraph. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

(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 Managers. 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 Managers.

(c) If any action by Members is taken by written consent, any articles 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 TBOC concerning any vote of Members, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

**8.06 Action by Telephone Conference or Other Remote Communications Technology.** 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 video-conferencing 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.

**8.07 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 IX OFFICERS

9.01 **Qualification.** The Managers 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, a Member or a Manager. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, 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 any specific delegation of authority and duties made to such officer by the Managers pursuant to this paragraph. Each officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Managers. Any number of offices may be held by the one person.

9.02. **Compensation.** The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

9.03. **Resignation.** 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 Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04. **Removal.** Any officer may be removed as such, either with or without cause, by the Managers 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.

9.05 **Appointment of Officers.** The President is Maximilien Barton. The Secretary and Treasurer is Niusha Karki. The President shall have the same rights, powers, and authorities as that of the Manager on a non-exclusive basis. The Secretary and Treasurer shall have those rights, powers, and authorities which are standard for such positions. Both the President and Treasurer shall have the power to open, manage, and close any accounts including with any financial institution on behalf of the Company.

## ARTICLE X INDEMNIFICATION

10.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in this Article, each person who was or is made a party or is threatened to be made a party to or is

involved in any 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 or Manager of the Company or while a Member or Manager of the Company is or was serving at the request of the Company as a Manager, 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 TBOC, 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 shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendments, modification or repeal of this Article 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 could involve indemnification for negligence or under theories of strict liability.

**10.02 Advance Payment.** The right to indemnification conferred in this Article 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 paragraph 10.01 of this Agreement 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 person of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article 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 or otherwise.

**10.03 Indemnification of Officers, Employees and Agents.** The Company, by adoption of a resolution of the Managers, may indemnify and advance or reimburse 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 Managers under this Article; and, the Company may indemnify and advance or reimburse expenses to persons who are not or were not Managers, officers, employees, or agents of the Company but who are or were serving at the request of the Company as a Manager, 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 Managers under this Article.

**10.04 Appearance as a Witness.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Member or Manager 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.

**10.05 Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Member or Manager or other person indemnified pursuant to paragraph 10.03 of this Agreement may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation or this Agreement, agreement, vote of disinterested Managers or otherwise.

**10.06 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 a Manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a Manager, 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.

**10.07 Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member or Manager in accordance with this Article 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.

**10.08 Savings Clause.** If this Article 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 Manager or any other person indemnified pursuant to this Article 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 that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE XI TAXES**

**11.01 Tax Returns.** The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in paragraph 11.02 of this Agreement. Each Member shall furnish to the Managers 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.

**11.02 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 for keeping the Company's books and records;

(c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue 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 Internal Revenue Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Internal Revenue Code; and

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

Either the Company or any Manager or 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 Internal Revenue Code or any similar provisions of applicable state law.

11.03 "Tax Matters Partner." A majority of the Managers shall designate one Manager that is a Member to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Internal Revenue Code; or, if there is no Manager that is a Member, the "tax matters partner" shall be a Member that is designated as such by a Simple Majority. 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 Internal Revenue 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 Internal Revenue Code without the consent of a Simple Majority, but this sentence does not authorize such Manager (or any other Manager) to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Internal Revenue Code.

## ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

12.01 **Maintenance of Books.** The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, its Managers and each committee of the Managers. 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 Article IV of this Agreement. The calendar year shall be the accounting year of the Company.

12.02 **Accounts.** The Managers 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 Managers determine. The Managers 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 Managers' investment of their own funds or investments by their Affiliates.

## ARTICLE XIII

## TRANSFERS

**13.01 Limited Right to Transfer.** No Member or Assignee shall make any Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired, except (a) with the unanimous consent of the Managers; (b) as provided by Article XIV of this Agreement; (c) as a Defaulting Member as provided by paragraph 15.01(f) of this Agreement; or (d) upon winding up or termination, as provided by paragraph 16.03 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void *ab initio*.

### 13.02 Rights of an Assignee.

(a) Unless and until an Assignee becomes a Substituted Member of the Company as provided in this Agreement, the Assignee shall be entitled only to (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. The Membership Interest of the Assignee shall not be considered in the voting requirements of the Company, and the Assignee shall have no right to participate in the operations or management of the Company.

(b) In the event that the Members make additional contributions to the Company which the Membership Interest is held by an Assignee, the Assignor Member and its Assignee shall be jointly and severally liable for the corresponding contribution in connection with the Membership Interest held by Assignee. If the Assignor Member or Assignee does not make such contribution in accordance with the provisions of this Agreement, then the Assignor Member and Assignee shall be treated as being in Default. In the event that one or more new Members are admitted into the Company, or one or more existing Members increase their Membership Interest, the Membership Interest of the Assignee may be correspondingly reduced and no consent or other action on the part of such Assignee shall be required.

**13.03 Legal Opinion.** For the right of a Member to transfer 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, the Company must receive an opinion from legal counsel acceptable to the Managers that states (a) the Transfer is exempt from registration under federal and state securities laws, (b) the Transfer will not cause the Company to be in violation of federal and state securities laws, (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury Regulations, and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury Regulations. The Managers, however, may waive the requirements of this paragraph.

**13.04 Admission as Substituted Member.** An Assignee has the right to be admitted to the Company as a Substituted Member with the Percentage Interest and the Capital Commitment so transferred to such person, in the event that:

- (a) the Member making such Transfer grants the Assignee the right to be so admitted;
- (b) such Transfer is consented to in accordance with paragraph 13.01 of this

Agreement; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Managers, and said instrument contains (i) the agreement by the Assignee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws, (iii) the Percentage Interests and the Capital Commitments after the Transfer of the Member effecting the Transfer and the person to which the Membership Interest of part thereof is transferred (which together must total the Percentage Interest and the Capital Commitment of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions.

**13.05 Transfer to Existing Member.** In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member.

**13.06 Third Party Offer.** In the event a Member desires to sell all or any portion of its Membership Interest to another person (other than an existing Member), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from a Third Party to purchase such Membership Interest, the selling Member shall promptly deliver a copy of the Third Party offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, then the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party offer.

**13.07 Reasonable Expenses.** The Member effecting a Transfer and the Substituted Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in paragraph 13.03 of this Agreement) on or before the tenth (10th) 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.

#### **ARTICLE XIV BUYOUT OF MEMBERSHIP INTEREST**

##### **14.01 Termination of Marital Relationship.**

(a) If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's community or separate interest, if any, in the Membership Interest (such spouse is referred to hereafter in this Article as the "Assignee Spouse"),

either as outright owner of such Membership Interest or as a trustee of a trust holding such Membership Interest, whether or not such Member is a beneficiary of such trust, then such Member shall have the option to purchase at Fair Value (determined as of the date of the death or divorce of the Member) the Assignee Spouse's interest in the Membership Interest to which such Member does not succeed. Such option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest at Fair Value for a period of ninety (90) days after the lapse of the initial 90-day period.

(b) Any Membership Interest of the Company held by a Member as a trustee of a trust as a result of the death of or the Member's divorce from the Assignee Spouse shall be treated as owned by such Member for purposes of this agreement. If such Member ceases to act as trustee of such trust for any reason, then such Member shall have the option to purchase all of the Membership Interest at Fair Value held in such trust. Such option must be exercised within ninety (90) days after such Member ceases to act as trustee of such trust. Should such Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest for a period of ninety (90) days after the lapse of the initial 90-day period.

**14.02 Death of Member.** Commencing upon the death of a Member, the surviving Members shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Managers. Upon the expiration of ninety (90) days after the death of a Member, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value which the surviving Members do not elect to purchase pursuant to the option granted in the preceding sentence. The Assignee (which may include spouse and executors or administrators of the deceased Member) shall sell all of the deceased Member's Membership Interest to the Company and/or the other Members in accordance with the option or obligation established by this paragraph.

**14.03 Bankruptcy of Member.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Managers to the Bankrupt Member (or its representative) at any time prior to the one hundred eightieth (180th) day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of such option is given by the Managers); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Managers. In the event that notice of the exercise of such option is given by the Managers to the Bankrupt Member (or its representative), the Bankrupt Member shall sell its interest to the Company as provided by this Article.

**14.04 Insufficient Surplus.** If the Company shall not have sufficient surplus to permit it lawfully to purchase the Membership Interest under paragraph 14.01, 14.02 or 14.03 of this Agreement at the time of the closing, the other Members may take such action to vote their respective Membership Interests to reduce the capital of the Company or to take such other steps as may be appropriate or necessary in order to enable the Company lawfully to purchase such Membership Interest.

**14.05 Option by Other Members.** If the Company fails or declines to exercise an option to purchase a Membership Interest of a Member as provided by this Agreement within the period of

time specified for such option, then the other Members shall have the option for a period of ninety (90) days thereafter to purchase such Membership Interest in such proportions as they mutually agree or in proportion to their respective Percentage Interests for the same price and upon the same terms available to the Company.

**14.06 Exercise of Option.** Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise such option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

**14.07 Determination of Fair Value.** The "Fair Value" of a Membership Interest shall be the amount that would be distributable to the Member holding such interest in the event that the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests pursuant to this Agreement. In the event that the Fair Value of a Membership Interest is to be determined under this Agreement, the Managers shall select a qualified independent appraiser to make such determination, and the Managers shall make the books and records available to the appraiser for such purpose. The determination of Fair Value made by such appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

**14.08 Fees and Expenses of Appraiser.** In the case of a purchase and sale of Membership Interest under paragraph 14.01 or 14.02 of this Agreement (in the event of death or divorce of a Member), the fees and expenses of such appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under paragraph 14.03 or 15.01 (in the event of the bankruptcy or default of a Member), the fees and expenses of such appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing such fees and expenses from the purchase price to be paid to such Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of such appraiser shall be shared equally by the purchaser and seller.

**14.09 Right to Withdraw Option.** In the event that a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by paragraph 14.07 of this Agreement, such Member may elect to terminate its right to purchase within fifteen (15) days following its receipt of the determination of Fair Value, by delivery of written notice to the Company and to the Assignee. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Percentage Interests.

**14.10 Terms of Purchase.**

(a) The closing date for any sale and purchase made pursuant to this Article shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party, or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.



(b) Payment of the purchase price for a Membership Interest may be made by the Company and/or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing, and (ii) the balance of the purchase price, bearing interest at the General Interest Rate determined on the date of closing, to be paid in twenty-four (24) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of such obligation at any time or times in advance of maturity without penalty. In the event that the Company becomes a party to a Fundamental Business Transaction, such obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to such transaction.

(c) At the closing, the person selling the Membership Interest will transfer 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.

(d) In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the selling Member, Assignee, or 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. The parties shall perform such actions and execute such documents that may be reasonably necessary to effectuate and evidence such purchase and sale, and release as provided by this paragraph.

#### ARTICLE XV DEFAULT OF A MEMBER

15.01 **Failure to Contribute.** 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 "Defaulting Member"), one or more of the following remedies:

(a) taking such action (including, without limitation, court proceedings) as the Managers may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting 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 Defaulting Member;

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

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

(ii) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member,

(iii) 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,

(iv) all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination 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),

(v) the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in paragraph 15.02 of this Agreement, and

(vi) 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 Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member;

(c) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas;

(d) reducing the Defaulting Member's Membership Interest or other interest in the Company;

(e) subordination of the Defaulting Member's Membership Interest to the non-defaulting Member;

(f) a forced sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article XIV;

(g) forfeiture of the Defaulting Member's Membership Interest; or

(h) exercising any other rights and remedies available at law or in equity.

**15.02 Security.** 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 Defaulting Member under this Article, 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 Defaulting Member pursuant to paragraph 15.01(b) of this Agreement, 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. It is expressly agreed that the security interest

created thereby shall be governed by Chapter 8 of 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 Article. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Managers or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article. At the option of the Managers or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

**15.03 Compromise or Release.** The obligation of a Defaulting 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 Defaulting Member in violation of the TBOC or this Agreement may be compromised or released only with the approval of the unanimous consent of the Managers. 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.

**15.04 Expulsion.** A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, or (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Article 15.01. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the expelled Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

## ARTICLE XVI WINDING UP AND TERMINATION

**16.01 Event Requiring Termination.** The Company shall begin to wind up its affairs upon the first of the following to occur:

(a) the execution of an instrument approving the termination of the Company by a Simple Majority of the Members;

(b) the occurrence of any event that terminates the continued membership of the last remaining Member of the Company; provided, however, that the Company is not dissolved if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member agrees to cancel the event requiring winding up, to continue the Company and to become a Member, or to designate another person who agrees to become a Member, as of the date of termination of the membership of the last remaining Member;

(c) entry of a decree of judicial dissolution of the Company;

(d) the occurrence of a non-waivable event under the terms of the TBOC which requires the Company to be terminated; or

(e) by the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

**16.02 Business May Be Continued.** Except as provided in paragraph 16.01(b) of this Agreement:

(a) an event that requires the winding up of the Company's business shall not terminate the Company if, no later than one year after the date of the event, the Members unanimously consent to cancel the event requiring winding up.

(b) the expiration of a period of duration that requires the winding up of the Company's business shall not terminate the Company if, no later than three years after the date the period of duration expires, the Members unanimously consent to amend the Company's Certificate of Formation and this Agreement to extend the Company's period of duration.

**16.03 Purchase of Former Member's Membership Interest.** Upon an event requiring winding up as provided in 16.01 of this Agreement, the Company's books shall be closed upon the date of such event, so as to determine the Former Member's Membership Interest value on the date ending all of the Former Member's financial interest in the Company. Within one hundred eighty (180) days of such event, the Company shall purchase the Former Member's Membership Interest at Fair Value (as determined by paragraph 14.07 of this Agreement), upon terms of purchase as provided in Article XIV of this Agreement.

**16.04 Liquidation.** As soon as possible following an event requiring termination of the Company, the Managers shall act as liquidator or may appoint one or more Managers or Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the TBOC. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after such event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;

(b) the liquidator shall cause the notice described in Section 11.052 of the TBOC to be delivered to each known claimant against the Company;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in paragraph 4.04 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); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

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 paragraph. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**16.05 Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Percentage Interests, upon termination of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

**16.06 Certificate of Termination.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other person or persons as the TBOC may require or permit) shall execute, acknowledge and cause to be filed a Certificate of Termination, at which time the Company shall cease to exist as a limited liability company.

## ARTICLE XVII AMENDMENT OR MODIFICATION

17.01 **Amendment or Modification.** This Agreement may be amended or modified from time to time only with a written instrument executed (a) with the unanimous consent of the Managers or (b) by a Super Majority of the Members.

17.02 **Special Provisions for Certain Amendments or Modifications.**

(a) An amendment or modification reducing a Member's Percentage Interest or increasing its Capital 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 Percentage Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Percentage Interest or other measure theretofore required.

(c) An amendment to establish the relative rights and preferences of the Membership Interests of any class or series may be made by a committee of Managers, within the authority of Managers or otherwise provided in the Certificate of Formation, the TBOC, or resolutions by Members forming the committee.

(d) An amendment or modification made solely to reflect the admission or withdrawal of a Member (such as to Exhibit A) need not be approved by any Member if the requirements set forth in this Agreement with respect to the admission or withdrawal of the Member are otherwise satisfied.

**ARTICLE XVIII  
GENERAL PROVISIONS**

18.01 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one Member, then references to Members in the plural should be construed as singular; likewise, in the event there is only one Manager, then references to Members in the plural should also be construed as singular.

18.02 **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.

18.03 **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. 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 or the Managers must be given to the Managers at the following address:

1800 Valley View Lane, Suite 300  
Farmers Branch, Texas 75234

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.

**18.04 Entire Agreement; Supersedes Other Agreements.** 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.

**18.05 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.

**18.06 Binding Effect.** Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. However, unless and until properly admitted as a Member, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the TBOC to assignees.

**18.07 Governing Law.** 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.

**18.08 Severability.** 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.


**18.09 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.

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

**18.11 Indemnification.** To the fullest extent permitted by law, each Member shall indemnify the Company, each Manager 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.

IN WITNESS WHEREOF, the Managers have adopted this Company Agreement and the Members have executed this Company Agreement, as of the Effective Date set forth above.

**MANAGER:**



\_\_\_\_\_  
MXBA LLC  
MAX BARTON, PRESIDENT

**MEMBERS:**



\_\_\_\_\_  
MXBA LLC  
MAX BARTON, PRESIDENT



**EXHIBIT "A"**  
**MEMBERS OF GILLESPIE VILLAS, LLC**

<u>Member's Name and Address</u>	<u>Percentage Interest</u>
MXBA LLC 1755 WITTINGTON PLACE, SUITE 340 DALLAS, TEXAS 75234	100%

18.12 **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.


#### ARTICLE XIX NOTICES AND DISCLOSURES

19.01 **Compliance with Regulation D of the Securities Act of 1933.** THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MANAGERS (WHICH, IN THE DISCRETION OF THE MANAGERS, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

19.02 **Notice to Members.** By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Certificate of Formation. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 8 of the Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

19.03 **Limitation of Liability.** Pursuant to Article 581-1 *et seq.* of the Texas Revised Civil Statutes (the "Texas Securities Act"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other person engaged to provide services relating to an offering of securities of the Company ("Service Providers") is limited to a maximum of three times the fee paid by the Company or seller of the Company's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By executing this Agreement, each Member hereby acknowledges the disclosure contained in this paragraph.

Filing#:804545256 Document#:1140489300002 Filed On 4/18/2022 received by Upload

<p><b>Form 205</b> <b>(Revised 12/21)</b></p> <p>Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555</p> <p><b>Filing Fee: \$300</b></p>	 <p><b>Certificate of Formation</b> <b>Limited Liability Company</b></p>	<p><small>This space reserved for office use.</small></p>
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**Article 1 – Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

Gillespie Villas, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

**Article 2 – Registered Agent and Registered Office**

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

ONE AGENT TEXAS, LLC

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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C. The business address of the registered agent and the registered office address is:

13901 Midway Road #102	Dallas	TX	75244
<small>Street Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>

**Article 3—Governing Authority**

(Select and complete either A or B and provide the name and address of each initial governing person.)

A. The limited liability company initially has managers. The name and address of each initial manager are set forth below.

B. The limited liability company does not initially have managers. The name and address of each initial member are set forth below.

<b>INITIAL GOVERNING PERSON 1</b>			
NAME (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
<b>OR</b>			
IF ORGANIZATION			
MXBA, LLC			
<small>Organization Name</small>			
ADDRESS			
13901 Midway Road #102	Dallas	TX	76244
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Country Zip Code</small>

INITIAL GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
ONE SF Residential LLC				
<i>Organization Name</i>				
ADDRESS				
13901 Midway Road #102	Dallas	TX	75244	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

INITIAL GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

**Article 4 – Purpose**

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

**Initial Mailing Address**

(Provide the mailing address to which state franchise tax correspondence should be sent.)

13901 Midway Rd #102	Dallas	TX	75244	
<i>Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

**Supplemental Provisions/Information**

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

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**Organizer**

The name and address of the organizer:

Max Barton  
Name

13901 Midway Rd #102 Dallas TX 76244  
Street or Mailing Address City State Zip Code

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, or a later date and time, not more than 90 days from the date of signing. The later effective date, or date and time is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

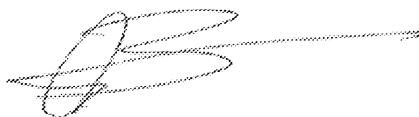
The following event or fact will cause the document to take effect in the manner described below:

[Empty box for describing the event or fact]

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned also affirms that, to the best knowledge of the undersigned, the name provided as the name of the filing entity does not falsely imply an affiliation with a governmental entity. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 04/13/2022 \_\_\_\_\_



Signature of organizer

Max Barton  
Printed or typed name of organizer

02

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

**DEED OF TRUST and SECURITY AGREEMENT**

Date: **May 11, 2022**

Grantor: **GILLESPIE VILLAS, LLC**  
**a Texas limited liability company, whose state**  
**identification number is 804545256**

Grantor's Mailing Address: **2999 Turtle Creek Blvd.**  
**Dallas, Texas 75219**  
**(Dallas County, Texas)**

Trustee: **Randy P. Marx**

Trustee's Mailing Address: **127 Howell Street**  
**Dallas, Texas 75207**

Lender: **BROADVIEW HOLDINGS, LLC**

Lender's Mailing Address: **1755 Wittington Place, Suite 340, Dallas, Texas 75324**

Obligation:

Note:

Date: even date herewith

Original stated principal amount: **\$1,400,000.00**

Borrower: **GILLESPIE VILLAS, LLC**

Lender: **BROADVIEW HOLDINGS, LLC**

Maturity Date: **May 10, 2023**

Other Debt: This conveyance is also made in trust to secure payment of all other present and future debts that Grantor may owe to Lender, regardless of how the other debt is incurred or evidenced. This conveyance is also made to secure payment of any renewal or extension of any present or future debt that Grantor owes Lender, including any loans and advancements from Lender to Grantor under the provisions of this deed of trust. When Grantor repays all debts owed to Lender, this deed of trust lien will terminate only if Lender releases this deed of trust at the request of Grantor. Until Lender releases it, this deed of trust will remain fully in effect to secure future advances and debts, regardless of any renewals, extensions, or partial releases.

Property (including any improvements), as may be more particularly described on Exhibit A hereto:

**Being a tract of land situated in the J.A. Sylvester Survey, Abstract No. 1383, City of Dallas Block 1029, Dallas County, Texas, said being that tract of land conveyed to Kay Baker and Dale Baker by Last Will and Testament recorded in Volume 134, Page 710, Deed Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:**

**BEGINNING at a 1/2 inch iron rod found at the South corner of a tract of land conveyed to Hossein G. Tabatabaie by Deed recorded in Instrument No. 200600280527, Official Public Records, Dallas County, Texas, said point being on the Northwest right-of-way line of Hood Street (40 foot right-of-way);**

**THENCE South 44 degrees 46 minutes 05 seconds West, along said Northwest right-of-way line of Hood Street, a distance of 132.07 feet to a point for corner at the intersection of said Northwest right-of-way line of Hood Street and the Northeast right-of-way line of Gillespie Street (40 foot right-of-way);**

**THENCE North 43 degrees 35 minutes 00 seconds West, along said Northeast right-of-way line of Gillespie Street, a distance of 64.05 feet to a 1/2 inch iron rod found at the South corner of Lot 2, Block A/1029 of Gillespie Tract, an Addition to the City of Dallas, Dallas County, Texas, according to the map recorded in Volume 2004110, Page 19, Map Records, Dallas County, Texas;**

**THENCE North 44 degrees 46 minutes 40 seconds East, along the Southeast line of said Lot 2, Block A/1029, passing at a distance of 111.23 feet, a 1/2 inch iron rod found at the common East corner of Lot 4 and the South corner of Lot 5 of said Block A/1029 and continuing for a total distance of 131.78 feet to a point for corner at the West corner of the aforementioned Tabatabaie tract;**

**THENCE South 43 degrees 50 minutes 26 seconds East, along the Southwest line of said Tabatabaie tract, a distance of 64.02 feet to the POINT OF BEGINNING and containing 8,445 square feet or 0.193 of an acre of land.**

Said parcel generally known as **3600 Gillespie, Dallas, Dallas County, Texas 75219;** together with: (i) all buildings, structures and other improvements now or hereafter situated on the foregoing described real property, (ii) all fixtures, equipment, apparatus, appliances, furniture, furnishings and other items now or hereafter attached to, installed in or used in connection with the foregoing described real property or improvements or buildings thereon including but not limited to any and all partitions, ducts, shafts, pipes, radiators, conduits, wiring, window screens and shades, drapes, rugs and other floor coverings, motors, engines, boilers, stockers, pumps, dynamos, transformers, generators, fans, blowers, vents, switchboards, compressors, furnaces, cleaning systems, call and sprinkler systems, fire extinguishing apparatus, water system, sewage disposal system, heating, plumbing, laundry, incinerating, air conditioning and air cooling systems, water, gas and electric equipment, and building materials, supplies and construction equipment of all of kinds, all of which property and things are hereby declared to be permanent accessions to the foregoing described real property, (iii) all rights, titles and interests now owned or hereafter acquired by Grantor in and to all easements, streets, roads, highways, and rights-of-way adjacent or contiguous to the foregoing described real property, (iv) all tracts or parcels of land and any interests therein presently owned by Grantor and contiguous to the foregoing described real property, (v) any strips or gores between the Land and abutting or adjacent properties; (vi) all water and water rights, timber, crops and mineral interests; and (vii) all rights, titles, interests, leases, privileges, hereditaments, appurtenances, estates, reversions and remainders owned or to be owned by Grantor in and to all or any portion of the foregoing described properties (all of the aforesaid being hereinafter sometimes called the "Property").

Prior Lien(s) (including recording information): None.

Other Exceptions to Conveyance and Warranty: as set forth in Lender's title policy covering the Property and the loan.

For value received and to secure payment of the Obligation, Grantor owns the Property, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

In addition to creating a deed-of-trust lien on all the real and other property described above, Grantor also grants to Lender a security interest in all of the above-described personal property pursuant to and to the extent permitted by the Texas Uniform Commercial Code.



## **Clauses and Covenants**

### **A. Grantor's Obligations**

Grantor agrees to—

1. keep the Property in good repair and condition;
2. pay all taxes and assessments on the Property before delinquency and furnish Lender paid tax receipts for all such taxes and assessment. Grantor shall not borrow money to pay ad valorem taxes without Lender's prior written consent. If all taxes are not timely paid by Grantor, Lender may, but shall not be obligated to, pay such taxes and Grantor shall, by affidavit or other instrument in form approved by Lender, authorize each tax assessor collector to transfer the lien securing payment of such taxes to Lender. In the event Grantor fails to execute such affidavit or other instrument within three (3) days from request by Lender to do so, Lender may sign the affidavit on behalf of Grantor - and for such limited purpose, Grantor appoints Lender its agent and attorney in fact coupled with the interest of this deed of trust. At Lender's request, Grantor shall pay Lender, on the same day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth (1/12th) of the yearly taxes and assessments which may attain priority under this Deed of Trust and one-twelfth (1/12th) of the yearly premiums for insurance as reasonably estimated initially and from time to time by Lender on the basis of assessments and reasonable estimates thereof. The Funds shall be managed by Lender or its designee and shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a Federal or state agency. Lender shall apply the Funds to pay said taxes, assessments, and insurance. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Grantor's interest on the Funds and applicable law permits Lender to make such a charge. Unless applicable law requires such interest to be paid, Lender shall not be required to pay Grantor any interest or earnings on the Funds. Lender shall provide Grantor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust. If the initial amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, and insurance premiums shall exceed the amount required to pay same as they fall due, such excess shall be, at Grantor's option; either promptly repaid to Grantor or credited to Grantor's monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments or insurance as they fall due, Grantor shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Lender to Grantor requesting payment thereof. Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Grantor any Funds held by Lender.

If the Property is sold or the Property is otherwise acquired by Lender, it shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust. If Lender does not require a tax escrow and Grantor fails to pay any taxes as and when due, or if Grantor fails to make escrow payments sufficient to pay all taxes, assessments and insurance premiums timely, Lender may, but shall not be obligated to, pay same. If payment of taxes is made by Lender, Grantor shall, by affidavit or other instrument in form approved by Lender, authorize each tax assessor collector to transfer the lien securing payment of such taxes to Lender. Grantor shall, immediately upon receipt, forward to Lender copies of all notices, appraisals and valuation determination, or other information regarding ad valorem taxes applicable to the Property received by Grantor. Grantor agrees to file and prosecute in good faith a protest or appeal of valuation or status of the property if requested to do so by Lender.

3. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
4. maintain all insurance coverage with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires including without limitation damage or loss by fire, hazards included within the meaning of the term "extended coverage," wind or windstorm, earthquakes and floods in the amounts required by Lender but no less than the amount of your indebtedness to the Lender ("Required Insurance Coverage") issued by insurers authorized to do business in Texas or an eligible surplus lines carrier and written on policy forms acceptable to Lender that includes naming Lender as the person to be paid under the policy in the event of a loss, and deliver evidence of the Required Insurance Coverage in a form acceptable to Lender at least ten days before the expiration of the Required Insurance Coverage. If Grantor fails to meet these requirements, Lender may, but is not obligated to, obtain collateral protection insurance on behalf of Grantor (or for Lender's protection only) at Grantor's expense;
5. obey all laws, ordinances, and restrictive covenants applicable to the Property;
6. keep any buildings occupied as required by the Required Insurance Coverages; and
7. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all lien instruments;
8. notify Lender of any change of address, condemnation proceeding, or other action affecting title to the Property.
9. furnish, from time to time, to the Lender promptly upon request, but in any event, no later than April 1 of each year during the term of the note, the personal financial statement of Grantor, sworn to by Grantor, and in such form as Lender may require. Such

financial statements shall include an adequately detailed current statement of assets, liabilities and net worth and current income statements in such detail as the Lender may reasonably request, all to conform to generally accepted or recognized accounting principals consistently applied.

10. Grantor shall not commercially cut timber on the property without the prior written consent of Lender. Grantor shall not commit or permit waste, impairment, or deterioration of or to the Property. Grantor will not, without first obtaining the written consent of Lender, permit any exploration, drilling, or extraction, removal, or production of any minerals from the Property.

11. Grantor shall promptly cure, and ratify the cure of, any defects in the creation, issuance, delivery, and recording of the Note, Deed of Trust, and any other loan document. Grantor will, at its expense, execute (or cause to be executed) and deliver to Lender upon request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the covenants and agreements of Grantor in the Note, Deed of Trust or other loan document, or to evidence further and describe more fully any collateral intended as security for the loan, or to correct any omissions in the Note, Deed of Trust or other loan document, or to state more fully the obligations and agreements set out in the Note, Deed of Trust or other loan document, or to make any recordings, to file any notices, or to obtain any consents, all as may be reasonably necessary or appropriate in connection with the loan.

12. Grantor shall not seek, agree to, or make any change in the use of the Property or its zoning classification without Lender's written agreement.

13. So long as any part of the Indebtedness remains unpaid, no construction shall be commenced nor improvements made upon the Property unless the plans and specifications for such construction or improvements have been submitted to and approved in writing by Lender. Lender shall not unreasonably withhold approval; provided that Lender is entitled to receive such assurances, agreements and subordinations by Grantor and the contractor(s) involved as Lender may request to the end that the Property will not be subject to any lien claim that is superior to Lender's lien(s) on the Property.

14. Grantor shall furnish Lender true and complete copies of any and all existing leases, extensions of existing leases, and new leases covering the Property or any part or portion thereof immediately upon the effective date thereof.

15. If Grantor fails to perform any of Grantor's obligations, Lender may, but is not obligated to, perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including without limitation attorneys fees and interest on those amounts from the date of Lender's payment at the default rate stated in the Note; and such amounts will be secured by this Deed of Trust.

**B. Lender's Rights**

1. Lender or Lender's mortgage servicer may appoint in writing one or more substitute trustees, succeeding to all rights and responsibilities of Trustee. Any such appointment shall be presumed to have been executed with appropriate authority.
2. If the proceeds of the Note are used to pay a debt or ad valorem taxes secured by superior liens, Lender is subrogated to and entitled to exercise any and all the rights, remedies and liens of the holder of the debt or the taxing units so paid.
3. Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy.
4. Notwithstanding note terms to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.
5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.
6. If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations, Lender may—
  - a. declare the unpaid principal balance and earned interest on the Obligation immediately due;
  - b. direct Trustee to foreclose this lien and security interest, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code and the Uniform Commercial Code as enacted in Texas, then in effect or institute suit to foreclose; and
  - c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.
  - d. Grantor acknowledges that the provisions of this Section 6 could result in foreclosure or institution of a suit to foreclose.

7. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

8. The term "Lender" includes the Lender named on the first page of this instrument and to its successors and assigns. The Obligation may be owned by more than one person or entity. Grantor acknowledges that Lender may assign portions of the Obligation or sell participations in the Obligation. Grantor consents to such assignments and/or participations and further consents that the owners of and/or participants in the Obligation may, by agreement or by appointment of power of attorney or both, designate a lead lender who may, on behalf of all owners and/or participants, fully administer the Obligation, including, without limitation, appointing substitute trustee(s), declaring and acting on defaults in payment or performance of the Obligation, modifying the terms of the Obligation, and directing the trustee or substitute trustee to act. Unless Grantor is otherwise informed in writing, the lead lender shall be Lender heretofore identified.

9. Lender shall be entitled to apply for and obtain the appointment of a receiver, trustee, liquidator, or conservator of the Property, without notice to Grantor and without regard to the adequacy of any security for the Obligation and without regard for the solvency of Grantor, any guarantor or other person or entity liable for the payment of the Obligation.

10. Grantor shall allow Lender or Lender's agents entry on the Property at reasonable times and inspect it and the personal property in which Lender has a security interest.

11. Grantor and Lender may agree to modify, extend, and/or renew the Note and this Deed of Trust for any reason without notice to or consent by any third party and without such modification, renewal or extension being subject to any "reasonableness" standard. .

### **C. Trustee's Rights and Duties**

If directed by Lender to foreclose this lien, Trustee will —

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;
2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;
3. from the proceeds of the sale, pay, in this order—

- a. expenses of foreclosure, including a reasonable fee or commission to Trustee;
- b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
- c. any amounts required by law to be paid before payment to Grantor; and
- d. to Grantor, any balance; and

4. be indemnified by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity. The Trustee shall not incur any personal liability hereunder except for his own gross negligence or willful misconduct; and the Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine.

#### **D. General Provisions**

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any trustee's deed conveying the Property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.
5. Grantor shall send Lender any information on the Property received by Grantor from the County Appraisal District, including without limitation, all notices of appraised value of the Property. At Lender's request, Borrower shall file a notice of protest of such appraised value and diligently pursue such protest at least through the appraisal review board hearing stage. Should Grantor fail to perform the obligations herein stated, Lender may, but is not obligated to file a protest and pursue it with the proper authorities; and, Grantor shall pay Lender all costs and expenses incurred by Lender in doing so, at Lender's request.
6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and

from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt. Borrower agrees that as a condition to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender advising Lender in reasonable detail of the nature and amount of the violation, and Lender will have sixty calendar days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Obligation, as provided above, or to any other indebtedness then owing to Lender by Borrower.

8. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

11. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

12. If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

13. **Grantor and each surety, endorser, and guarantor of the Note waive the requirement of notice of default or demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.**

14. Every party to this Deed of Trust expressly waives any right to trial by jury of any suit, action, or cause of action arising under this Deed of Trust or any other instrument,

document, or agreement executed or delivered in connection herewith, or in any way connected with or related or incidental to the dealings of the parties hereto with respect to this Deed of Trust. Each party consents that any such suit or cause of action shall be decided by the court without the aid of a jury and that any party to this Deed of Trust may file this Deed of Trust or a certified copy of this Deed of Trust with any court as conclusive evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

15. To the maximum extent permitted by applicable law, **Grantor waives all rights, remedies, claims and defenses based on or related to Sections 51.003, 51.004, and 51.005 of the Texas Property Code**, to the extent the same pertain or may pertain to this Deed of Trust or suit for deficiency after enforcement hereof.

16. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

17. If any portion of the Note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.

18. The term Lender includes any mortgage servicer for Lender.

19. If default be made in the payment of any part of the Indebtedness, such as an installment of the Note or advancements made under the terms of this Deed of Trust, Lender shall have the option to proceed with foreclosure of the Property, or any part or portion thereof, to satisfy the payment of such installment(s) or other items only, without accelerating the maturity of the entire debt. Lender may foreclose either through the courts or by directing the Trustee or her successor or substitute in trust to proceed as authorized in this Deed of Trust conducting the sale as otherwise herein provided but without declaring the whole Indebtedness due. Any such installment foreclosure sale shall be made subject to the unmatured part of the Indebtedness and any other obligations secured by this Deed of Trust. It is agreed that any such installment foreclosure shall not in any manner affect the unmatured part of the Indebtedness secured by this Deed of Trust; but, as to such unmatured part of said indebtedness and obligations, this Deed of Trust shall thereafter remain in full force and effect as a good and valid lien on the Property just as though no sale had been made as authorized by the provisions of this section. Should Lender purchase at such a sale, the title so acquired shall not merge with the liens and security interests held by Lender except by the express written election to the contrary by Lender. It is further agreed that several sales may be made under this section of this Deed of Trust without exhausting the right or power of sale for any unmatured part of the Indebtedness.

20. The Trustee may sell the Property in whole or in part and in such parcels and order as the Lender or Trustee may determine. The right of sale hereunder shall not be exhausted by one sale; but rather, successive sales may be made until all of the Property has been



sold. If any sale made hereunder is not completed or is defective in the opinion of Lender, such sale shall not exhaust the power of sale hereunder, and Lender or Trustee shall have the right to vitiate said sale and cause a subsequent sale or sales to be made by the Trustee. In the event of a foreclosure sale under this deed of trust, Grantor agrees that all of the Property may be sold as a whole at Lender's option and that the Property need not be present at the sale.

21. Grantor further covenants and agrees (which covenants and agreements shall survive any foreclosure or deed in lieu of foreclosure, of the Property and any satisfaction of the Indebtedness) that:

a. Grantor has no knowledge of (i) the presence of any "Hazardous Substances" (as defined below) on or about the Property or (ii) any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property or any "Other Property" (as defined below).

b. In connection with the construction on or operation and use of the Property, Grantor has no knowledge of any failure to comply with all applicable local, state, and federal environmental laws regulations, ordinances and administrative and judicial orders relating to the generation, recycling, return, sale, storage handling, transport and disposal of any Hazardous Substances.

c. Grantor has given no release or waiver of liability that would waive or impair any claim based on Hazardous Substances to a previous owner of the Property or to any party who may be potentially responsible for the presence of Hazardous Substances to any party.

d. Grantor agrees to immediately notify Lender if Borrower becomes aware of (i) any Hazardous Substances or other environmental problem or liability with respect to the Property or any Other Property or (ii) any lien, action or notice resulting from violation of any laws, regulations, ordinances or orders affecting the Property. At its own cost, Borrower will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, containment or any other remedial action required by applicable governmental authorities.

e. Grantor will indemnify and hold Lender harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and disbursements which accrue as to or are incurred by Lender on or after transfer of the Property pursuant to foreclosure proceedings or in lieu thereof and on after the indebtedness is fully paid and arises directly from or out of, or in any way in connection with (i) the inaccuracy of the certification contained herein, (ii) any activities on the Property which directly or indirectly results in the Property or any

Other Property becoming contaminated with Hazardous Substances, (iii) the discovery of Hazardous Substances on the Property, and (iv) the clean-up after such a transfer of Hazardous Substances from the Property or any Other Property. Grantor acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of Hazardous Substances from the Property or any Other Property.

f. As used herein, "Hazardous Substances" shall mean: any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term by any federal, state, or local environmental and /or health statute, regulation or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations and ordinances may be amended from time to time, including but not limited to: Federal Resources Conservation and Recovery Act of 1986, 42 U.S.C. 6901 et seq.; Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1990, 41 U.S.C. 9601 et seq.; Federal Clean Air Act, 42 U.S.C. Sections 7401-7626; Federal Water Pollution Control Act, Federal Clean Water Act of 1987, 33 U.S.C. 1257 et seq.; Federal Insecticide, Fungicide, Rodenticide Act, Federal Pesticide Act of 1988, 7 U.S.C Paragraph 13 et seq; Federal Toxic Substance Control Act, 15 U.S.C. 2601 et seq; Federal Safe Drinking Water Act, 42 U.S.C. 300(f) et seq; Federal Solid Waste Disposal Act, 42 U.S.C. 6921 et seq; Texas Water Code; Texas Clean Air Act, Texas Revised Civil Statutes Annotated Article 4477-5 (Vernon 1986 and Supp. 1989); Texas Solid Waste Disposal Act, Texas Revised Civil Statutes Annotated Article 4477-7 (Vernon 1986 and Supp. 1989); Texas Low-Level Radioactive Waste Disposal Authority Act, Texas Revised Civil Statutes f-1 (Vernon 1986 and Supp. 1989);

As used in this Deed of Trust, "Other Property" means any property which becomes contaminated with Hazardous Substances as a result of construction, operations or other activities on, or the contamination of, the Property.

22. Grantor may not sell, transfer, or otherwise dispose of any Property, whether voluntarily or by operation of law, without the prior written consent of Lender. If granted, consent may be conditioned upon (a) the grantee's integrity, reputation, character, creditworthiness, and management ability being satisfactory to Lender; and (b) the grantee's executing, before such sale, transfer, or other disposition, a written assumption agreement containing any terms Lender may require, such as a principal pay down on the Obligation, an increase in the rate of interest payable with respect to the Obligation, a transfer fee, or any other modification of the Note, this deed of trust, or any other instruments evidencing or securing the Obligation.

Grantor shall not cause or permit the Property, nor any part thereof to be encumbered by any liens, security interests, or encumbrances other than the liens securing

the Obligation without the prior written consent of Lender. If granted, consent may be conditioned upon Grantor's executing, before granting such lien, a written modification agreement containing any terms Lender may require, such as a principal pay down on the Obligation, an increase in the rate of interest payable with respect to the Obligation, an approval fee, or any other modification of the Note, this deed of trust, or any other instruments evidencing or securing the Obligation.

In addition, if granted, consent may be conditioned upon the consented lien containing express covenants to the effect that (a) the consented lien instrument is unconditionally subordinate to this deed of trust; (b) if any action is instituted to foreclose or otherwise enforce the consented lien instrument, no action may be taken that would terminate any occupancy or tenancy without the prior written consent of Lender, and that consent, if granted, may be conditioned in any manner Lender determines; (c) rents, if collected by or for the holder of the consented lien instrument, will be applied first to the payment of the Obligation then due and to expenses incurred in the ownership, operation, and maintenance of the Property in any order Lender may determine, before being applied to any indebtedness secured by the consented lien instrument; (d) written notice of default under the consented lien instrument and written notice of the commencement of any action to foreclose or otherwise enforce the consented lien instrument must be given to Lender concurrently with or immediately after the occurrence of any such default or commencement; and (e) in the event of the bankruptcy of Grantor, all amounts due on or with respect to the Obligation and this deed of trust will be payable in full before any payments on the indebtedness secured by the consented lien instrument.

Grantor may not cause or permit any of the following events to occur without the prior written consent of Lender: if Grantor is (a) a corporation, the dissolution of the corporation or the sale, pledge, encumbrance, or assignment of any shares of its stock; (b) a limited liability company, the dissolution of the company or the sale, pledge, encumbrance, or assignment of any of its membership interests; (c) a general partnership or joint venture, the dissolution of the partnership or venture or the sale, pledge, encumbrance, or assignment of any of its partnership or joint venture interests, or the withdrawal from or admission into it of any general partner or joint venturer; or (d) a limited partnership, (1) the dissolution of the partnership, (2) the sale, pledge, encumbrance, or assignment of any of its general partnership interests, or the withdrawal from or admission into it of any general partner, (3) the sale, pledge, encumbrance, or assignment of a controlling portion of its limited partnership interests, or (4) the withdrawal from or admission into it of any controlling limited partner or partners. If granted, consent may be conditioned upon (a) the integrity, reputation, character, creditworthiness, and management ability of the person succeeding to the ownership interest in Grantor (or security interest in such ownership) being satisfactory to Lender; and (b) the execution, before such event, by the person succeeding to the interest of Grantor in the Property or ownership interest in Grantor (or security interest in such ownership) of a written modification or assumption agreement containing such terms as Lender may require, such

as a principal pay down on the Obligation, an increase in the rate of interest payable with respect to the Obligation, a transfer fee, or any other modification of the Note, this deed of trust, or any other instruments evidencing or securing the Obligation. Failure on the part of Lender to exercise said option to accelerate shall never in any event be interpreted as a release of liability of the original Borrower of said note or any other person liable thereon.

Included in the restriction aforesaid, but not in limitation thereof, Grantor shall neither enter into any mineral lease or conveyance nor drill or explore for, or extract, removal or produce minerals from the surface or subsurface of the Property or affecting the Property or any part or portion thereof without the prior written consent of Lender. Lender's consent may be conditioned upon Grantor and any proposed mineral lessee executing, in form and content acceptable to Lender, a subordination of said lease or other conveyance or like instrument to the lien of this Deed of Trust. In addition, Grantor shall execute and deliver to Lender such other security agreements, instruments, or similar documents which, in Lender's reasonable discretion, is necessary or appropriate to secure Lender. The term "minerals" includes, without limitation, oil, gas, casing head gas, coal, lignite, hydrocarbons, methane, carbon dioxide, helium, uranium, sand and gravel and all other natural elements, compounds, and substances.

23. No waiver by Lender of any default by Grantor or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or power hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time.

24. Neither Lender nor any other person asserting rights against the Property hereunder for the benefit of Lender shall have any obligation to marshal the rights of Lender under the Obligation or any other instruments or to marshal the assets securing the Note or to marshal any other assets.

25. This Deed of Trust creates an assignment of rents arising from the Property pursuant to Chapter 64 of the Texas Property Code. Grantor may not lease the Property or any portion, on terms other than at market rents and utilizing lease forms approved by Grantor, thereof without Lender's prior written approval. Grantor agrees to provide Lender, upon request, copies of all leases and rent roll reports affecting the Property. Grantor may not, without Lender's written consent, request or receive rent from any tenant of the property for more than one month in advance.

26. This instrument is intended to also function as a security agreement pursuant to and in accordance with the Uniform Commercial Code as enacted in the state of Texas.

27. This instrument is also intended to serve as a Financing Statement under the Uniform Commercial Code between the Debtor/Grantor whose address is hereinabove set out, and the Secured Party/Lender, whose address is hereinabove set out. Debtor grants permission to Lender to file other financing statements to perfect Lender's security interest.

28. At all times throughout the term of the loan, Grantor and all of its respective Affiliates (defined below) shall (i) not be a Prohibited Person (defined below), and (ii) be in full compliance with all applicable orders, rules, regulations and recommendations of the Office of Foreign Assets Control ("OFAC") of the U. S. Department of the Treasury. The term "Prohibited Persons" shall mean any person or entity a) listed in the Annex to, or otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order; d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; e) that is named as a "specially designated national and blocked person" on the most current list published by OFAC at its website, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac) or at any replacement website or other replacement or supplemental official publication of such list; or f) who is an Affiliate of or affiliated with a person or entity listed above. The term "Affiliate" as used herein shall mean, as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with such person or entity, or is a director or officer of such person or entity or of an Affiliate of such person or entity. As used herein, the term "control"-means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership or voting securities or interest, by contract or otherwise.

29. Grantor acknowledges and agrees that Lender may collaterally assign this Deed of Trust and the Note secured hereby. Grantor shall execute and deliver to Lender and the collateral assignee its estoppel certificate certifying that copies of the executed loan documents are true and correct; that the loan documents have not been modified (or stating such modifications); that Grantor has no claims, setoffs, or defenses to payment of the Note or against Grantor (or stating any such claims); whether a default exists under the terms of the Note and Deed of Trust and the amounts due and owing on the Note and held in escrow. Failure by Grantor to deliver the signed estoppel certificate within five days from Lender's request that Grantor do so shall be a material default hereunder.

30. Grantor shall not engage in business other than owning and operating the Property; acquire or own material assets other than the Property and such personal property as is reasonable and necessary in the management and operation of the Property; or fail to hold

itself out to the public as a legal entity separate from all others and its owners or conduct business in any name other than that set forth in the signature line hereof.

31. (reserved).

32. The Note secured hereby is given as part of the purchase price of the Property and is additionally secured by the Vendor's Lien and Superior Title retained in Warranty Deed With Vendor's Lien executed and delivered to Grantor this day by **Dale and Kay Baker**. This deed of trust does not waive the vendor's lien or superior title and the two liens and the right of superior title are cumulative. Lender may elect to foreclose under either of the liens or assert superior title without waiving the others. Foreclosure of this Deed of Trust lien shall, unless otherwise reserved, cancel the Vendor's Lien and Superior Title reserved in the Deed aforesaid. Likewise, foreclosure of the Vendor's Lien or rescission of this transaction to reinstate the Superior Title reserved in the deed aforesaid shall, unless otherwise noted, cancel this deed of trust lien.

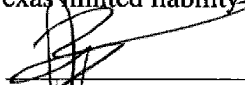
Signature page follows

2022 - 202200138717 05/17/2022 08:25 AM Page 18 of 20

Signature page to Deed of Trust and Security Agreement

Executed **May 10, 2022.**

**GILLESPIE VILLAS, LLC**  
A Texas limited liability company

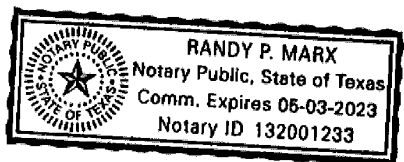
By:   
Maximilien Barton  
President

THE STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on **May 9, 2022**, by **Maximilien Barton**, President of **GILLESPIE VILLAS, LLC**, a Texas limited liability company, on behalf of said company.

  
Notary Public - State of Texas



After recording return to:

Lender  
c/o  
Emily Hutcherson  
East Texas Title Companies  
(903) 561-8060 ext.2426  
[ehutcherson@etextitle.com](mailto:ehutcherson@etextitle.com) [www.etextitle.com](http://www.etextitle.com)

**EXHIBIT "A" to**  
**Deed of Trust**

**LEGAL DESCRIPTION OF LAND**

Being a tract of land situated in the J.A. Sylvester Survey, Abstract No. 1383, City of Dallas Block 1029, Dallas County, Texas, said being that tract of land conveyed to Kay Baker and Dale Baker by Last Will and Testament recorded in Volume 134, Page 710, Deed Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found at the South corner of a tract of land conveyed to Hossein G. Tabatabaie by Deed recorded in Instrument No. 200600280527, Official Public Records, Dallas County, Texas, said point being on the Northwest right-of-way line of Hood Street (40 foot right-of-way);

THENCE South 44 degrees 46 minutes 05 seconds West, along said Northwest right-of-way line of Hood Street, a distance of 132.07 feet to a point for corner at the intersection of said Northwest right-of-way line of Hood Street and the Northeast right-of-way line of Gillespie Street (40 foot right-of-way);

THENCE North 43 degrees 35 minutes 00 seconds West, along said Northeast right-of-way line of Gillespie Street, a distance of 64.05 feet to a 1/2 inch iron rod found at the South corner of Lot 2, Block A/1029 of Gillespie Tract, an Addition to the City of Dallas, Dallas County, Texas, according to the map recorded in Volume 2004110, Page 19, Map Records, Dallas County, Texas;

THENCE North 44 degrees 46 minutes 40 seconds East, along the Southeast line of said Lot 2, Block A/1029, passing at a distance of 111.23 feet, a 1/2 inch iron rod found at the common East corner of Lot 4 and the South corner of Lot 5 of said Block A/1029 and continuing for a total distance of 131.78 feet to a point for corner at the West corner of the aforementioned Tabatabaie tract;

THENCE South 43 degrees 50 minutes 26 seconds East, along the Southwest line of said Tabatabaie tract, a distance of 64.02 feet to the POINT OF BEGINNING and containing 8,445 square feet or 0.193 of an acre of land.

*Memo only:*

*3600 Gillespie, Dallas, Dallas County TX 75219*

*GF No. 424803*

*Survey Date: May 9, 2004*

*(at times, Lot 10, Block 1029)*

*DCAD Account: 138-784 000 000*



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**Dallas County  
John F. Warren  
Dallas County Clerk**

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**Instrument Number:** 202200138717

eRecording - Real Property

Recorded On: May 17, 2022 08:25 AM

Number of Pages: 20

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**" Examined and Charged as Follows: "**

Total Recording: \$98.00

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**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 202200138717  
Receipt Number: 20220516001241  
Recorded Date/Time: May 17, 2022 08:25 AM  
User: Kamesha W  
Station: CC33

**Record and Return To:**

Simplifile



**STATE OF TEXAS  
COUNTY OF DALLAS**

**I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Dallas County, Texas.**

John F. Warren  
Dallas County Clerk  
Dallas County, TX

A handwritten signature in black ink, appearing to be "JFW", is written over the printed name of John F. Warren.

APP000140

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

Broadview Holdings  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
1919 S. Shiloh Rd STE 100 LB 30  
Garland, TX 75042  
(972) 494-9800

No. 1030

Date 1/18/2022

Pay To The Order Of East Texas Title Companies

\$ \*\*15,000.00

Fifteen Thousand and 00/100\*\*\*

Dollars

East Texas Title Companies  
102J East Loop STE 400  
Tyler, TX

Memo: 3600 Gillespie St Dallas TX 75219 (Deposit)

GF # 424803 9



⑈000001030⑈ ⑆111925113⑆1024611⑈

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1341

Date 9/15/2022

Pay To The Texas Brand Bank

\$ \*\*17,100.00

Seventeen Thousand One Hundred and 00/100\*\*\*

Dollars

Texas Brand Bank  
Garland, TX 75042

Memo: Cashier CK in the name of Gillespie Villas LLC



⑈000001341⑈ ⑆1119251131⑆1024611⑈

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1334

Date 9/9/2022

**Pay To The** Stone Street Development LLC

\$ \*\*15,000.00

Fifteen Thousand and 00/100\*\*\*

Dollars

Stone Street Development LLC  
8215 Westchester Dr STE 301  
Dallas, TX 75225-6117



**Memo:** Gillespie



⑈000001334⑈ ⑆⑆⑆⑆925⑆⑆3⑆⑆0246⑆⑆⑆⑆⑈

~~THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK—HOLD AT ANGLE TO VIEW~~

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

**Texas Brand Bank**  
Garland, TX 75042  
88-2511/1119

No. 1097

Date 4/4/2022

Pay To The Order Of Kay Baker


\$ \*\*10,000.00

Ten Thousand and 00/100\*\*\*

Dollars

Kay Baker  
6237 Anita Street  
Dallas, TX 75214  
(214) 826-2607

Memo: Gillespie Project



⑈000001097⑈ ⑆111925113⑆1024611⑈

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1242

Date 7/29/2022

Pay To The Order Of Stone Street Development LLC

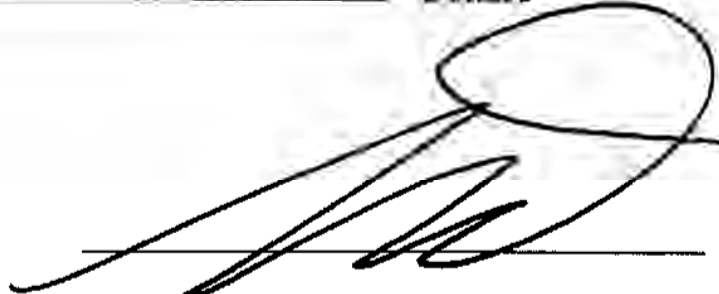
\$ \*\*15,000.00

Fifteen Thousand and 00/100\*\*\*

Dollars

Stone Street Development LLC  
8215 Westchester Dr STE 301  
Dallas, TX 75225-6117

Memo: Gillespi



⑈000001242⑈ ⑆⑆⑆⑆925⑆⑆3⑆⑆⑆⑆0246⑆⑆⑆⑆⑈

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

Broadview Holdings  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1279

Date 8/19/2022

Pay To The Order Of James E. Langford

\$ \*\*1,750.00

One Thousand Seven Hundred Fifty and 00/100\*\*\*

Dollars

James E. Langford  
3001 Bookhout Street  
Dallas, TX 75201



Memor: Architect (Gillespie Villas)

⑈0000012790⑈ ⑆111925113010246110⑆

**GUARANTY**

WHEREAS, **XIAO-EN FANG** (herein called "Lender"), is the owner and holder of that certain promissory note (herein called the "Note") in the original principal sum of **\$550,000.00**, executed by **Gillespie Villas, LLC, a Texas limited liability company ("Borrower")**, secured by a first lien deed of trust encumbering the Gillespie Property owned by Gillespie Villas, LLC, a Texas limited liability company (here "**Grantor**") said promissory note of even date herewith, payable to the order of Lender; and

WHEREAS, said Note is secured by Deed of Trust of even date with the Note, executed by Grantor, as Mortgagor, in favor of a Trustee designated by Lender, covering that property more particularly described in said Deed of Trust to which reference is hereinafter made;

WHEREAS, as a condition precedent to the making of the loan, Lender has required Guarantor to guarantee the loan on the conditions hereinafter set forth; and

WHEREAS, the undersigned desires to guarantee, jointly and severally, payment of the Guaranteed Indebtedness upon and subject to the terms and conditions set forth herein,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, **ENOCH INVESTMENTS, LLC, a Delaware limited liability company** (herein called the "Guarantor") for and in consideration of the premises, ten dollars, and other good and valuable consideration paid, the receipt of which is hereby acknowledged, and for the purpose of inducing Lender to make the aforesaid loan, does hereby unconditionally and irrevocably guarantee to Lender, its successors and assigns, the full, punctual and prompt payment of the Guaranteed Indebtedness and the performance and observance of all obligations under the Note and Deed of Trust.

The term "Guaranteed Indebtedness" shall mean all sums stated to be paid under the terms of the Note, and Deed of Trust, including, without limitation, each and every installment of principal and interest under said Note, and all other indebtedness of Borrower to Lender whether matured or unmatured and whether presently existing or hereafter incurred or acquired.

This is a guaranty of payment and not a guaranty of collection. This Guaranty shall terminate only upon payment to Lender of all Guaranteed Indebtedness and performance of all obligations under the Note and Deed of Trust.

This Guaranty is subject to the following terms and provisions:

1. Guarantor absolutely and unconditionally covenants and agrees that (i) in the event that Borrower does not or is unable to pay or perform the Guaranteed Indebtedness for any reason, or (ii) if all or any part of the Guaranteed Indebtedness (or any instrument executed in connection therewith) is for any reasons found to be



invalid, illegal, unenforceable, uncollectible or legally impossible; then, in any such event, Guarantor shall pay and perform the Guaranteed Indebtedness as herein provided and agrees that no such occurrence shall in any way diminish or otherwise impair or Guarantor's obligations hereunder.

2. Without notice to or the consent of Guarantor, Lender may renew, rearrange or extend the time, manner, place or terms of payment of the Guaranteed Indebtedness or any renewal or extension thereof, and/or Lender may supplement, change, amend, substitute, modify or alter the Guaranteed Indebtedness and/or any present and future security document without in any way changing, releasing or discharging Guarantor from liability and obligation hereunder;

3. **Guarantor waives notice of the acceptance of this Guaranty and also waives notice of default, presentment, demand, protest, and notice of protest, non-payment, default or dishonor, notice of intent to accelerate and notice of acceleration of the Guaranteed Indebtedness or any renewal or extension thereof;**

4. Lender may, at any time and from time to time, without prejudice to any claim against Guarantor hereunder, and without notice to Guarantor: (i) exchange, release or surrender all or any part of the security which Lender may at any time hold as security for the payment of the Guaranteed Indebtedness, (ii) sell all or any part of the security in accordance with the terms and provisions of any instrument pledging the same and become the purchaser thereof at any such sale, and (iii) settle or compromise with Borrower or any other person liable on the Guaranteed Indebtedness or any renewal or extension thereof;

5. No failure, omission or delay on the part of Lender in exercising any rights hereunder or in taking any action to collect or enforce payment of any obligation to which this Guaranty applies or in enforcing observance of performance of any agreement, covenant, term or condition to be performed or observed under the Note and/or Deed of Trust, either against Borrower or any other person thereon primarily or secondarily liable shall operate as a waiver of any such rights of Lender against the Guarantor;

6. Guarantor waives any right to require Lender to (i) proceed against Borrower or any other person primarily or secondarily liable on the Note, (ii) proceed against or exhaust any security held by Lender for the payment of the Guaranteed Indebtedness, or (iii) pursue any remedy that Lender has or to which it may be entitled; marshal assets and liabilities or sell in inverse order of alienation.

7. **Guarantor waives all rights or defenses given to sureties or guarantors at common law, in equity, or by statute, other than actual payment of the Guaranteed Indebtedness and expressly waives each and every right to which Guarantor may be entitled pursuant to Rule 31, Texas Rules of Civil Procedure, Section 17.001 et seq. of the Texas Civil Practice and Remedies Code. In addition, to the maximum extent permitted by applicable law, Guarantor waives all rights, remedies, claims and defenses based on or related to Sections 51.003, 51.004, and 51.005 of the Texas Property Code, to the extent the same pertain or may pertain to any enforcement of this Guaranty.**

8. Guarantor agrees to pay a reasonable attorney's fee and all other costs and expenses which may be incurred by Lender in the enforcement of the Note, Deed of Trust or this Guaranty;

9. Guarantor's liability shall remain and continue in full force and effect notwithstanding the non-liability of the Borrower for any reason whatsoever for the payment of the Guaranteed Indebtedness or any part thereof; the voluntary or involuntary liquidation, dissolution, sale of all of the property described in the Deed of Trust, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or any similar proceeding affecting Borrower or any of its assets; the release of the Borrower from the observance of any of the agreements, covenants, terms or conditions contained in the Note and/or Deed of Trust by operation of law; any defenses or rights of set-off or counter-claims which Borrower, or any other person liable on the Note may have or assert; or any change in status, composition, structure or name of Borrower.

10. Until the Guaranteed Indebtedness, has been paid in full to Lender, Guarantor hereby waives and releases any right of subrogation that Guarantor has or to which Guarantor may be entitled and further waives any right that Guarantor has in or to which Guarantor may be entitled in and to the benefit of any security which Lender may at any time hold in connection with the Guaranteed Indebtedness;

11. Guarantor agrees that this contract is performable in **Dallas County, Texas**;

12. If an event of default occurs under the terms of the Note or Deed of Trust, or (ii) if Guarantor defaults in the performance or observance of any agreement, covenant, term or condition contained herein, or (iii) if Guarantor makes a general assignment for the benefit of creditors, or (iv) Guarantor petitions or applies to any tribunal for the appointment of a trustee or receiver of the business, estate or assets or of any substantial part of the business, estate or assets of Guarantor or commences any proceedings relating to Guarantor under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or (v) any such petition or application is filed or any such proceedings are commenced against Guarantor and by any act indicating approval thereof, consent thereto, or acquiescence therein, or an order is entered appointing any such trustee or receiver, or adjudicating such Guarantor bankrupt or insolvent, or approving the petition in any such proceeding and such order remains in effect for more than sixty (60) days; or (vi) Guarantor dies and his estate or a substantial part of such estate is distributed by the executor or administrator thereof to his heirs or in accordance with such Guarantor's Will prior to all the distributees of such estate or part thereof (by an instrument approved in form and substance by Lender) either jointly or severally, assuming all of such deceased Guarantor's obligation hereunder, or as additional collateral securing the payment of the Note, effectively pledging, mortgaging or otherwise creating a first lien (but without any personal liability of such distributees' part) on a portion of the assets of such estate valued by a qualified appraiser approved by Lender at not less than the principal amount of the Note then outstanding, then an event of default under this Guaranty shall have occurred and the holder of the Note may, at its option, immediately declare the Note to be due and payable, and the entire principal remaining on the Note shall thereupon be and become forthwith due and payable together with accrued, unpaid interest thereon, under the terms of and with the effect provided in the Note, Deed of Trust and this Guaranty.

13. Guarantor hereby warrants and represents unto Lender that (i) any and all balance sheets, net worth statements and other financial data which have heretofore been given to Lender, with respect to Guarantor, fairly and accurately present the financial condition of Guarantor as of the date thereof, and since the date thereof there has been no material adverse change in the financial condition of Guarantor; and (ii) except as may be set forth in any exhibit attached hereto, (iii) there are no legal proceedings, material claims or demands pending against,

or to Guarantor's knowledge, threatened against Guarantor's assets, and (iv) no event (including specifically Guarantor's execution and delivery of this Guaranty) has occurred which, with the lapse of time or action by a third party, could result in Guarantor's material breach or material default under any legal requirement or agreement.

14. In the event any payment from Borrower to Lender is held to constitute a preference under the bankruptcy laws, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower to Lender shall not constitute a release of Guarantor from any liability hereunder. Guarantor agrees to pay such amount to Lender upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

15. It is not the intention of the Lender to obligate the Guarantor to pay interest in excess of that legally permitted to be paid by Borrower under applicable law and should it be determined that Guarantor is required to pay usurious interest under the Note, or Deed of Trust, the obligations of the Guarantor shall be limited to paying the maximum rate permitted under said applicable law. This provision shall not limit in any respect, other than the payment of such interest as may be usurious, the obligation of the Guarantor to pay the principal amount due plus other sums then due under the terms of the Note and Deed of Trust.

16. Suit may be brought against Guarantor, if there be more than one guarantor of the Guaranteed Indebtedness, jointly and severally, and against any one or more of them, less than all, without impairing the rights of the Lender against Guarantor or any other guarantor; and Lender may compromise with any other guarantor for such sum or sums as it may see fit and release such other guarantor(s) from all further liability to the Lender for the Guaranteed Indebtedness without impairing the right of the Lender to demand and collect the balance of the Guaranteed Indebtedness from Guarantor or the other guarantors not so released. The Lender may bring suit against any Guarantor separately, without having to contemporaneously sue the other guarantors or the Borrower, or any other person liable on the Note.

17. It is specifically understood and agreed that this Guaranty shall be in force and effect and fully enforceable according to the terms and conditions herein notwithstanding any limitations which may exist with respect to the liability of Borrower, if any.

18. Every party to this Guaranty expressly waives any right to trial by jury of any suit, action, or cause of action arising under this Guaranty or any other instrument, document, or agreement executed or delivered in connection herewith, or in any way connected with or related or incidental to the dealings of the parties hereto with respect to this Guaranty. Each party consents that any such suit or cause of action shall be decided by the court without the aid of a jury and that any party to this Guaranty may file this Guaranty or a certified copy of this Guaranty with any court as conclusive evidence of the consent of the parties hereto to the waiver of their right to trial by jury.


19. Wherever used in this Guaranty, the singular number shall include the plural and the singular and the use of any gender shall include all genders.

20. This Agreement shall be binding upon Guarantor and his/her executors, administrators and other personal representatives, heirs and assigns. The transfer or assignment by Lender of the Note shall operate as a transfer or assignment to the transferee or assignee of this Guaranty and all rights and privileges hereunder. All references herein to "Lender" shall mean the Lender named above and any subsequent owner and/or holder of the Note or any interest therein.

Signed: August 23 2022.

**GUARANTOR:**

**ENOCH INVESTMENTS, LLC**  
**A Delaware limited liability company**

By:   
\_\_\_\_\_  
Maximilien Barton  
President

Sender Title  
GF# 22D2692-VVTA

07.

**SUBORDINATION AGREEMENT**

(Fee Interest)

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DALLAS

This Subordination Agreement is made and entered into to be effective **August 23, 2022**, by **BROADVIEW HOLDINGS, LLC**, a Texas limited liability company, the owner and holder of the lien or security interest hereinafter described and is given for the purposes and considerations hereinafter expressed.

**RECITALS**

(1) The undersigned is the owner and holder of the following described lien or security interest: (such lien or security interest being hereinafter referred to as the "Lien").

Deed of Trust from GILLESPIE VILLAS, LLC, a Texas limited liability company to Randy P. Marx, trustee, fbo Broadview Holdings, LLC, dated May 11, 2022, filed May 17, 2022, recorded in Clerk's File Instrument Number: 2022 001 387 17, Deed of Trust Records of Dallas County, Texas, securing a note in the principal sum of \$1,400,000.00, payable to BROADVIEW HOLDINGS, LLC, and securing other indebtedness as described therein, if any, encumbering the Property (herein so called, as described therein, and herein, on Exhibit A hereto); together with:

Vendor's lien retained in Special warranty Deed With Vendor's Lien dated May 11, 2022, to Gillespie Villas, LLC, a Texas limited liability company, . dated May 11, 2022, filed May 17, 2022, recorded in Clerk's File Instrument Number: 202200138724 Deed Records of Dallas County, Texas, securing a note in the principal sum of \$1,400,000.00, payable to BROADVIEW HOLDINGS, LLC, and securing other indebtedness as described therein, if any, encumbering the Property (herein so called, as described therein, and herein, on Exhibit A hereto); and

**UCC Financing Statement** executed by Gillespie Villas, LLC, as Debtor to Broadview Holdings, LLC, as Secured Party, filed May 18, 2022, recorded under Instrument No. 202200141259, of the Official Public Records of Dallas County, Texas.

(2) The undersigned desires to subordinate the Lien to the following described interest, security interest or lien (hereinafter referred to as the "Superior Interest"):

Deed of Trust from GILLESPIE VILLAS, LLC, a Texas limited liability company to **Xue Zhen Fang-Lu**, Trustee for the benefit of **XIAO-EN FANG**, dated August 24, 2022, filed contemporaneously herewith the 24 day of August, 2022, recorded in Clerk's File Instrument Number: 202200229790, Deed of Trust Records of Dallas County, Texas, securing a note in the principal sum of \$550,000.00, payable to XIAO-EN FANG, and encumbering the Property.

**NOW, THEREFORE**, the undersigned, the present owner(s) and holder(s) of the Lien, for valuable and sufficient consideration paid this date, the receipt and adequacy of which is hereby acknowledged, do/does hereby agree that the Lien shall be and is hereby made subordinate, subject and inferior to the Superior Interest; and in the event of foreclosure (or other sale or liquidation of the Lien pursuant to judicial, non-judicial, private or other proceedings) and the sale of the collateral (whether real property, personal property or otherwise) covered by the Lien pursuant to such foreclosure, it is agreed that the Superior Interest, and any renewal, extension, amendment or alteration thereof, as the case may be, shall in no wise be effected thereby.

Except as expressly provided herein, the Lien shall not otherwise be impaired or further subordinated hereby.

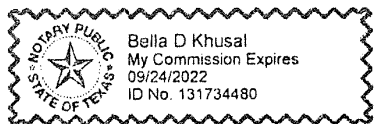
EXECUTED to be effective August 23, 2022.

**BROADVIEW HOLDINGS, LLC**,  
a Texas limited liability company

By:   
Timothy L. Barton, President

STATE OF TEXAS        
COUNTY OF DALLAS   

THIS INSTRUMENT ACKNOWLEDGED before me, the undersigned authority, on this 23 day of August, 2022, by Timothy L. Barton, President of BROADVIEW HOLDINGS, LLC, a Texas limited liability company, on behalf of said corporation.



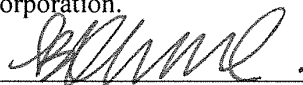
  
Notary Public, State of Texas  
Printed name: Bella D Khusal  
Commission expires: 09/24/2022

Exhibit A: legal description

**AFTER RECORDING RETURN TO:**

Lender  
c/o

Julie Lyssy,  
Escrow Officer  
**SENDERA TITLE**  
**1800 Valley View Ln. # 160**  
**Farmers Branch, Texas 75234**  
[jlyssy@senderatitle.com](mailto:jlyssy@senderatitle.com)  
Tel 972-428-2855  
Fax 972-428-2901

**EXHIBIT A**  
**(LEGAL DESCRIPTION)**

**LEGAL DESCRIPTION OF LAND**

Being a tract of land situated in the J.A. Sylvester Survey, Abstract No. 1383, City of Dallas Block 1029, Dallas County, Texas, said being that tract of land conveyed to Kay Baker and Dale Baker by Last Will and Testament recorded in Volume 134, Page 710, Deed Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found at the South corner of a tract of land conveyed to Hossein G. Tabatabaie by Deed recorded in Instrument No. 200600280527, Official Public Records, Dallas County, Texas, said point being on the Northwest right-of-way line of Hood Street (40 foot right-of-way);

THENCE South 44 degrees 46 minutes 05 seconds West, along said Northwest right-of-way line of Hood Street, a distance of 132.07 feet to a point for corner at the intersection of said Northwest right-of-way line of Hood Street and the Northeast right-of-way line of Gillespie Street (40 foot right-of-way);

THENCE North 43 degrees 35 minutes 00 seconds West, along said Northeast right-of-way line of Gillespie Street, a distance of 64.05 feet to a 1/2 inch iron rod found at the South corner of Lot 2, Block A/1029 of Gillespie Tract, an Addition to the City of Dallas, Dallas County, Texas, according to the map recorded in Volume 2004110, Page 19, Map Records, Dallas County, Texas;

THENCE North 44 degrees 46 minutes 40 seconds East, along the Southeast line of said Lot 2, Block A/1029, passing at a distance of 111.23 feet, a 1/2 inch iron rod found at the common East corner of Lot 4 and the South corner of Lot 5 of said Block A/1029 and continuing for a total distance of 131.78 feet to a point for corner at the West corner of the aforementioned Tabatabaie tract;

THENCE South 43 degrees 50 minutes 26 seconds East, along the Southwest line of said Tabatabaie tract, a distance of 64.02 feet to the POINT OF BEGINNING and containing 8,445 square feet or 0.193 of an acre of land.

*Memo only:*

*3600 Gillespie, Dallas, Dallas County TX 75219*

*GF No. 424803*

*Survey Date: May 9, 2004*

*(at times, Lot 10, Block 1029)*

*DCAD Account: 138-784 000 000*



2022-202200229929 08/24/2022 3:45 PM Page 5 of 5

**Dallas County  
John F. Warren  
Dallas County Clerk**

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**Instrument Number:** 202200229929

eRecording - Real Property

Recorded On: August 24, 2022 03:41 PM

Number of Pages: 5

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**" Examined and Charged as Follows: "**

Total Recording: \$38.00

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\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 202200229929  
Receipt Number: 20220824000899  
Recorded Date/Time: August 24, 2022 03:41 PM  
User: Kevin T  
Station: CC18

**Record and Return To:**

Simplifile



**STATE OF TEXAS  
COUNTY OF DALLAS**

**I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Dallas County, Texas.**

John F. Warren  
Dallas County Clerk  
Dallas County, TX

A handwritten signature in black ink, appearing to be "JFW".

APP000156

# EXHIBIT A-11


#	Corporate Entity Name
1	126 VILLITA, LLC
2	2999TC ACQUISITIONS MZ, LLC
3	2999TC ACQUISITIONS, LLC
4	2999TC FOUNDERS, LLC
5	2999TC JMJ CMGR, LLC
6	2999TC JMJ EQUITY, LLC
7	2999TC JMJ MGR, LLC
8	2999TC JMJ, LLC
9	2999TC LP, LLC
10	2999TC MM, LLC
11	2999TC MZ, LLC
12	AVEG WW, LLC
13	BARTON TEXAS WATER DISTRICT, LLC
14	BARTON WATER DISTRICT LLC
15	BC ACQUISITIONS, LLC
16	BEE2019, LLC
17	BM318 LLC
18	BROADVIEW HOLDINGS, LLC
19	CARNEGIE DEVELOPMENT LLC
20	CARNEGIE FINANCE, LLC
21	CYNKFP, LLC
22	D4AT LLC
23	D4AVEG LLC
24	D4BM LLC
25	D4BR, LLC
26	D4DS LLC
27	D4FR LLC
28	D4IN, LLC
29	D4KL LLC
30	D4MC LLC
31	D4OP LLC
32	D4OPM, LLC
33	D4SMC, LLC
34	D4WP LLC
35	DALLAS REAL ESTATE INVESTORS LLC
36	DALLAS REAL ESTATE LENDERS, LLC
37	DALLAS REAL ESTATE MANAGEMENT, LLC
38	DJD LAND PARTNERS, LLC
39	ENOCH INVESTMENTS, LLC
40	FHC ACQUISITION, LLC
41	FIVE STAR GM, LLC
42	FIVE STAR MM, LLC
43	FIVE STAR MM, LLC
44	FIVE STAR TC, LLC
45	GOLDMARK HOSPITALITY LLC
46	ILLUMINATE DALLAS, LLC
47	JMJ ACQUISITIONS MANAGEMENT LLC
48	JMJ ACQUISITIONS, LLC
49	JMJ CENTRE LLC
50	JMJ DEVELOPMENT FUND INC
51	JMJ DEVELOPMENT INC. (LLC)
52	JMJ HOLDING US LLC
53	JMJ HOLDINGS LLC
54	JMJ HOLDINGS USA, INC.
55	JMJ HOME BUILDING, INC.
56	JMJ HOSPITALITY, LLC
57	JMJ LAND ACQUISITIONS, INC.
58	JMJ LAND DEVELOPMENT, INC.
59	JMJ MEZZANINE, INC.
60	JMJ MF DEVELOPMENT, LLC
61	JMJ MULTIFAMILY, INC.
62	JMJ RESIDENTIAL, LLC
63	JMJ VALLEY CENTER LLC
64	JMJ VC MANAGEMENT LLC
65	JMJAV LLC
66	JMJD4 LLC
67	JMJD4ALLENSVILLE, LLC
68	JMJKH, LLC
69	JMR100, LLC
70	LAJOLLA CONSTRUCTION MANAGEMENT, LLC
71	LC ALEDO TX, LLC



APP023

#	Corporate Entity Name
72	LDG001, LLC
73	LYNN INVESTMENTS, LLC
74	MANSIONS APARTMENT HOMES AT MARINE CREEK LLC
75	MCFW, LLC
76	MCRS2019, LLC
77	MYRA PARK 635, LLC
78	NORTHSTAR PM, LLC
79	NORTHSTAR114, LLC
80	ONE AGENT TEXAS, LLC
81	ONE AGENT, LLC
82	ONE FHC, LLC
83	ONE MFD4, LLC
84	ONE PASS INVESTMENTS, LLC
85	ONE SF RESIDENTIAL, LLC
86	ORCHARD FARMS VILLAGE, LLC
87	RIDGEVIEW ADDITION, LLC
88	SEAGOVILLE FARMS, LLC
89	SF ROCK CREEK, LLC
90	SK CARNEGIE LLC
91	STL PARK, LLC
92	TRWF LLC
93	TRWF LODGE LLC
94	VENUS59, LLC
95	VENUSBK195, LLC
96	VENUSPARK201, LLC
97	VILLITA TOWERS LLC
98	WALL007 LLC
99	WALL009 LLC
100	WALL010 LLC
101	WALL011 LLC
102	WALL012 LLC
103	WALL016 LLC
104	WALL017 LLC
105	WALL018 LLC
106	WALL019, LLC
107	WRL2019, LLC

APP024

Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  Filing Fee: \$300	  <b>Certificate of Formation                  Limited Liability Company</b>	<b>Filed in the Office of the                  Secretary of State of Texas                  Filing #: 803639280 06/04/2020                  Document #: 974390580004                  Image Generated Electronically                  for Web Filing</b>
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**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:  
**ONE SF Residential, LLC**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:  
**ONE Agent Texas, LLC**

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:  
**Street Address:  
 13901 Midway Rd  
 Suite 102 Dallas TX 75244-75244**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

**OR**

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: (Business Name) **ONE Pass Investments, LLC**  
 Address: **13901 Midway Rd Suite 102 Dallas TX, USA 75244-75244**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer are set forth below.

**Krista Vassallo**      **13901 Midway Rd Suite 102 Dallas TX 75244**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Krista Vassallo**

Signature of Organizer

**FILING OFFICE COPY**

**Texas Franchise Tax Public Information Report**



Comptroller of Public Accounts FORM 05-102 (Rev.9-11/30)

To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions  
**This report MUST be signed and filed to satisfy franchise tax requirements**

■ Tcode 13196 Franchise

■ Taxpayer number

■ Report year

*You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.*

3 2 0 7 4 5 2 2 1 5 5

2 0 2 1

Taxpayer name <b>ONE SF RESIDENTIAL, LLC</b>				Secretary of State (SOS) file number or Comptroller file number <b>0803639280</b>	
Mailing address <b>13901 MIDWAY RD STE 102</b>					
City <b>DALLAS</b>	State <b>TX</b>	ZIP Code <b>75244</b>	Plus 4		

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office \_\_\_\_\_  
 Principal place of business \_\_\_\_\_

*Please sign below!*

Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or manager.

3207452215521

Name <b>ONE PASS INVESTMENTS</b>	Title <b>Manager</b>	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>13901 MIDWAY RD SUITE 102</b>	City <b>Dallas</b>	State <b>TX</b>	ZIP Code <b>75244</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of 10 percent or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
---	--------------------	-------------------------------	-------------------------

Registered agent and registered office currently on file. (see instructions if you need to make changes)  
 Agent: **ONE AGENT TEXAS, LLC**  Blacken circle if you need forms to change the registered agent or registered office information.

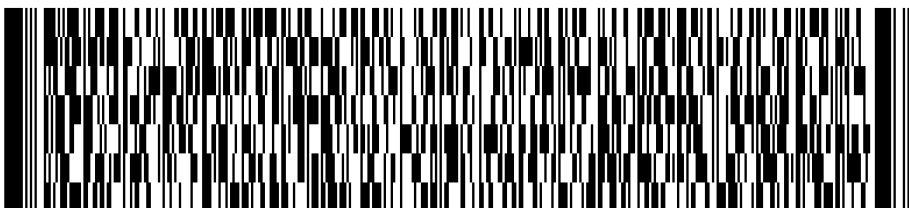
Office: <b>13901 MIDWAY RD SUITE 102</b>	City <b>DALLAS</b>	State <b>TX</b>	ZIP Code <b>75244</b>
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The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or manager and who is not currently employed by this, or a related, corporation or limited liability company.

sign here <b>Saskya Bedoya</b>	Title <b>Electronic</b>	Date <b>06-14-2021</b>	Area code and phone number <b>( 214 ) 641 - 0122</b>
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**Texas Comptroller Official Use Only**



VE/DE <input type="radio"/>	PIR IND <input type="radio"/>
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# EXHIBIT A-12



Venus59, LLC  
Texas

EIN

 **IRS** DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
CINCINNATI OH 45999-0023

Date of this notice: 06-11-2020

Employer Identification Number:  
85-1392580

Form: SS-4

Number of this notice: CP 575 B

VENUS59 LLC  
TIM BARTON MBR  
13901 MIDWAY RD STE 102  
DALLAS, TX 75244

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 85-1392580. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1065

03/15/2021

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

A limited liability company (LLC) may file Form 8832, *Entity Classification Election*, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, *Election by a Small Business Corporation*. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

APP000167

(IRS USE ONLY)

575B

06-11-2020 VENU B 999999999 SS-4

**IMPORTANT REMINDERS:**

- \* Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.** You may give a copy of this document to anyone asking for proof of your EIN.
- \* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- \* Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is VENU. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.

Keep this part for your records. CP 575 B (Rev. 7-2007)

Return this part with any correspondence so we may identify your account. Please correct any errors in your name or address.

CP 575 B

9999999999

Your Telephone Number Best Time to Call  
( ) -

DATE OF THIS NOTICE: 06-11-2020  
EMPLOYER IDENTIFICATION NUMBER: 85-1392580  
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE  
CINCINNATI OH 45999-0023  
|||

VENUS59 LLC  
TIM BARTON MBR  
13901 MIDWAY RD STE 102  
DALLAS, TX 75244

6/11/2020

EIN Individual Request - Online Application



**EIN Assistant**

Your Progress: 1 Identity 2 Authenticate 3 Addresses 4 Details **5. EIN Confirmation**

**Summary of your information**

Please review the information you are about to submit. If any of the information below is incorrect, you will need to [sign a new application](#).

Click the "Submit" button at the bottom of the page to receive your EIN.

**Organization Type: LLC**

**LLC Information**

Legal name: VENUS59 LLC  
 County: DALLAS  
 State/Territory: TX  
 Start date: JUNE 2020  
 Closing month of accounting year: DECEMBER (The closing month of the accounting year is defaulted to December due to your organization type. To change your closing month of accounting year, complete [Form 1170](#))  
 State/Territory where articles of organization are (or will be) filed: TX

**Help Topics**

[What is Form 1170?](#)

**Addresses**

Physical Location: 13901 MIDWAY RD STE 102  
 DALLAS TX 75244  
 Phone Number: 972-385-9934

**Responsible Party**

Name: TIM BARTON MBR  
 SSN/TIN: XXX-XX-1728

**Principal Business Activity**

What your business/organization does: REAL ESTATE  
 Principal products/services: REAL ESTATE PROPERTY MANAGEMENT

**Additional LLC Information**

Owns a 55,000 pounds or greater highway motor vehicle: NO  
 Involves gambling/wagering: NO  
 Involves alcohol, tobacco or firearms: NO  
 Files Form 720 (Quarterly Federal Excise Tax Return): NO  
 Has employees who receive Forms W-2: NO  
 Reason for Applying: STARTED A NEW BUSINESS

We strongly recommend you print this summary page for your records as this will be your only copy of the application. You will not be able to return to this page after you click the "Submit" button.

Click "Submit" to send your request and receive your EIN.

Once you submit, please wait while your application is being processed. It can take up to two minutes for your application to be processed.

6/11/2020

EIN Individual Request - Online Application



**EIN Assistant**

Your Progress 1. Identify 2. Authenticate 3. Addresses 4. Details 5. EIN Confirmation

**Additional Information about your EIN**

We suggest you print this page for your records.

**When Can You Use Your EIN?**

This EIN is your permanent number and can be used immediately for most of your business needs, including:

- Opening a bank account
- Applying for business licenses
- Filing a tax return by mail.

However, it will take up to two weeks before your EIN becomes part of the IRS's permanent records. You must wait until this occurs before you can:

- File an electronic return
- Make an electronic payment
- Pass an IRS Taxpayer Identification Number (TIN) matching program.

**Next Steps (for LLC)?**

If you do not wish to accept the default status of either partnership or disregarded entity, you can file:

- [Form 8832](#) (Entity Classification Election). This form must be completed in a timely manner to receive corporation status. See the instructions for complete information.
- [Form 2553](#) (Election by a Small Business Corporation). This form must be completed in a timely manner to receive S corporation status. See the instructions for complete information.

**Acceptance or Non-Acceptance of Election**

- The service center will notify the LLC as to the acceptance or non-acceptance of its election. The LLC should generally receive a determination on its election within 60 days after it has filed Form 8832 or Form 2553.
- Do not file Form 1120 (U.S. Corporation Income Tax Return) or Form 1120S (U.S. Income Tax Return for an S Corporation) until you receive notification of your acceptance.

You can download IRS forms, publications, and tax returns at <http://www.irs.gov/irm-pubs>

**Corrections?**


If you need to make changes to your organization's information, you must do so in writing and mail the information to the address provided at <http://www.irs.gov/businesses/individual-identification>.

<< Back


Continue >>

**Help Topics**

- [What is Form 8832?](#)
- [What is Form 2553?](#)



Certificate of State



APP000171

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709



**Certificate of Formation  
Limited Liability Company**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 803635526 06/01/2020  
Document #: 973624300002  
Image Generated Electronically  
for Web Filing

Filing Fee: \$300

**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**Venus59, LLC**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

**ONE Agent Texas, LLC**

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

**Street Address:**

**13901 Midway RD**

**Suite 102 Dallas TX 75244**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

**OR**

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: (Business Name) **JMJ Residential, LLC**

Address: **13901 Midway Rd Suite 102 Dallas TX, USA 75244-75244**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**

**APP000171A**



[The attached addendum, if any, is incorporated herein by reference ]

**Organizer**

The name and address of the organizer are set forth below.

**Krista LaGrange Vassallo** 1755 Wittington Place Suite 340 Dallas TX 75234

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned **affirms** that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Krista LaGrange Vassallo**

Signature of Organizer

FILING OFFICE COPY

APP000171B

**COMPANY AGREEMENT OF  
Venus59, LLC,  
A TEXAS LIMITED LIABILITY COMPANY**

This Company Agreement of **Venus59, LLC**, a Texas limited liability company is executed as of JUNE 01, 2020 (the "Effective Date") by the persons who sign and are identified as "Members" and "Managers" in this Agreement.

**ARTICLE I  
DEFINITIONS**

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

"Affiliate" means, with reference to any person, any other person controlling, controlled by or under direct or indirect common control with such person.

"Agreement" means this Company Agreement, as amended from time to time.

"Assignee" means a person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member.

"Bankrupt Member" means (except to the extent a Simple Majority consents otherwise) any Member (a) that (i) makes an 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, dissolution, termination, 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, dissolution, or similar relief under any law has been commenced and one hundred twenty (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 ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (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 Account" means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

"Capital Contribution" means the amount of money and the Net Value of property

other than money contributed to the Company by a Member.

"Capital Commitment" of a Member represents the aggregate amount of capital that such Member has agreed to contribute to the Company.

"Certificate of Formation" means the initial, amended, and restated certificate of formation of the Company.

"Company" means **Venus59, LLC**, a Texas limited liability company.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) ten percent (10%) plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"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; however, this term does not include a person who ceases to be a Member as a result of bankruptcy, default or expulsion.

"Fundamental Business Transaction" has that meaning assigned to it by the definitions in the TBOC, as may be amended from time to time, and includes (a) a merger, (b) an interest exchange, (c) a conversion, or (d) a sale of all or substantially all of an entity's assets (with or without good will), other than in the usual and regular course of the Company's business.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

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

"Manager" means any person named in the Certificate of Formation as an initial Manager of the Company and any person hereafter elected as a Manager of the Company as provided in this Agreement, but does not include any person who has ceased to be a Manager of the Company.

"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 the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Percentage Interest" means the ratio in which the Members shall share profits and losses, as provided in this Agreement. The sum of the Members' Interests shall be one hundred percent (100%).

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative.

"Simple Majority" means one or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members.

"Super Majority" means one or more Members having among them more than sixty-six and sixty-seven hundredths percent (66.67%) of the Percentage Interests of all Members.

"TBOC" means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

"Transfer" means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor's lifetime or upon or after the transferor's death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

Other terms defined herein have the meaning so given them.

## ARTICLE II ORGANIZATION

2.01 **Formation.** The Company has been organized as a Texas limited liability company by filing a Certificate of Formation with the Secretary of State of Texas, which may be amended or restated from time to time.

2.02 **Name.** The name of the Company is " **Venus59, LLC** " and all Company business must be conducted in that name or such other names that comply with applicable law as the Managers may select from time to time.

2.03 **Registered Office and Registered Agent.** The registered office of the Company required by the TBOC 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 Managers 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 Managers may designate from time to time in the manner provided by law.

**2.04 Principal Office and Other Offices.** The principal office of the Company in the United States shall be at such place as the Managers may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Managers may designate from time to time.

**2.05 Purposes.** The primary purposes of the Company shall be any lawful purpose which may be undertaken by the company in accordance with the applicable provisions of the Texas Business Organizations Code.

**2.06 Powers.** The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the TBOC, (ii) any other laws in the State of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

**2.07 Foreign Qualification.** Prior to the Company's conducting business in any jurisdiction other than Texas, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Managers, each Member shall immediately 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.

**2.08 Term.** The Company will commence as provided in the Certificate of Formation for the Company filed with the Secretary of the State of Texas, and will continue until the Company terminates under the terms of this Agreement.

**2.09 Mergers and Exchanges.** The Company may be a party to a merger, an exchange, or acquisition under the TBOC, subject to the requirements of this Agreement.

**2.10 No State-Law Partnership.** The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

### ARTICLE III MEMBERSHIP

**3.01 Initial Members, Capital Commitments, and Percentage Interests.** The persons listed on Exhibit A are hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date of formation of the Company. Set forth opposite the name of each Member listed on Exhibit A is such Member's Capital Commitment and its Percentage Interest. Exhibit A may be amended from time to time to reflect changes in or additions to the membership of the Company.

Any such amended Exhibit A shall (a) supersede all prior Exhibit A's, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not transfer such interest in contravention of that act or any applicable state or federal securities laws.

**3.02 Additional Members.** Additional persons may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by unanimous consent of the Managers. The terms of admission or issuance must specify the Percentage Interests and the Capital Commitments applicable thereto. The terms of admission or issuance may also provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Managers 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 Managers.

**3.03 Member Rights Specified in Agreement.** Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to sell, transfer or assign its interest in the Company; (b) to require partition of the property of the Company; (c) to compel the sale of Company assets; or (d) to cause the winding up of the Company.

**3.04 Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that, if that Member is a business entity: (a) that Member is duly organized, validly existing, and in good standing under the law of the state of its organization; (b) that Member is duly qualified to do business in the jurisdiction of its principal place of business; (c) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (d) all necessary actions by the board of directors, shareholders, members, managers or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; and (e) 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.

**3.05 No Authority.** Except as otherwise specifically provided in this Agreement, no Member (other than a Manager or an officer) has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

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

**3.07 Withdrawal.** A Member may withdraw from the Company with sixty (60) days written notice to the Managers of the Company, subject to winding up or termination as provided in Article XVI of this Agreement.

## ARTICLE IV CAPITAL CONTRIBUTIONS

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

4.02 **No Further Contributions.** No Member shall be required to make any Capital Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by the TBOC.

4.03 **Return of Contributions.** No Member is 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.

4.04 **Loans by Members.** If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so with the Managers' consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this paragraph 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.

4.05 **Capital Accounts.** A Capital Account shall be established and maintained for each Member. The Capital Account of each Member:

(a) shall consist of (i) the amount of money contributed by that Member to the Company, and (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 Internal Revenue Code);

(b) shall be increased by 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 Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation § 1.704-1(b)(4)(i); and

(c) 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 Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (c)(iii) above and loss or deduction described in Treasury Regulation § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation § 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 Treasury Regulation § 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 Treasury Regulation § 1.704-1(b)(2)(iv)(l).

## **ARTICLE V ALLOCATIONS AND DISTRIBUTIONS**

### **5.01 Allocations.**

(a) Except as may be required by Section 704(c) of the Internal Revenue Code and Treasury Regulation § 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 Percentage Interests.

(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 Internal Revenue Code and the regulations thereunder.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of the Company's income and gain shall be specially allocated as a qualified income offset to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this paragraph 5.01(c) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this paragraph 5.01(c) were not in this Agreement.

(d) For the purpose of determining the Members entitled to receive allocations as provided for in this Agreement, the Managers may fix in advance a record date for any such determination of Members, such date in any case to be set not more than (30) days and not less than (5) days prior to the date on which the action authorizing the allocation is taken. If no record date is fixed, then the date on which the Managers take action to authorize such an allocation pursuant to this Agreement and the Internal Revenue Code, shall be the record date for such determination of Members.

### **5.02 Distributions.**

(a) From time to time (but at least once each calendar quarter) the Managers 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 Managers shall cause the Company to distribute to the Members, in accordance with their Percentage Interests, an amount



in cash equal to that excess.

(b) From time to time the Managers 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 Percentage Interests 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 Treasury Regulation § 1.704-1(b)(2)(iv)(f).

(c) For the purpose of determining the Members entitled to receive a distribution as provided for in this Agreement, the Managers may fix in advance a record date for any such determination of Members, such date in any case to be set not more than (30) days and not less than (5) days prior to the date on which the action authorizing the distribution is taken. If no record date is fixed, then the date on which the Managers take action to authorize such a distribution pursuant to this Agreement and the Internal Revenue Code, shall be the record date for such determination of Members.

## **ARTICLE VI MANAGEMENT**

**6.01 Designation of Manager and Management by Managers.** JMJ Residential, LLC is hereby designated by the Members as the Manager for the Company. Except for situations in which the approval of the Members is required by this Agreement or by non-waivable provisions of applicable law, and subject to the provisions of paragraph 6.02 of this Agreement, the Managers shall have the sole and exclusive control of the management, business and affairs of the Company, and the Managers shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) 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, including a Fundamental Business Transaction;

(b) 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;

(c) maintaining the assets of the Company in good order;

(d) collecting sums due the Company;

(e) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;

(g) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(h) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(i) obtaining insurance for the Company;

(j) determining distributions of Company cash and other property as provided in paragraph 5.02 of this Agreement;

(k) establishing a seal for the Company; and

(l) designating one or more committees, each of which shall be comprised of one or more Managers, to exercise any authority of the Managers in the management, business and affairs of the Company.

**6.02 Restrictions.** Notwithstanding the provisions of paragraph 6.01 of this Agreement, the Managers may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(a) enter into a Fundamental Business Transaction, without complying with the applicable procedures set forth in the TBOC regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(b) do any act in violation of this Agreement;

(c) admit a Member, except as expressly permitted by this Agreement;

(d) do any act which requires the prior approval of the Members;

(e) possess Company property or assign rights in Company property, other than for a Company purpose; or

(f) amend this Agreement, except as expressly permitted by this Agreement.

**6.03 Conflicts of Interest.** Subject to the other express provisions of this Agreement, each Manager, 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, Manager or officer the right to participate therein.

**6.04 Contracts or Transactions with Interested Directors or Officers.** This provision applies only to a contract or transaction between the Company and one or more of its Managers, Members or officers, or between the Company and an entity or other organization in which one or more of the Company's Managers, Members or officers is a managerial official or has a financial interest.

An otherwise valid contract or transaction is valid notwithstanding that a Manager, Member or officer of the corporation is present at or participates in the meeting of the Managers, Members or officers,

or of a committee of the Managers, Members or officers that authorizes the contract or transaction, or votes or signs, in the person's capacity as a Manager, Member or officer, a written consent of Managers, Members or officers to authorize the contract or transaction, if: (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by (a) the Managers, Members or officers or a committee of the Managers, Members or officers and the Managers, Members or officers or committee in good faith authorize the contract or transaction by the affirmative vote of the majority of the disinterested Managers, Members or officers or committee members, regardless of whether the disinterested Managers, Members or officers or committee members constitute a quorum; or (b) the Members of the Company, and the Members in good faith approve the contract or transaction by vote of the Members; or (2) the contract or transaction is fair to the Company when the contract or transaction is authorized, approved, or ratified by the Managers, Members or officers, a committee of the Managers, Members or officers, or the Members of the Company.

**6.05 Number and Term of Office.** The number of Managers of the Company shall be determined from time to time by resolution of the Managers, and shall consist of at least one (1); provided, however, that no decrease in the number of Managers that would have the effect of shortening the term of an incumbent Manager may be made by the Managers. If the Managers make no such determination, the number of Managers shall be the number set forth in the Certificate of Formation as the number of Managers constituting the initial Managers. Each Manager shall hold office for the term for which he is elected and thereafter until his successor shall have been elected and qualified, or until his earlier death, resignation or removal. Unless otherwise provided in the Certificate of Formation, Managers need not be Members or residents of the State of Texas.

**6.06 Vacancies; Removal; Resignation.** Any Manager position to be filled by reason of an increase in the number of Managers or other reason may be filled by election at an annual or special meeting of Members called for that purpose. A Manager elected to fill a vacancy occurring other than by reason of an increase in the number of Managers shall be elected for the unexpired term of his predecessor in office. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this Agreement, any Manager may be removed, with or without cause, by a Super Majority. Any Manager may resign 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 remaining Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**6.07 Compensation.** For their services in the management of the Company and its operations, the Managers may receive such compensation, if any, as may be designated from time to time by a Simple Majority of the Members.

**6.08 Reimbursement.** The Managers are not required to advance any funds to pay costs and expenses of the Company. However, in the event the Managers advance such funds, the Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder, including the portion of their overhead reasonably allocable to Company activities.

**6.09 Meetings.**

(a) Unless otherwise required by law or provided in the Certificate of Formation or this Agreement, a majority of the total number of Managers fixed by, or in the manner provided in,

the Certificate of Formation or this Agreement shall constitute a quorum for the transaction of business of the Managers, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Managers. A Manager who is present at a meeting of the Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

(b) Meetings of the Managers may be held at such place or places as shall be determined from time to time by resolution of the Managers. At all meetings of the Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Managers. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) In connection with any annual meeting of Members at which Managers were elected, the Managers may, if a quorum is present, hold their first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.

(d) Regular meetings of the Managers shall be held at such times and places as shall be designated from time to time by resolution of the Managers. Notice of such regular meetings shall not be required.

(e) Special meetings of the Managers may be called by any Manager on at least 24 hours written notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Certificate of Formation or this Agreement. Notice of special meetings may be given by facsimile or electronic message (e-mail).

**6.10 Approval or Ratification of Acts or Contracts by Members.** The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract. Any act or contract that shall be approved or be ratified by a majority of the Managers shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

**6.11 Action Without Meeting.** Any action permitted or required by the TBOC, the Certificate of Formation or this Agreement to be taken at a meeting of the Managers or any committee designated by the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Managers or members of such committee, as the case may be. Every written consent shall bear the date of signature of each Manager who signs the consent, and the consent may be in one or more counterparts. A telegram, telex, cablegram or similar transmission by a Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this paragraph. Such consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Texas, and the execution of such

consent shall constitute attendance or presence in person at a meeting of the Managers or any such committee, as the case may be. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

**6.12 Action by Telephone Conference or Other Remote Communications Technology.**

Subject to the requirements of the TBOC, the Certificate of Formation or this Agreement for notice of meetings, unless otherwise restricted by the Certificate of Formation, Managers, or members of any committee designated by the Managers, may participate in and hold a meeting of the Managers or any committee of Managers, as the case may be, 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 video-conferencing technology or the Internet, but only if each Manager 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 Manager 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.

**6.13 Broad Discretion and Authority of Managers.** Each Member acknowledges and understands that the Managers are granted broad discretion and authority under this Agreement and that the Managers' exercise of such broad discretion and authority may impair the value of the Membership Interest of the Member. Such Member further acknowledges and understands that the Managers would not cause the Company to issue a Membership Interest to the Member if the Managers did not have such broad discretion and authority, and such Member agrees not to challenge the Manager's exercise of such discretion and authority.

**ARTICLE VII  
CONFIDENTIAL INFORMATION**

**7.01 Confidential Information.** The Members agree that the Managers from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information. 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 or a Manager, except for disclosures (i) compelled by law (but the Member must notify the Managers 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 transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this paragraph, 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.

7.02. **Specific Performance.** The Members acknowledge that breach of the provisions of paragraph 7.01 of this Agreement 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 paragraph 7.01 of this Agreement may be enforced by specific performance.

## **ARTICLE VIII MEETING OF MEMBERS**

### **8.01 Meetings.**

(a) A quorum shall be present at a meeting of Members if the holders of a Simple Majority 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 Percentage Interests of all Members entitled to vote is required by the TBOC or this Agreement, the affirmative vote of a Simple Majority at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by another specific provision in this Agreement.

(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 outside 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 paragraph 8.06 of this Agreement.

(c) Notwithstanding the other provisions of the Certificate of Formation or this Agreement, the chairman of the meeting or the holders of a Super Majority 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 Super Majority. 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 election of the Managers and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or outside the State of Texas, on such date and at such time as the Managers shall fix and set forth in the notice of the meeting, which date shall be within thirteen (13) 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 Managers or the holders of at least ten percent of the Percentage Interests 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 given not

less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be given when deposited in the United States mail, addressed to the Member at his address on the voting list provided for in paragraph 8.02 of this Agreement, 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 Managers 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) Notice of meetings may be given to Members by facsimile or electronic message (e-mail).

**8.02 Voting List.** The Managers shall make, at least ten (10) 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 Percentage Interests held by each. For a period of ten (10) days prior to such meeting, such list 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 paragraph shall not affect the validity of any action taken at the meeting.

**8.03 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 paragraph. 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 Managers, 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 Managers, 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 (11) 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 Percentage Interests that are the subject of such proxy are to be voted with respect to such issue.

**8.04 Conduct of Meetings.** All meetings of the Members shall be presided over by the

chairman of the meeting, who shall be a Manager (or representative thereof) designated by a majority of the Managers. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion.

**8.05 Action by Unanimous Written Consent Without Meeting.**

(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, by unanimous written consent of the Members or committee members, as the case may be, setting forth the action so taken. No written consent shall be effective to take the action that is the subject to the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the Company in the manner required by this paragraph, the signed consent or consents are delivered to the Company by delivery to its registered office, its principal place of business, or the Managers. 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 Managers. Each written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. 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 paragraph. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

(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 Managers. 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 Managers.

(c) If any action by Members is taken by written consent, any articles 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 TBOC concerning any vote of Members, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

**8.06 Action by Telephone Conference or Other Remote Communications Technology.** 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 video-conferencing 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.

**8.07 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 IX OFFICERS

9.01 **Qualification.** The Managers 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, a Member or a Manager. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, 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 any specific delegation of authority and duties made to such officer by the Managers pursuant to this paragraph. Each officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Managers. Any number of offices may be held by the one person.

9.02. **Compensation.** The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

9.03. **Resignation.** 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 Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04. **Removal.** Any officer may be removed as such, either with or without cause, by the Managers 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.

9.05 **Appointment of Officers.** The President is Tim Barton. The Secretary and Treasurer is Saskya Bedoya. The President shall have the same rights, powers, and authorities as that of the Manager on a non-exclusive basis. The Secretary and Treasurer shall have those rights, powers, and authorities which are standard for such positions. Both the President and Treasurer shall have the power to open, manage, and close any accounts including with any financial institution on behalf of the Company.

## ARTICLE X INDEMNIFICATION

10.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in

this Article, each person who was or is made a party or is threatened to be made a party to or is involved in any 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 or Manager of the Company or while a Member or Manager of the Company is or was serving at the request of the Company as a Manager, 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 TBOC, 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 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 shall be deemed contract rights, and no amendments, modification or repeal of this Article 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 could involve indemnification for negligence or under theories of strict liability.

**10.02 Advance Payment.** The right to indemnification conferred in this Article 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 paragraph 10.01 of this Agreement 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 person of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article 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 or otherwise.

**10.03 Indemnification of Officers, Employees and Agents.** The Company, by adoption of a resolution of the Managers, may indemnify and advance or reimburse 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 Managers under this Article; and, the Company may indemnify and advance or reimburse expenses to persons who are not or were not Managers, officers, employees, or agents of the Company but who are or were serving at the request of the Company as a Manager, 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 Managers under this Article.

**10.04 Appearance as a Witness.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Member or Manager 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.

10.05 **Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Member or Manager or other person indemnified pursuant to paragraph 10.03 of this Agreement may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation or this Agreement, agreement, vote of disinterested Managers or otherwise.

10.06 **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 a Manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a Manager, 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.

10.07 **Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member or Manager in accordance with this Article 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.

10.08 **Savings Clause.** If this Article 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 Manager or any other person indemnified pursuant to this Article 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 that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE XI TAXES

11.01 **Tax Returns.** The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in paragraph 11.02 of this Agreement. Each Member shall furnish to the Managers 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.

11.02 **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 for keeping the Company's books and records;

(c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue 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 Internal Revenue Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Internal Revenue Code; and

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

Either the Company or any Manager or 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 Internal Revenue Code or any similar provisions of applicable state law.

**11.03 "Tax Matters Partner."** A majority of the Managers shall designate one Manager that is a Member to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Internal Revenue Code; or, if there is no Manager that is a Member, the "tax matters partner" shall be a Member that is designated as such by a Simple Majority. 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 Internal Revenue 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 Internal Revenue Code without the consent of a Simple Majority, but this sentence does not authorize such Manager (or any other Manager) to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Internal Revenue Code.

## **ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS**

**12.01 Maintenance of Books.** The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, its Managers and each committee of the Managers. 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 Article IV of this Agreement. The calendar year shall be the accounting year of the Company.

**12.02 Accounts.** The Managers 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 Managers determine. The Managers 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 Managers' investment of their own funds or investments by their Affiliates.

### ARTICLE XIII TRANSFERS

13.01 **Limited Right to Transfer.** No Member or Assignee shall make any Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired, except (a) with the unanimous consent of the Managers; (b) as provided by Article XIV of this Agreement; (c) as a Defaulting Member as provided by paragraph 15.01(f) of this Agreement; or (d) upon winding up or termination, as provided by paragraph 16.03 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void *ab initio*.

#### 13.02 **Rights of an Assignee.**

(a) Unless and until an Assignee becomes a Substituted Member of the Company as provided in this Agreement, the Assignee shall be entitled only to (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. The Membership Interest of the Assignee shall not be considered in the voting requirements of the Company, and the Assignee shall have no right to participate in the operations or management of the Company.

(b) In the event that the Members make additional contributions to the Company which the Membership Interest is held by an Assignee, the Assignor Member and its Assignee shall be jointly and severally liable for the corresponding contribution in connection with the Membership Interest held by Assignee. If the Assignor Member or Assignee does not make such contribution in accordance with the provisions of this Agreement, then the Assignor Member and Assignee shall be treated as being in Default. In the event that one or more new Members are admitted into the Company, or one or more existing Members increase their Membership Interest, the Membership Interest of the Assignee may be correspondingly reduced and no consent or other action on the part of such Assignee shall be required.

13.03 **Legal Opinion.** For the right of a Member to transfer 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, the Company must receive an opinion from legal counsel acceptable to the Managers that states (a) the Transfer is exempt from registration under federal and state securities laws, (b) the Transfer will not cause the Company to be in violation of federal and state securities laws, (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury Regulations, and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury Regulations. The Managers, however, may waive the requirements of this paragraph.

13.04 **Admission as Substituted Member.** An Assignee has the right to be admitted to the Company as a Substituted Member with the Percentage Interest and the Capital Commitment so transferred to such person, in the event that:

(a) the Member making such Transfer grants the Assignee the right to be so admitted;

(b) such Transfer is consented to in accordance with paragraph 13.01 of this Agreement; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Managers, and said instrument contains (i) the agreement by the Assignee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws, (iii) the Percentage Interests and the Capital Commitments after the Transfer of the Member effecting the Transfer and the person to which the Membership Interest of part thereof is transferred (which together must total the Percentage Interest and the Capital Commitment of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions.

**13.05 Transfer to Existing Member.** In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member.

**13.06 Third Party Offer.** In the event a Member desires to sell all or any portion of its Membership Interest to another person (other than an existing Member), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from a Third Party to purchase such Membership Interest, the selling Member shall promptly deliver a copy of the Third Party offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, then the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party offer.

**13.07 Reasonable Expenses.** The Member effecting a Transfer and the Substituted Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in paragraph 13.03 of this Agreement) on or before the tenth (10th) 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.

#### **ARTICLE XIV BUYOUT OF MEMBERSHIP INTEREST**

##### **14.01 Termination of Marital Relationship.**

(a) If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's community or separate interest, if any, in

the Membership Interest (such spouse is referred to hereafter in this Article as the "Assignee Spouse"), either as outright owner of such Membership Interest or as a trustee of a trust holding such Membership Interest, whether or not such Member is a beneficiary of such trust, then such Member shall have the option to purchase at Fair Value (determined as of the date of the death or divorce of the Member) the Assignee Spouse's interest in the Membership Interest to which such Member does not succeed. Such option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest at Fair Value for a period of ninety (90) days after the lapse of the initial 90-day period.

(b) Any Membership Interest of the Company held by a Member as a trustee of a trust as a result of the death of or the Member's divorce from the Assignee Spouse shall be treated as owned by such Member for purposes of this agreement. If such Member ceases to act as trustee of such trust for any reason, then such Member shall have the option to purchase all of the Membership Interest at Fair Value held in such trust. Such option must be exercised within ninety (90) days after such Member ceases to act as trustee of such trust. Should such Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest for a period of ninety (90) days after the lapse of the initial 90-day period.

**14.02 Death of Member.** Commencing upon the death of a Member, the surviving Members shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Managers. Upon the expiration of ninety (90) days after the death of a Member, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value which the surviving Members do not elect to purchase pursuant to the option granted in the preceding sentence. The Assignee (which may include spouse and executors or administrators of the deceased Member) shall sell all of the deceased Member's Membership Interest to the Company and/or the other Members in accordance with the option or obligation established by this paragraph.

**14.03 Bankruptcy of Member.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Managers to the Bankrupt Member (or its representative) at any time prior to the one hundred eightieth (180th) day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of such option is given by the Managers); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Managers. In the event that notice of the exercise of such option is given by the Managers to the Bankrupt Member (or its representative), the Bankrupt Member shall sell its interest to the Company as provided by this Article.

**14.04 Insufficient Surplus.** If the Company shall not have sufficient surplus to permit it lawfully to purchase the Membership Interest under paragraph 14.01, 14.02 or 14.03 of this Agreement at the time of the closing, the other Members may take such action to vote their respective Membership Interests to reduce the capital of the Company or to take such other steps as may be appropriate or necessary in order to enable the Company lawfully to purchase such Membership Interest.

**14.05 Option by Other Members.** If the Company fails or declines to exercise an option to

purchase a Membership Interest of a Member as provided by this Agreement within the period of time specified for such option, then the other Members shall have the option for a period of ninety (90) days thereafter to purchase such Membership Interest in such proportions as they mutually agree or in proportion to their respective Percentage Interests for the same price and upon the same terms available to the Company.

**14.06 Exercise of Option.** Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise such option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

**14.07 Determination of Fair Value.** The "Fair Value" of a Membership Interest shall be the amount that would be distributable to the Member holding such interest in the event that the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests pursuant to this Agreement. In the event that the Fair Value of a Membership Interest is to be determined under this Agreement, the Managers shall select a qualified independent appraiser to make such determination, and the Managers shall make the books and records available to the appraiser for such purpose. The determination of Fair Value made by such appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

**14.08 Fees and Expenses of Appraiser.** In the case of a purchase and sale of Membership Interest under paragraph 14.01 or 14.02 of this Agreement (in the event of death or divorce of a Member), the fees and expenses of such appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under paragraph 14.03 or 15.01 (in the event of the bankruptcy or default of a Member), the fees and expenses of such appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing such fees and expenses from the purchase price to be paid to such Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of such appraiser shall be shared equally by the purchaser and seller.

**14.09 Right to Withdraw Option.** In the event that a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by paragraph 14.07 of this Agreement, such Member may elect to terminate its right to purchase within fifteen (15) days following its receipt of the determination of Fair Value, by delivery of written notice to the Company and to the Assignee. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Percentage Interests.

**14.10 Terms of Purchase.**

(a) The closing date for any sale and purchase made pursuant to this Article shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party, or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.



(b) Payment of the purchase price for a Membership Interest may be made by the Company and/or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing, and (ii) the balance of the purchase price, bearing interest at the General Interest Rate determined on the date of closing, to be paid in twenty-four (24) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of such obligation at any time or times in advance of maturity without penalty. In the event that the Company becomes a party to a Fundamental Business Transaction, such obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to such transaction.

(c) At the closing, the person selling the Membership Interest will transfer 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.

(d) In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the selling Member, Assignee, or 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. The parties shall perform such actions and execute such documents that may be reasonably necessary to effectuate and evidence such purchase and sale, and release as provided by this paragraph.

## ARTICLE XV DEFAULT OF A MEMBER

15.01 **Failure to Contribute.** 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 "Defaulting Member"), one or more of the following remedies:

(a) taking such action (including, without limitation, court proceedings) as the Managers may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting 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 Defaulting Member;

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

(i) the sum advanced constitutes a loan from the Lending Member to the Defaulting Member and a Capital Contribution of that sum to the Company by the

Defaulting Member pursuant to the applicable provisions of this Agreement,

(ii) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member,

(iii) 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,

(iv) all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination 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),

(v) the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in paragraph 15.02 of this Agreement, and

(vi) 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 Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member;

(c) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas;

(d) reducing the Defaulting Member's Membership Interest or other interest in the Company;

(e) subordination of the Defaulting Member's Membership Interest to the non-defaulting Member;

(f) a forced sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article XIV;

(g) forfeiture of the Defaulting Member's Membership Interest; or

(h) exercising any other rights and remedies available at law or in equity.

**15.02 Security.** 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 Defaulting Member under this Article, 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 Defaulting Member pursuant to paragraph 15.01(b) of this Agreement, 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. It is expressly agreed that the security interest created thereby shall be governed by Chapter 8 of 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 Article. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Managers or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article. At the option of the Managers or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

**15.03 Compromise or Release.** The obligation of a Defaulting 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 Defaulting Member in violation of the TBOC or this Agreement may be compromised or released only with the approval of the unanimous consent of the Managers. 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.

**15.04 Expulsion.** A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, or (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Article 15.01. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the expelled Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

## **ARTICLE XVI WINDING UP AND TERMINATION**

**16.01 Event Requiring Termination.** The Company shall begin to wind up its affairs upon the first of the following to occur:

(a) the execution of an instrument approving the termination of the Company by a Simple Majority of the Members;

(b) the occurrence of any event that terminates the continued membership of the last remaining Member of the Company; provided, however, that the Company is not dissolved if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member agrees to cancel the event requiring winding up, to continue the Company and to become a Member, or to designate another person who agrees to become a Member, as of the date of termination of the membership of the last remaining Member;

(c) entry of a decree of judicial dissolution of the Company;

(d) the occurrence of a non-waivable event under the terms of the TBOC which requires the Company to be terminated; or

(e) by the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

**16.02 Business May Be Continued.** Except as provided in paragraph 16.01(b) of this Agreement:

(a) an event that requires the winding up of the Company's business shall not terminate the Company if, no later than one year after the date of the event, the Members unanimously consent to cancel the event requiring winding up.

(b) the expiration of a period of duration that requires the winding up of the Company's business shall not terminate the Company if, no later than three years after the date the period of duration expires, the Members unanimously consent to amend the Company's Certificate of Formation and this Agreement to extend the Company's period of duration.

**16.03 Purchase of Former Member's Membership Interest.** Upon an event requiring winding up as provided in 16.01 of this Agreement, the Company's books shall be closed upon the date of such event, so as to determine the Former Member's Membership Interest value on the date ending all of the Former Member's financial interest in the Company. Within one hundred eighty (180) days of such event, the Company shall purchase the Former Member's Membership Interest at Fair Value (as determined by paragraph 14.07 of this Agreement), upon terms of purchase as provided in Article XIV of this Agreement.

**16.04 Liquidation.** As soon as possible following an event requiring termination of the Company, the Managers shall act as liquidator or may appoint one or more Managers or Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the TBOC. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after such event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;

(b) the liquidator shall cause the notice described in Section 11.052 of the TBOC to be delivered to each known claimant against the Company;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in paragraph 4.04 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); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

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 paragraph. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**16.05 Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Percentage Interests, upon termination of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

**16.06 Certificate of Termination.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other person or persons as the TBOC may require or permit) shall execute, acknowledge and cause to be filed a Certificate of Termination, at which time the Company shall cease to exist as a limited liability company.

## ARTICLE XVII

## AMENDMENT OR MODIFICATION

17.01 **Amendment or Modification.** This Agreement may be amended or modified from time to time only with a written instrument executed (a) with the unanimous consent of the Managers or (b) by a Super Majority of the Members.

### 17.02 **Special Provisions for Certain Amendments or Modifications.**

(a) An amendment or modification reducing a Member's Percentage Interest or increasing its Capital 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 Percentage Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Percentage Interest or other measure theretofore required.

(c) An amendment to establish the relative rights and preferences of the Membership Interests of any class or series may be made by a committee of Managers, within the authority of Managers or otherwise provided in the Certificate of Formation, the TBOC, or resolutions by Members forming the committee.

(d) An amendment or modification made solely to reflect the admission or withdrawal of a Member (such as to Exhibit A) need not be approved by any Member if the requirements set forth in this Agreement with respect to the admission or withdrawal of the Member are otherwise satisfied.

## ARTICLE XVIII GENERAL PROVISIONS

18.01 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one Member, then references to Members in the plural should be construed as singular; likewise, in the event there is only one Manager, then references to Members in the plural should also be construed as singular.

18.02 **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.

18.03 **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. 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 or the Managers must be given to the Managers at the following address:

13901 Midway Rd  
Suite 102-243  
Dallas, TX 75244

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.

**18.04 Entire Agreement; Supersedes Other Agreements.** 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.

**18.05 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.

**18.06 Binding Effect.** Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. However, unless and until properly admitted as a Member, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the TBOC to assignees.

**18.07 Governing Law.** 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.

**18.08 Severability.** 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.

**18.09 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.

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

**18.11 Indemnification.** To the fullest extent permitted by law, each Member shall indemnify the Company, each Manager 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.

18.12 **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.

## **ARTICLE XIX NOTICES AND DISCLOSURES**

19.01 **Compliance with Regulation D of the Securities Act of 1933.** THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MANAGERS (WHICH, IN THE DISCRETION OF THE MANAGERS, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

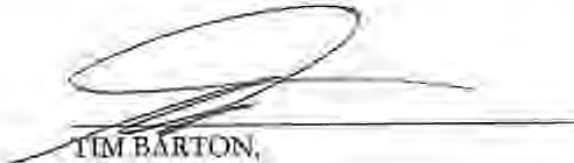
19.02 **Notice to Members.** By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Certificate of Formation. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 8 of the Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

19.03 **Limitation of Liability.** Pursuant to Article 581-1 *et seq.* of the Texas Revised Civil Statutes (the "Texas Securities Act"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other person engaged to provide services relating to an offering of securities of the Company ("Service Providers") is limited to a maximum of three times the fee paid by the Company or seller of the Company's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By executing this Agreement, each Member hereby acknowledges the disclosure contained in this paragraph.

**IN WITNESS HEREOF**, the Managers have adopted this Company Agreement and the Members have executed this Company Agreement, as of the Effective Date set forth above.




**MANAGER:**



TIM BARTON,  
President of JMJ Residential, LLC

**MEMBERS:**



TIM BARTON,  
President of JMJ Residential, LLC



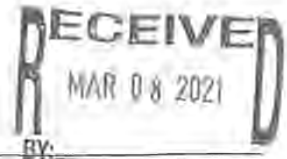
TIM BARTON,  
President of ONE SF Residential, LLC

**EXHIBIT "A"**  
**MEMBERS OF Venus59, LLC**

<b><u>Member's Name and Address</u></b>	<b><u>Percentage Interest</u></b>
JMJ Residential, LLC 13901 MIDWAY RD SUITE 102 DALLAS, TX 75244	99%
ONE SF Residential, LLC 13901 MIDWAY RD SUITE 102 DALLAS, TX 75244	1%



## TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



Comptroller.Texas.Gov

VENUS59, LLC  
13901 MIDWAY RD STE 102  
DALLAS TX 75244-4388

Taxpayer number	
32074476477	
File number	
0803635526	
WebFile number	
XT060235	
Report year	Due date
2021	05/17/2021

## Texas Franchise Taxpayers: Your Annual Report Is Due

Your annual franchise tax report is due on the date shown in the box in the upper right corner of this letter. Even if you have no tax due or no activity to report, Texas tax law requires that you file a franchise tax report and information report each year.

### **Choose a Reporting Option**

There are three reporting options: No Tax Due Report, E-Z Computation Report and the Long Form report. You will need to choose the best report for your situation.

Taxable entities that are part of a combined group engaged in a unitary business must file a combined group report. A passive entity or a new veteran-owned business cannot be included in a combined group report.

You can file a No Tax Due Report if your business:

- is an entity or a combined group with annualized total revenue less than or equal to the no tax due threshold;
- has zero Texas receipts; or
- meets the statutory requirements for a passive entity, a real estate investment trust or a new veteran-owned business.

You must file an original No Tax Due Report electronically. You can file free through the Comptroller's Webfile system at [www.comptroller.texas.gov/taxes/file-pay/](http://www.comptroller.texas.gov/taxes/file-pay/).

You can file an E-Z Computation Report if your business is an entity or a combined group with annualized total revenue of \$20 million or less.

If you choose this option, your business cannot:

- take any margin deductions (including cost of goods sold or compensation),
- take any franchise tax credits, or
- carry over that report year's temporary credit for business loss carryforward to a future period.

You must file a Long Form report if you:

- are not eligible to file either the No Tax Due Report or the E-Z Computation Report, or
- will take franchise tax credits.

### **Request an Extension**

A \$50 penalty is due on a report filed after the due date, even if no tax is due. If you need more time to file, request an extension by the due date to avoid the penalty. A combined group must include the Texas Franchise Tax Affiliate List with its first extension request.

### **Save Time and File Online!**

With the Comptroller's secure online system, Webfile ([www.comptroller.texas.gov/taxes/file-pay/](http://www.comptroller.texas.gov/taxes/file-pay/)), you can file a franchise tax report, pay tax due or request an extension. First-time users will need the Webfile number in the box in the upper right corner of this letter to get started. (Note: Your tax preparer may need your Webfile number to file your report electronically.)

6/14/2021

Franchise Tax - You Have Filed Successfully

# Franchise Tax

## 2021 Annual No Tax Due Report

Confirmation

You Have Filed Successfully

**Please do NOT send a paper form**

Since you are electronically reporting this tax, you will not receive a paper tax return in the mail for subsequent reports due. To keep you up-to-date and informed of due dates for this tax, we will send a courtesy e-mail reminder to you at the e-mail address on file for this account.

**Print this page for your records**

**Submission ID: 56544943**

**Date and Time of Filing:** 06/14/2021 05:31:01 PM

**Taxpayer ID:** 32074476477

**Taxpayer Name:** VENUS59, LLC

**Taxpayer Address:** 13901 MIDWAY RD STE 102 DALLAS, TX 75244 - 4388

**Entered By:** Saskya Bedoya

**Email Address:** sbedoya@jnjdevelopment.com

**Telephone Number:** (214) 641-0122

**IP Address:** 50.84.47.194

Additional Reports	
Is this the reporting entity of a combined group?	No
Do any of the entities in the combined group have a temporary business loss preserved?	No
Will your total revenue be adjusted for the Tiered Partnership Election?	No

No Tax Due Report	
SIC Code: Accounting Year Begin Date: 01/01/2020	NAICS Code: Accounting Year End Date: 12/31/2020
Is this a passive entity as defined in Chapter 171 of the Texas Tax Code?	No
Is this entity's annualized total revenue below the no tax due threshold?	Yes
Does the entity have zero Texas Gross Receipts?	Yes
Is this entity a Real Estate Investment Trust (REIT) that meets the qualifications specified in section 171.0002(c)(4)?	No
Is this entity a New Veteran-Owned Business as defined in Texas Tax Code Sec. 171.0005?	No
Total Revenue:	\$0

Mailing Address
Street Address: 13901 MIDWAY RD STE 102
City: DALLAS
State: TX
Zip Code: 75244 - 4388
Country: USA

Public Information Report
<b>Taxpayer</b>
Taxpayer Name: VENUS59, LLC
Taxpayer Number: 32074476477
SOS File Number or Comptroller File Number: 0803635526
Mailing Address: 13901 MIDWAY RD STE 102 DALLAS, TX 75244-4388
Principal Office:
Principal Place Of Business:
Changes from previous year?: Yes
<b>Officers, Directors, Managers, Member or General Partner</b>

6/14/2021

Franchise Tax - You Have Filed Successfully

Name: ONE SF RESIDENTIAL		Director? No	Term Expiration Date
Title: Manager	Mailing Address: 13901 MIDWAY RD SUITE 102 Dallas, TX 75244		
Owned Entity(s)			
Owned Entity(s)	State of Formation	TX SOS File #	Percentage of Ownership
None entered.			
Owners			
Owned Entity(s)	State of Formation	TX SOS File #	Percentage of Ownership
None entered.			
Registered Agent and Office			
Agent: ONE AGENT TEXAS, LLC			
Office: 13901 MIDWAY RD SUITE 102 DALLAS, TX 75244-4388			
Declaration Statement			
I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the submission date, and that a copy of this information has been mailed to each person named in this section who is an officer, director or manager and who is not currently employed by this, or a related, corporation or limited liability company.			

[texas.gov](http://texas.gov) | 
 [Texas Records and Information Locator \(TRAIL\)](#) | 
 [State Link Policy](#) | 
 [Texas Homeland Security](#) | 
 [Texas Veterans Portal](#)  
 Glenn Hegar, Texas Comptroller • [Home](#) • [Contact Us](#)  
[Privacy and Security Policy](#) | 
 [Accessibility Policy](#) | 
 [Link Policy](#) | 
 [Public Information Act](#) | 
 [Compact with Texans](#)

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1342

Date 9/15/2022

**Pay To The** VENUS59 LLC

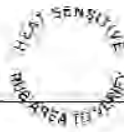
\$ \*\*23,325.62

Twenty-Three Thousand Three Hundred Twenty-Five and 62/100\*\*\*

Dollars

VENUS59 LLC  
13901 Midway Rd. STE 102-243  
Dallas, TX 75244  
(972) 385-9934

**Memo:** Return of Loan



A large, stylized handwritten signature in black ink, written over a horizontal line.

⑈000001342⑈ ⑆⑆⑆⑆925⑆⑆3⑆⑆0246⑆⑆⑆⑈

## FUNDING AGREEMENT

This Funding Agreement (“**Agreement**”) is entered into on this 31st day of August 2021 (“**Effective Date**”), by and between **Daniel Crow** (“**Crow**”) and/or his assigns and **Venus59, LLC** (“**Company**”) (collectively, “**Parties**”) as consented to by One SF Residential, LLC (“**OSFR**”) (as the manager and a member of the Company) and MXBA, LLC (“**MXBA**”) (collectively, “**Members**”) as the members in the Company.

### RECITALS

WHEREAS Company is under contract (“**59 Acre Contract**”) to acquire approximately 59 acres of land in Venus, Johnson County, Texas (“**59 Acres**”) which is due to close (“**Closing**”) on August 31, 2021 (“**Closing Date**”).

WHEREAS Company is also under contract (“**3 Acre Contract**”) with the 3 Acre Contract and 59 Acre Contract referred to collectively as the “**Purchase Contract**”) to purchase a 3.44 acre adjacent tract of land in Venus, Johnson County, Texas (“**3 Acres**” with the 59 Acres collectively consisting of 62.4 acres being the “**Property**”) which will close simultaneously with or shortly after the Closing of the 59 Acre Contract. (see Exhibit “A”).

WHEREAS Company intends to preliminary plat the Property into residential subdivision known as Mustang Meadows consisting of approximately 304 50 ft. single family lots or approximately 379 40 ft single family lots (or mix thereof) and associated street rights-of-way, detention areas and common area amenities which Company intends sell or otherwise perform such horizontal development as necessary to develop the Project for the purpose of selling developed lots to home builders to the extent agreed to by the Members.

WHEREAS Company seeks certain equity funding for the purchase of the Property;

WHEREAS the Parties agree that Crow shall provide certain equity funding on the terms provided herein including such supplemental terms attached as Exhibit “B” for the purpose of Closing the Purchase Contract and other specified costs upon which Crow shall be granted certain membership interests in the Company and admitted into the Company as defined in this Agreement upon the terms stated in the *Amended and Restated Company Agreement* (“**Company Agreement**”) as attached hereto and under which Crow shall have certain consent rights to approve certain major decisions of the Company.

### AGREEMENT

NOW, THEREFORE, for valuable consideration the sufficiency and acceptance of which is acknowledged by the Parties, the Parties hereto agree as follows:

1. **Equity Funding by Crow.** Crow shall contribute a total of \$1,098,675.36 as follows and as further described on Exhibit C as attached hereto: (i) \$744,985.56 towards the closing of the 59 Acre Contract (“**59 Acre Closing Balance**”) (ii) \$254,220.80 towards the closing of the 3 Acre Contract (“**3 Acre Closing Balance**”), (iii) \$36,860.00 for expenses incurred but which remain unpaid related to the Property (“**Unpaid Expenses**” with the 59 Acre Closing Balance and 3 Acre Closing Balance being referred to collectively as, “**Initial Contribution**”) and (iv) \$21,924.64 (“**Additional Crow Contribution**” with the Initial Contribution collectively, “**Crow**”

**Contributions**”), as a required additional contribution to be used towards the \$62,600.00 (“**Estimated Costs**”) for estimated costs to complete the Paper Lots (defined below)

2. **Equity Funding by MXBA and OSFR.** MXBA, including through its related entities, has made certain deposits and paid certain extension fees related to the closing of the Property, paid certain fees and other costs related to the Property, and has paid invoices on behalf of the Company as related to the Property totaling \$81,653.65 (as further described on Exhibit C as attached hereto), copies of which shall be made available to Crow upon request, and all of which shall be treated as the initial capital contributions of MXBA in the Company Agreement. Additionally, MXBA shall be required to make an additional capital contribution of \$40,675.36 (“**MXBA Additional Contribution**”) to be used to pay the remaining Estimated Costs. OSFR, which is the manager of the Company, has contributed \$10.00 as its total required capital contribution to the Company in exchange for its one percent (1%) membership interest.

3. **Membership Interests.** In exchange for the Crow Contributions, Crow shall be granted sixty percent (60%) of the total outstanding membership interests in the Company with all profit and losses being allocated likewise under the terms of the Company Agreement of the Company the form attached hereto as Exhibit D. No preferred return shall be paid on any contributions by the members in the Company unless otherwise agreed to by all members.

4. **Delivery of Crow Contributions.** Crow shall deliver (i) the 59 Acre Closing Balance on August 31, 2021 to the applicable Title Company which shall be held in escrow and applied at closing of such contract, (ii) the 3 Acre Closing Balance on or before the date the 3 Acre Contract closes to the applicable Title Company which shall be held in escrow and applied at closing of such contract, (iii) the Unpaid Expenses to the Company within seven (7) days following the closing on the 59 Acre Contract, (iv) the Additional Crow Contribution to be used towards the Estimated Costs as determined by the Company prior to such costs becoming due. No part of the Initial Contribution may be refunded or returned to Crow unless either (1) Company fails to close on either the 3 Acre Contract or 59 Acre Contract including as may be extended upon the agreement of the applicable seller(s) or (2) Company’s material default of this Agreement prior to closing of the Purchase Contract which is not otherwise cured as provided herein.

5. **Use of Proceeds.** The Crow Contributions and the MXBA Contributions shall be used by the Company as described in Exhibit C. Upon the Closing and the application of the Crow Contributions, Crow will be (i) deemed to have delivered his required contributions under the Company Agreement to the Company, (ii) shall be granted sixty percent (60%) of the total outstanding membership interests in the Company, and (iii) shall be admitted as a member into the Company upon terms as stated and agreed to by Crow in the Company Agreement with all rights and obligations as agreed to therein.

6. **Development of the Property.** Company shall perform all work necessary in order to create a preliminary plat of property designating single family residential subdivision and creating “paper lots” that may be sold to and/or developed by a third party land development company(ies) and/or home builder(s). OSFR as manager of the Company shall close on the sale of at least 50% of the paper lots or the total acreage of the Property within two (2) years following the closing of the entire Property as further described in the Company Agreement. Upon terms agreed to by Crow, MXBA, and OSFR, the Company may perform horizontal development on the Property in order to develop the Paper Lots into single family lots in a form ready for vertical construction and



which may be sold to third party home builders (“Horizontal Development”) as further described in the Company Agreement.

7. **Development Costs and Fees.** No separate development fees shall be paid or earned by any member of the Company including their related persons and entities for the creation of Paper Lots. In the event Crow, MXBA, and OSFR agree to perform the Horizontal Development, a related entity of MXBA and/or OSFR may be utilized to perform such development work and shall be paid a development fee of three percent (3%) of the total costs of development.

8. **Company Agreement.** The execution of the Company Agreement shall not be effective or binding against the parties or the members and managers therein until the Closing of the Purchase Contract, provided that if the transaction contemplated in the 3 Acre Contract fails to close for any reason other than due to the action or inaction of Crow, the parties shall enter into the Company Agreement with the sole modification thereto being the reduction of Crow’s membership interest set forth on Exhibit A thereof to 55%, together with modification of the other members’ membership interests set forth thereon on a pro rata basis.

9. **Management.** As provided in the Company Agreement, OSFR is the current manager of Company and shall continue to serve as the manager and will control the day-to-day operations of Company subject to certain consent and removal rights of Crow and subject to the consent rights of all members for certain major decisions including but not limited to approving Company budgets, spending funds in excess of such budgets, execution of contracts beyond an agreed to amount, major debt financing, admission of new members/investors not otherwise agreed to herein, sale and/or development of the Property, and other major decisions to the extent provided in the Company Agreement.

10. **Distributions.** Allocation of all profits and losses in the Company shall be made in accordance with the percentages of each member in the Company in accordance with Exhibit A as attached to and incorporated into the Company Agreement and as such, Crow shall be allocated sixty percent (60%) of all such profits and losses.

11. **Termination.** This Agreement may be terminated only upon (1) the consent of the Parties or (2) upon a material default of this Agreement including any related agreement as attached hereto which is not cured within three (3) days (or such longer period as otherwise provided herein) following written notice from the non-breaching party (except where the default is the failure to provide the equity funding upon which Company may terminate immediately without providing any opportunity to cure.) Otherwise, this Agreement shall terminate upon the closing of the Purchase Contract and application of the Crow Contribution to the Company upon which the Company Agreement shall survive, shall become effective, and shall govern the relationship between the Parties subject to the representations of the Parties made herein and any other provisions which expressly survive termination. The termination of this Agreement prior to Closing of the Purchase Contract shall operate as a termination of the Company Agreement.

12. **Disclosure.** Crow has performed all necessary due diligence in order to enter into this Agreement including but not limited to reviewing the Purchase Contract and all related documents and the Company Agreement and is entering into this Agreement on its own accord independently of and without reliance on any statements or representations made by Company or any person or entity related thereto and as such neither Company or its related entities or persons makes any representations or warranties related to the transactions described in this Agreement and as such

expressly disclaims any and all implied warranties and representations to the maximum extent permitted by applicable law.

**13. Valid and Binding Obligation.** This Agreement along with the Amended and Restated Company Agreement (once effective), Supplemental Terms and any related agreements or documents thereto, constitute valid and binding obligations of Company and Crow enforceable in accordance with their terms.

**14. Title to Property.** Upon closing, Company shall own full legal and equitable title to the Property as provided in the warranty deed granted to Company at Closing only subject to the exceptions listed on the Title Commitment and/or exceptions of record as recorded in the real property records of Johnson County, Texas the rights and obligations under which shall be superior to this Agreement and shall not sell, pledge, or encumber the Property without consent of Crow as further provided in the Company Agreement.

**15. Default.** Any material breach of the terms, covenants, representations, or warranties in this Agreement shall constitute an “Event of Default” hereunder by either Party which, unless otherwise stated herein, is not cured within three (3) days following the receipt of written notice shall be an immediate default.

**16. Authorization.** This Agreement shall serve as authorization to the Title Company to apply the Crow Contribution held in escrow to the Purchase Price and applicable closing costs at Closing of the Purchase Contract and to refund any amounts remaining in escrow to Crow after Closing as further described in section 3 without any other authorization.

**17. Remedy.** Upon an Event of Default a non-defaulting Party may extend the cure period as necessary for a defaulting Party to cure such default or else may terminate this Agreement and be entitled to pursue its actual damages but in no event shall it be entitled to receive any consequential damages, special damages, punitive damages, or lost profits or revenues or the like even if the party has been advised of the likelihood of the occurrence of such damages (except where such default is the result of fraud, willful misconduct, or any criminal conduct) or be entitled to specific performance. **NOTWITHSTANDING ANY TERMS HEREOF TO THE CONTRARY, NEITHER THE COMPANY NOR ANY MEMBER THEREOF SHALL HAVE ANY REMEDY AGAINST CROW, IN DAMAGES OR OTHERWISE, DUE TO THE FAILURE BY CROW TO DELIVER THE 59 ACRE CLOSING BALANCE ON OR BEFORE THE CLOSE OF BUSINESS ON AUGUST 31, 2021. UPON ANY SUCH FAILURE, THE COMPANY’S SOLE REMEDY WILL BE THE TERMINATION OF THIS CONTRACT, WITH NO FURTHER OBLIGATIONS HEREUNDER BY ANY PARTY.**

**18. Supplemental.** This Agreement is subject to the supplemental terms attached hereto as Exhibit E which are incorporated hereto by reference and any acquisition of any membership interests in Company and the admission of Crow as a member shall be governed by the terms of the Company Agreement which shall be interpreted in conjunction with this Agreement and in the event of any conflict between this Agreement and the Company Agreement then the Company Agreement shall control unless otherwise stated herein.

**19. Broker/Referral Fees.** No broker, agent, or similar party is entitled to any referral or broker fee as related to this Agreement.

**20. Intentionally Omitted.**

**21. Time of Essence.** Time is of the essence in performance of this Agreement by the Parties.

**22. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS WITHIN SUCH STATE WITH EXCLUSIVE FORUM AND JURISDICTION BEING IN THE COURTS OF DALLAS COUNTY, TEXAS.**

**23. Notices.** All notices by Crow to Company pursuant to any provisions of this Agreement must be in writing. Such notices shall be given at such addresses as provided by each party to one another by personal delivery, expedited delivery service with proof of delivery, registered or certified mail, return receipt requested, or by email transmission (provided that such email transmission is confirmed by any other method of notice provided herein or delivery confirmation of such email along with a read receipt is received by the sending party) Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery; in the case of expedited delivery service or mail, as of the date of deposit with a reputable overnight courier service or an official depository of the United States Postal Service; or in the case of an email transmission, upon receipt.

**24. Miscellaneous.** In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; provided, however, if the disregard of such provision would frustrate the intent and purposes of this Agreement, either Party may petition any court having jurisdiction in equity to render a judgment modifying the disregarded provision of this Agreement so as to carry out such intent and purposes. Except as otherwise provided herein, no provision of this Agreement may be modified, waived, or terminated except by instrument in writing executed by the party against whom a modification, waiver or termination is sought to be enforced. Except as otherwise provided herein, in the event of any conflict between this Agreement and any other documents, then this Agreement shall control except for the Company Agreement in which case the Company Agreement shall control. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.


**CROW**

By:   
Name: Daniel Crow

25 Aug 20

**COMPANY**

Venus59, LLC

By:   
Name: Maximilien Barton  
Its: President

*[Consent Pages to Follow]*

BC  
25 Aug 20

As consented to by MXBA, LLC

By:   
Name: Maximilien Barton  
Its: President

As consented to by One SF Residential, LLC

By:   
Name: Maximilien Barton  
Its: President

Funding Agreement – Crow & Venus 59, LLC

<sup>6</sup> DC  
25 Aug 26

APP000215

**EXHIBIT A**  
**Purchase Contract and related Documents**

[See Attached]

## **EXHIBIT B**

### **Supplemental Terms**

1. As a condition of Venus 59 LLC or any of its related entities (collectively, “Company”) to accept any investment and contribution from Crow and admit Crow as a member (which shall be effective upon the Closing of the Purchase Contract) for any reason including upon the as related to the Funding Agreement, Crow shall represent and warrant to Company and its members the following which may be further amended and supplemented as agreed to by Crow and Company:

a. Except as disclosed in writing to Company, Crow shall acquire any membership interests in Company for its own account; shall not have any contract, undertaking or arrangement with any person or entity to sell, transfer or grant a participation with respect to any of Company interests; and shall not acquire Company interests with a view to or for sale in connection with any distribution.

b. Crow or an advisor or consultant relied upon by Crow in reaching a decision to invest has such knowledge and experience in financial, tax and business matters as to enable Crow or such advisor or consultant to evaluate the merits and risks of an investment in Company interests and to make an informed investment decision with respect thereto.

c. Crow understands that Company interests have not been and will not be registered under the Securities Act of 1933 or 1934, as amended (collectively, the “Securities Act”), or any state law, and that Company is not registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Crow understands that Company has no intention to register Company or Company interests or any of its related entities with the Securities and Exchange Commission or any state and is under no obligation to assist Crow in obtaining or complying with any exemption from registration. Company may require that a proposed transferee meet appropriate financial and other suitability standards and that the transferor, at its expense, furnish a legal opinion satisfactory to Company and its counsel that the proposed transfer complies with applicable federal, state and any other applicable securities laws. An appropriate legend evidencing such restrictions may be placed on any certificates issued representing Company interests and appropriate stop-transfer instructions may be placed with respect to Company interests.

d. In formulating a decision to invest in Company, Crow has not relied nor acted on the basis of any representations or other information purported to be given on behalf of Company (it being understood that no person has been authorized by Company furnish any such representations or other information) and has conducted sufficient due diligence and background investigation including into the Property and to the related persons and entities of Company including in the property and court records of Johnson County and secretary of the state of Texas.

e. Crow recognizes that there may not be any ascertainable secondary market for Company interests. Accordingly, it may not be possible for Crow readily to liquidate Crow’s investment in Company.

f. Crow is qualified to become a member in Company and (i) has the legal capacity to execute, deliver and perform as agreed including any definitive agreement, and (ii) has all permits, licenses or approvals as may be required to make any investment to Company in US Dollars.

g. The acquisition of Company interests contemplated hereunder and the compliance by Crow with all of the provisions herein and the Company Agreement applicable to Crow and the consummation by Crow of the transactions as contemplated will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Crow is a party or by which Crow is bound or to which any of the property or assets of Crow is subject, nor (ii) will such action result in any violation of any statute applicable to Crow or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Crow or the property of Crow.

h. Crow has carefully reviewed and understands the various risks of an investment in Company.

- i. Crow is satisfied that it has received adequate disclosure from Company to enable it to enter into further negotiations towards the Company Agreement and shall be satisfied that it has received all requested due diligence materials and adequate disclosure prior to executing any definitive agreement.
  - j. Crow has sufficient expertise and knowledge necessary to understand and evaluate the rights, obligations, distributions and other terms of a potential definitive agreement and the risks associated therewith.
  - k. Crow agrees promptly to notify Company of any change in information affecting these representations and covenants.
  - l. Crow acknowledges and agrees that any amounts paid to it will be paid to the same account from which its funds were originally remitted, unless Company agrees otherwise.
  - m. Crow is purchasing Company interests for Crow's own account.
  - n. Crow is an accredited investor under Rule 501 of the Securities Act and/or is outside the United States and is not a U.S. Person (i.e., is not a resident or citizen of the United States).
  - o. If the managing member/manager permits a transfer of Company interests to occur, Crow will give each person to whom Crow transfers Company interests notice of any restrictions on transfer of Company interests including a copy of the Company Agreement/regulations of Company in which a transferee must agree to be bound.
  - p. If Crow is not a U.S. person and is outside the United States, Crow is purchasing in accordance with Regulation S under the Securities Act and has not engaged in, and will not engage in any short selling of any interests granted by Company (including, without limitation, Company interests) or any hedging transaction with respect to any such equity security, including without limitation, put, call or other option transactions, option writing and equity swaps.
2. Crow understands the meaning and legal consequences of the representations, warranties, agreements, covenants and confirmations set out above and agrees that any investment made to Company is accepted in reliance thereon. Crow shall agree to indemnify and hold harmless Company, the managing member/manager, and their affiliates, and the partners, members, managing members/managers, stockholders, other beneficial owners, officers, directors and employees of any of the foregoing (the "Indemnified Persons") from and against any and all loss, damage, liability or expense, including reasonable costs and attorneys' fees and disbursements, which an Indemnified Person may incur by reason of, or in connection with, any representation or warranty made herein (or in any investment representation statement) not having been true, correct and complete when made, any misrepresentation made by Crow or any failure by Crow to fulfill any of the covenants or agreements set forth herein, in any representations or in any other document provided by Crow to Company.
3. In the event of any breach of Crow's representations, Crow shall indemnify and hold any administrative agent, lenders, developer, and their affiliates and each of their officers, directors, employees, consultants, agents, and owners harmless, and to reimburse any administrative agent, lender, and its affiliates and each Party shall be responsible for their own costs, expenses, and fees related to the contemplated transaction including accounting and legal fees, consulting fees, costs of investigation, insurance, due diligence reports, brokers or finders fees, travel, and closing costs. In the event of any dispute between the Parties, each Party waives any and all rights to seek or recover any consequential, punitive, or special damages.
4. Crow's investment is subject to certain "know your customer" disclosures and requirements as promulgated by the government of the United States related to certain investments and transactions by foreign nationals within the United States. As such, you agree to provide any and all necessary documents and information including personal and financial information regarding Crow and any entity which Crow uses to facilitate its investment. Such information is subject to verification by Company and any required government authority.
5. The actual terms and conditions upon which each Company is willing to accept Crow as a member are further defined in the form of the Company Agreement which shall govern the terms by which Crow is granted any membership interests in Company and admitted as a member and any other documentation reasonably requested by Company in order to close the applicable transaction which may include the following:

- Completed and signed Investment Representation Statement;



- Completed IRS Forms W-8BEN (non US citizens) or W-9: as designated by the U.S. Department of the Treasury Internal Revenue Service;
- Payment of any designated administrative or escrow fee;
- Delivery of any signed escrow agreement; and
- Delivery of consent to be bound to the Company Agreement of Company.

6. Crow agrees to abide by all applicable laws, rules, regulations, orders and ordinances to which Company is or may be subject including but not limited to those related to the negotiation and consummation of an investment in Company.

7. Crow shall hold harmless Company's managing member/manager including its related persons, officers, directors, members, and employees from any liability, damages or loss that the Crow sustains from any such person's action or failure to act except to the extent such losses, liability or damages are directly caused by the fraud or willful misconduct of any such person.

**EXHIBIT C**

**Venus59, LLC -  
Use of Proceeds from Capital Contributions of Members**

**TOTAL CAPITAL CONTRIBUTIONS OF CROW**

<b>1. <u>Closing of 59 Acre Contract</u></b> (as defined in the attached 59 Acre Purchaser's Statement)	
"Balance Due by Purchaser"	<b>\$744,985.56</b>
<b>2. <u>Closing of 3 Acre Contract</u></b> (as defined in the attached 3 Acre Purchaser's Statement)	
"Estimated Total" due by Purchaser	<b>\$254,229.80</b>
<b>3. <u>Invoices to be Paid on behalf of Venus59, LLC</u></b>	
Jones Carter Invoice 00320691	\$19,440.00
Alpha Testing, Inc., Invoice 602974	\$ 6,300.00
CCN Settlement with Mountain Peak The AL Law Group (David Tuckfield) Invoice 40763	\$ 1,120.00
Barrett & Associates, PLLC Invoice 1539	<u>\$10,000.00</u>
<b>Total Invoices to be Paid:</b>	<b>\$36,860.00</b>
<b><u>Total Initial Capital Contributions of Crow</u></b>	<b><u>\$1,036,075.36</u></b>
<b>4. <u>Estimated Cost to complete Preliminary Plat:</u></b>	
Preliminary Plat	\$29,000.00
Meeting and Coordination	\$ 2,000.00
Easement Preparation	\$ 1,000.00
Downstream Assessment and Flood Study	\$24,225.00
Downstream Assessment Agency Comments	<u>\$ 6,375.00</u>
<b>Total Billing Remaining for Preliminary Plat:</b>	<b>\$62,600.00</b>
<b>LESS: MXBA Additional Contribution:</b>	<b>(\$40,675.36)</b>
<b><u>Estimated Costs Apportioned to the Crow Additional Contribution</u></b>	<b><u>\$21,924.64</u></b>

**TOTAL CAPITAL CONTRIBUTIONS OF CROW:** **\$1,058,000.00**

**TOTAL CAPITAL CONTRIBUTIONS OF MXBA**

**4. Estimated Cost to complete Preliminary Plat:**

Preliminary Plat	\$29,000.00
Meeting and Coordination	\$ 2,000.00
Easement Preparation	\$ 1,000.00
Downstream Assessment and Flood Study	\$24,225.00
Downstream Assessment Agency Comments	<u>\$ 6,375.00</u>
<b>Total Billing Remaining for Preliminary Plat:</b>	<b>\$62,600.00</b>
<b>LESS: Crow’s Additional Contribution:</b>	<b>(\$21,924.64)</b>

**Estimated Costs Apportioned to the**  
**MXBA Additional Contribution** **\$40,675.36**

**5. Invoices and Monies Paid on behalf of Venus59, LLC**

City of Venus Professional Services Agreement Fee Invoice 2021-01-112-1	\$15,000.00
Retainer for Development Agreement with Miklos Cinclair Attorneys & Counselors	\$ 5,000.00
Retainer for Decertification Filing with Mountain Peak The AL Law Group (Andy Barrett)	\$ 5,000.00
Mountain Peak Settlement for Decertification 51-158	\$10,000.00
Jones Carter – Services for Johnston Tract Legal Description – Invoice 00302850-2	\$ 1,116.33
Invoice 00303581-2	\$ 372.11
Non-Applicable Non-Refundable Deposit for Contract Extension Johnston Seventh Amendment, May 31, 2021	\$10,000.00
Non-Applicable Non-Refundable Deposit for Contract Extension Johnston Eighth Amendment, July 31, 2021	\$10,000.00
59 Acres: Gross Amount Due By Purchaser Less Balance Due By Purchaser (per the Purchasers Statement including Applicable Earnest Money of \$20,000.00) (\$765,150.77 - \$744,985.56)	\$20,165.21
“Earnest and Option” (per 3 Acre “Estimated Fees”)	\$ 5,000.00
	<b>\$81,653.65</b>

**TOTAL CAPITAL CONTRIBUTIONS OF MXBA** **\$122,329.01**



**EXHIBIT D**  
**Amended and Restated Company Agreement of Company**

[See Attached]

**AMENDED AND RESTATED  
COMPANY AGREEMENT OF  
VENUS59, LLC  
A TEXAS LIMITED LIABILITY COMPANY**

This Amended and Restated Company Agreement of VENUS 59, LLC a Texas limited liability company is executed as of AUGUST 31, 2021 by the persons who sign and are identified as "Members" and "Managers" in this Agreement but shall not be effective unless and until the closing of the acquisition of the Property under the terms of the Purchase Contract as described herein (the "Effective Date"), or as otherwise contemplated in the Funding Agreement entered into among the Members as of the date hereof.

**ARTICLE I  
DEFINITIONS**

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

"Affiliate" means, with reference to any person, any other person controlling, controlled by or under direct or indirect common control with such person.

"Agreement" means this Company Agreement, as amended from time to time.

"Assignee" means a person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member.

"Bankrupt Member" means (except to the extent all Members consent otherwise) any Member (a) that (i) makes an 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, dissolution, termination, 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, dissolution, or similar relief under any law has been commenced and one hundred twenty (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 ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (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 Account" means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

"Capital Contribution" means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

"Capital Commitment" of a Member represents the aggregate amount of capital that such Member has agreed to contribute to the Company.

"Certificate of Formation" means the initial, amended, and restated certificate of formation of the Company.

"Company" means **Venus 59, LLC**, a Texas limited liability company.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) ten percent (10%) plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"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; however, this term does not include a person who ceases to be a Member as a result of bankruptcy, default or expulsion.

"Fundamental Business Transaction" has that meaning assigned to it by the definitions in the TBOC, as may be amended from time to time, and includes (a) a merger, (b) an interest exchange, (c) a conversion, or (d) a sale of all or substantially all of an entity's assets (with or without good will), other than in the usual and regular course of the Company's business.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"Good Cause" or similar language means (i) conviction of a crime of moral turpitude, (ii) action or inaction constituting willful misconduct or gross negligence, or (iii) a material breach of this Agreement which remains uncured thirty (30) days after written notice from any Member and/or Manager as applicable.

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

"Manager" means any person named in the Certificate of Formation as an initial Manager of the Company and any person hereafter elected as a Manager of the Company as

provided in this Agreement, but does not include any person who has ceased to be a Manager of the Company.

"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 the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Percentage Interest" means the ratio in which the Members shall share profits and losses, as provided in this Agreement. The sum of the Members' Interests shall be one hundred percent (100%).

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative.

"Simple Majority" or "Majority" means one or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members.

"Super Majority" means one or more Members having among them more than sixty-six and sixty-seven hundredths percent (66.67%) of the Percentage Interests of all Members.

"TBOC" means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

"Transfer" means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor's lifetime or upon or after the transferor's death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

"Unanimous Consent" including "consent of all" or similar language means consent of 100% of such persons entitled to vote or consent on such matters and in reference to the Members means 100% of all Membership Interests in the Company entitled to vote. Where consent of the Members is required such shall mean Unanimous Consent unless a Majority, Super Majority, or other specific consent is specifically stated.

Other terms defined herein have the meaning so given them.



## ARTICLE II ORGANIZATION

2.01 **Formation.** The Company has been organized as a Texas limited liability company by filing a Certificate of Formation with the Secretary of State of Texas, which may be amended or restated from time to time.

2.02 **Name.** The name of the Company is “Venus 59, LLC” and all Company business must be conducted in that name or such other names that comply with applicable law as the Managers may select from time to time.

2.03 **Registered Office and Registered Agent.** The registered office of the Company required by the TBOC 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 Managers 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 Managers may designate from time to time in the manner provided by law.

2.04 **Principal Office and Other Offices.** The principal office of the Company in the United States shall be at such place as the Managers may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Managers may designate from time to time.

2.05 **Purposes.** The purposes of the Company shall be:

- (a) The closing of a purchase contract (“59 Acre Contract”) to acquire approximately 59 acres of land in Venus, Johnson County, Texas (“Large Tract”) which is due to close (“Closing”) on August 31, 2021 (“Closing Date”);
- (b) The closing of a purchase contract (“3 Acre Contract” with the 3 Acre Contract and 59 Acre Contract referred to collectively as the “Purchase Contract”) to purchase a 3.44 acre adjacent tract of land in Venus, Johnson County, Texas (“Small Tract” with the Large Tract and Small Tract collectively consisting of 62.4 acres being the “Property”) which will close simultaneously with the Closing of the 59 Acre Contract;
- (c) Create a preliminary plat of the Property to create a residential subdivision known as Mustang Meadows consisting of approximately 304 50 ft. single family lots or approximately 379 40 ft single family lots (or mix thereof) and associated street rights-of-way, detention areas and common area amenities (“Paper Lots”) which Company, unless otherwise agreed to by all Members, shall sell to a third party on terms as consented to by all Members (and which shall not be unreasonably withheld so long as such are sold at fair market value under an arms length transaction) (“Project”);
- (d) Otherwise, Company may perform horizontal development on the Property in order to develop the Paper Lots into single family lots in a form ready for vertical construction and which may be sold to third party home builders (“Horizontal Development”) only upon the Unanimous Consent of the Members and only upon such terms as further agreed to

by all Members and which will include the payment of a development fee of three percent (3%) of the total development costs to be paid to a related entity of MXBA as the developer; and

(e) No other purposes whatsoever.

**2.06 Powers.** The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the TBOC, (ii) any other laws in the State of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

**2.07 Foreign Qualification.** Prior to the Company's conducting business in any jurisdiction other than Texas, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Managers, each Member shall immediately 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.

**2.08 Term.** The Company will commence as provided in the Certificate of Formation for the Company filed with the Secretary of the State of Texas, and will continue until the Company terminates under the terms of this Agreement.

**2.09 Mergers and Exchanges.** The Company may be a party to a merger, an exchange, or acquisition under the TBOC, subject to the requirements of this Agreement.

**2.10 No State-Law Partnership.** The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

**2.11 Budget.** Upon closing of the Property, the Members shall unanimously agree to a development budget for any Horizontal Development of the Property and upon approval, the Manager shall have the power to spend money or incur liabilities in the ordinary course of business in accordance with the approved budget. Otherwise, the Manager is authorized to expend up to \$100,000.00 for the purpose of creating Paper Lots including for reasonably necessary engineering costs ("Paper Lot Expenses").

### ARTICLE III MEMBERSHIP

**3.01 Initial Members, Capital Commitments, and Percentage Interests.** The persons listed on Exhibit A are hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date of formation of the Company. Set forth opposite the name of each Member listed on Exhibit A is such Member's Capital Commitment and its Percentage Interest. Exhibit A may

be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Exhibit A shall (a) supersede all prior Exhibit A's, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not transfer such interest in contravention of that act or any applicable state or federal securities laws.

**3.02 Additional Members.** Additional persons may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by Unanimous Consent of the Members. The terms of admission or issuance must specify the Percentage Interests and the Capital Commitments applicable thereto. The terms of admission or issuance may also provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Managers 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 by all Members.

**3.03 Member Rights Specified in Agreement.** Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to sell, transfer or assign its interest in the Company; (b) to require partition of the property of the Company; (c) to compel the sale of Company assets; or (d) to cause the winding up of the Company.

**3.04 Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that, if that Member is a business entity: (a) that Member is duly organized, validly existing, and in good standing under the law of the state of its organization; (b) that Member is duly qualified to do business in the jurisdiction of its principal place of business; (c) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (d) all necessary actions by the board of directors, shareholders, members, managers or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; and (e) 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.

**3.05 No Authority.** Except as otherwise specifically provided in this Agreement, no Member (other than a Manager or an officer) has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

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

**3.07 Withdrawal.** A Member may withdraw from the Company with sixty (60) days written notice to the Managers of the Company, subject to winding up or termination as provided in Article XVI of this Agreement.

## ARTICLE IV CAPITAL CONTRIBUTIONS

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

**4.02 Additional Contributions.** Except for the additional Capital Contribution to be made by the Members Daniel Crow and MXBA up to the amounts described as the “Crow Additional Contribution” and “MXBA Additional Contribution” set forth on the *Use of Proceeds from Capital Contributions of Members* included as part of Exhibit A as attached to this Agreement, which amounts shall be a required additional Capital Contribution of such Members, no Member shall be required to make any Capital Contributions other than those specifically described by this Agreement unless agreed to in writing by the contributing Member or required by the TBOC.

**4.03 Return of Contributions.** No Member is 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 except as provided for in section 5.02. An unrepaid Capital Contribution is not a liability of the Company or of any Member.

**4.04 Loans by Members.** If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so with the Managers' consent without further consent of the Members and may advance all or part of the needed funds to or on behalf of the Company. An advance described in this paragraph 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.

**4.05 Capital Accounts.** A Capital Account shall be established and maintained for each Member. The Capital Account of each Member:

(a) shall consist of (i) the amount of money contributed by that Member to the Company, and (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 Internal Revenue Code);

(b) shall be increased by 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 Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation § 1.704-1(b)(4)(i); and

(c) 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 Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (c)(iii) above and loss or deduction described in Treasury Regulation § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of

Treasury Regulation § 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 Treasury Regulation §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 Treasury Regulation § 1.704-1(b)(2)(iv)(l).

## **ARTICLE V ALLOCATIONS AND DISTRIBUTIONS**

### **5.01 Allocations.**

(a) Except as may be required by Section 704(c) of the Internal Revenue Code and Treasury Regulation § 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 Percentage Interests.

(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 Internal Revenue Code and the regulations thereunder.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of the Company's income and gain shall be specially allocated as a qualified income offset to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this paragraph 5.01(c) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this paragraph 5.01(c) were not in this Agreement.

(d) For the purpose of determining the Members entitled to receive allocations as provided for in this Agreement, the Managers may fix in advance a record date for any such determination of Members, such date in any case to be set not more than (30) days and not less than (5) days prior to the date on which the action authorizing the allocation is taken. If no record date is fixed, then the date on which the Managers take action to authorize such an allocation pursuant to this Agreement and the Internal Revenue Code, shall be the record date for such determination of Members.

(e) Notwithstanding any terms of this Section 5.01 to the contrary, at the request of Daniel Crow and without the need of any further consent from any other Member, this Section shall be modified so as to allocate any losses to Daniel Crow, up to the amount of his Capital

Contribution, before the allocation of any losses to any other Member hereunder. All of the Members hereto acknowledge that this subsequent modification is in consideration for Daniel Crow's joinder as a Member of the Company immediately prior to the close of escrow on the acquisition of the Large Tract, and that the limitations of time prior thereto made consultation with a tax lawyer impracticable. No other Member shall impose any conditions on such further modification of this Section.

#### 5.02 Distributions.

(a) From time to time (but at least once each calendar quarter) the Managers 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 ("Distributable Cash"). If such an excess exists, the Managers shall cause the Company to distribute to the Members, in the following order:

- (a) Reimbursement of all capital contributions of the Member, Daniel Crow
- (b) Reimbursement of all capital contributions of the other Members.
- (c) in accordance with their Percentage Interests, an amount in cash equal to that excess.

Notwithstanding the above, no distributions shall be paid until the Project is generating income or otherwise has closed on the sale of a sufficient number of lots sufficient to create Distributable Cash. The distributions made under this section for the purpose of paying back Capital Contributions shall not result in the reduction of any the Membership Interests of the Members. The Manager may require any and all loans to Members including any rate of return on such loans be paid prior to distributing any Distributable Cash.

### ARTICLE VI MANAGEMENT

6.01 **Designation of Manager and Management by Managers.** The Manager identified on Exhibit "B" are hereby designated by the Members as the Manager for the Company. Except for situations in which the approval of the Members is required by this Agreement or by non-waivable provisions of applicable law, and subject to the provisions of paragraph 6.02 of this Agreement, the Managers shall have the sole and exclusive control of the management, business and affairs of the Company, and the Managers shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

- (a) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in connection with the purposes of the Company at the Manager's reasonable and sole discretion (except entering into any contract with or a sale to any related entity of any Member that is not for fair value or upon terms standard for the industry that would be conducted as an arms-length transaction) and making all decisions and waivers thereunder.

- (c) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money in accordance with the Budget or as authorized in this Agreement;
- (d) maintaining the assets of the Company in good order;
- (e) collecting sums due the Company;
- (f) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;
- (g) utilizing the assets of the Company for the approved Purposes of the Company;
- (i) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (j) obtaining and maintaining insurance for the Company;
- (l) disposition of Company property in the ordinary course of business except for any capital assets including the Property which shall require Unanimous Consent of the Members;
- (n) designating Members or other individuals with authority to sign or give instructions with respect to those accounts and arrangements as authorized in this Agreement;
- (p) incurring any debt or liability (or agreeing to incur any debt or liability) on behalf of the Company which is consented to by all Members as part of an approved Budget or as otherwise authorized in this Agreement;
- (q) determining the amount and timing of distributions of Company cash and other property as provided in paragraph 5.02 of this Agreement;
- (r) appoint officers of the Company and provide such officers with authorities, powers,;
- (t) delegate any responsibilities to any Member, officer, or person retained by the Manager to perform certain tasks (except any payment or remuneration paid to such person shall require Unanimous Consent of the Members).
- (u) where the Company is a member, shareholder, partner, or joint venture in any partnership or entity, execute any necessary resolution, consent, or agreement on behalf of the Company including voting the interests of the Company in the best interests of the Company as reasonably determined by the Manager.
- (v) perform all necessary action on behalf of the Company in order to create Paper Lots as described in section 2.05(c) and expend up to \$100,000.00 for the Paper Lot Expenses (as defined in section 2.11) without the necessity to obtain further consent of the Members.

6.02 **Restrictions.** Notwithstanding the provisions of paragraph 6.01 of this Agreement, the Manager(s) may not cause the Company to do any of the following which shall require the Unanimous

Consent of all Members and shall comply with any other applicable requirements as may be set forth in this Agreement:

- (a) enter into a Fundamental Business Transaction
- (b) do any act in violation of this Agreement;
- (c) sell or issue additional Membership Interests or admit new Members of the Company;
- (d) do any act which requires the prior consent or approval of the Members;
- (e) possess Company property or assign rights in Company property, other than for a Company purpose;
- (f) amend or terminate this Agreement, except as expressly permitted by this Agreement.
- (g) sell, transfer, assign, convey, encumber the Property except as necessary to plat the Property to create Paper Lots.
- (h) enter into any contract or expend funds which would exceed the Budget or as otherwise authorized in this Agreement.
- (i) enter into any development agreement, perform Horizontal Development, or perform any other material work on the Property not otherwise authorized in this Agreement for the purpose of creating Paper Lots.
- (j) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
- (k) agreeing to or paying any type of compensation or remuneration to any Manager, Officer, or Member or other employee of the Company which is not otherwise authorized in this Agreement
- (l) entering into and executing agreements in the ordinary course of business and related to the capital assets of the Company including those related to construction, development, sales (including assets), management, marketing and promotion of the Company and the Project.

**6.03 Conflicts of Interest.** Subject to the other express provisions of this Agreement, each Manager, 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, Manager or officer the right to participate therein.

**6.04 Contracts or Transactions with Interested Directors or Officers.** This provision applies only to a contract or transaction between the Company and one or more of its Managers, Members or officers, or between the Company and an entity or other organization in which one or more of the Company's Managers, Members or officers is a managerial official or has a financial interest.

An otherwise valid contract or transaction is valid notwithstanding that a Manager, Member or officer of the corporation is present at or participates in the meeting of the Managers, Members or officers, or of a committee of the Managers, Members or officers that authorizes the contract or



transaction, or votes or signs, in the person's capacity as a Manager, Member or officer, a written consent of Managers, Members or officers to authorize the contract or transaction, if: the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by the Members of the Company, and the disinterested Members in good faith approve the contract or transaction by vote of the disinterested Members.

**6.05 Number and Term of Office.** The number of Managers of the Company shall be determined from time to time by resolution of the Managers, and shall consist of at least one (1); provided, however, that no decrease in the number of Managers that would have the effect of shortening the term of an incumbent Manager may be made by the Managers. If the Managers make no such determination, the number of Managers shall be the number set forth in the Certificate of Formation as the number of Managers constituting the initial Managers. Each Manager shall hold office for the term for which he is elected and thereafter until his successor shall have been elected and qualified, or until his earlier death, resignation or removal. Unless otherwise provided in the Certificate of Formation, Managers need not be Members or residents of the State of Texas.

**6.06 Vacancies; Removal; Resignation.** Any Manager position to be filled by reason of an increase in the number of Managers or other reason may be filled upon the Unanimous Consent of the Members at an annual or special meeting of Members called for that purpose. A Manager elected to fill a vacancy occurring other than by reason of an increase in the number of Managers shall be elected for the unexpired term of his predecessor in office. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this Agreement, any Manager may be removed, with or without cause, by Unanimous Consent of the Members and otherwise may be removed upon any material breach of this Agreement which is not cured following thirty (30) days written notice from any Member, Manager, or Officer or for Good Cause (as defined in section 15.04) by a Majority of the Members. Any Manager may resign 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 remaining Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**6.07 Compensation.** For their services in the management of the Company and its operations, the Managers may receive such compensation, if any, as may be designated from time to time by the Unanimous Consent of the Members.

**6.08 Reimbursement.** The Managers are not required to advance any funds to pay costs and expenses of the Company. However, in the event the Managers advance such funds, the Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder, including the portion of their overhead reasonably allocable to Company activities, provided that any such reimbursed amounts are promptly reported to all the Members.

**6.09 Meetings.**

(a) Unless otherwise required by law or provided in the Certificate of Formation or this Agreement, a majority of the total number of Managers fixed by, or in the manner provided in, the Certificate of Formation or this Agreement shall constitute a quorum for the transaction of business of the Managers, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Managers. A Manager who is present at a meeting of the

Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

(b) Meetings of the Managers may be held at such place or places as shall be determined from time to time by resolution of the Managers. At all meetings of the Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Managers. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) In connection with any annual meeting of Members at which Managers were elected, the Managers may, if a quorum is present, hold their first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.

(d) Regular meetings of the Managers shall be held at such times and places as shall be designated from time to time by resolution of the Managers. Notice of such regular meetings shall not be required.

(e) Special meetings of the Managers may be called by any Manager on at least 24 hours written notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Certificate of Formation or this Agreement. Notice of special meetings may be given by facsimile or electronic message (e-mail).

**6.010 Approval or Ratification of Acts or Contracts by Members.** The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract. Any act or contract that shall be approved or be ratified by a majority of the Managers shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

**6.11 Action Without Meeting.** Any action permitted or required by the TBOC, the Certificate of Formation or this Agreement to be taken at a meeting of the Managers or any committee designated by the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Managers or members of such committee, as the case may be. Every written consent shall bear the date of signature of each Manager who signs the consent, and the consent may be in one or more counterparts. An email, telegram, telex, cablegram or similar transmission by a Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this paragraph. Such consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Texas, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Managers or any such committee, as the case may be. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

**6.12 Action by Telephone Conference or Other Remote Communications Technology.**

Subject to the requirements of the TBOC, the Certificate of Formation or this Agreement for notice of meetings, unless otherwise restricted by the Certificate of Formation, Managers, or members of any committee designated by the Managers, may participate in and hold a meeting of the Managers or any committee of Managers, as the case may be, 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 video-conferencing technology or the Internet, but only if each Manager 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 Manager 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.

**6.13 Broad Discretion and Authority of Managers.** Each Member acknowledges and understands that the Managers are granted broad discretion and authority under this Agreement and that the Managers' exercise of such broad discretion and authority may impair the value of the Membership Interest of the Member. Such Member further acknowledges and understands that the Managers would not cause the Company to issue a Membership Interest to the Member if the Managers did not have such broad discretion and authority, and such Member agrees not to challenge the Manager's exercise of such discretion and authority.

**6.14 Sale of Paper Lots.** Unless otherwise consented to by all Members including where the Members have agreed to perform Horizontal Construction, the Manager shall cause the sale and closing of the Paper Lots at fair market value on an arms-length transaction basis subject to commercial reasonable terms to a third party that is not related to any Member ("**Sale Parameters**") and shall ensure that at least fifty (50%) of the Paper Lots or total acreage of the Property is sold on or before the expiration of two (2) years following the closing of all Property ("**Sales Objective**"). Regardless of any conflict in this Agreement, in the event that Manager fails to achieve the Sales Objective, the Manager may be removed and replaced by a Majority of the Members following thirty (30) days' written notice during which period the Manager fails to cure and meet the Sales Objective. So long as Manager enters into a purchase contract on behalf of the Company and closes on the sale of Paper Lots in accordance with the Sale Parameters, then the Members shall not unreasonably withhold or delay any required consent to the sale and otherwise, such consent shall be deemed given.

**ARTICLE VII**  
**CONFIDENTIAL INFORMATION**

**7.01 Confidential Information.** The Members agree that the Managers from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information. 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 or a Manager, except for disclosures (i) compelled by law (but the Member must notify the Managers 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 transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this paragraph, 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.

7.02. **Specific Performance.** The Members acknowledge that breach of the provisions of paragraph 7.01 of this Agreement 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 paragraph 7.01 of this Agreement may be enforced by specific performance.

## **ARTICLE VIII MEETING OF MEMBERS**

### **8.01 Meetings.**

(a) A quorum shall be present at a meeting of Members if the holders of 100% of the Membership Interests 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 Percentage Interests of all Members entitled to vote is required by the TBOC or this Agreement, the affirmative vote of a Simple Majority at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by another specific provision in this Agreement.

(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 outside 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 paragraph 8.06 of this Agreement.

(c) Notwithstanding the other provisions of the Certificate of Formation or this Agreement, the chairman of the meeting or the holders of a Super Majority 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 Super Majority. 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 election of the Managers and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or outside the State of Texas, on such date and at such time as the Managers shall fix and set forth in the notice of the meeting, which date shall be within thirteen (13) 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 Managers or the holders of at least ten percent of the Percentage Interests 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 given not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be given when deposited in the United States mail, addressed to the Member at his address on the voting list provided for in paragraph 8.02 of this Agreement, 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 Managers 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) Notice of meetings may be given to Members by facsimile or electronic message (e-mail).

#### 8.02 **Intentionally Omitted.**

8.03 **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 paragraph. 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 Managers, 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 Managers, 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 (11) 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 Percentage Interests that are the subject of such proxy are to be voted with respect to such issue.

8.04 **Conduct of Meetings.** All meetings of the Members shall be presided over by the

chairman of the meeting, who shall be a Manager (or representative thereof) designated by a majority of the Managers. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion.

**8.05 Action by Unanimous Written Consent Without Meeting.**

(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, by unanimous written consent of all Members or committee members, as the case may be, setting forth the action so taken which may be evidenced by the delivery of an email, fax, or similar transmission or electronic consent delivered by a Member, or any copy, facsimile or similar reproduction of a writing signed by a Member or other written consent delivered to and received by the Manager. Each written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

(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 Managers including by electronic transmission.

(c) If any action by Members is taken by written consent, any articles 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 TBOC concerning any vote of Members, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

**8.06 Action by Telephone Conference or Other Remote Communications Technology.** 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 video-conferencing 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.

**8.07 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 IX  
OFFICERS**

9.01 **Qualification.** The Managers may, from time to time, designate one or more persons to be officers of the Company upon the Unanimous Consent of the Members. No officer need be a resident of the State of Texas, a Member or a Manager. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, 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 any specific delegation of authority and duties made to such officer by the Managers pursuant to this paragraph. Each officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Managers. Any number of offices may be held by the one person.

9.02. **Compensation.** The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

9.03. **Resignation.** 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 Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04. **Removal.** Any officer may be removed for any material breach of this Agreement which is not cured following thirty (30) days written notice from any Member, Manager, or Officer or for Good Cause (as defined in section 15.04) by a Majority of the Members provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed.

9.05 **Appointment of Officers.** The initial President, Treasurer, Secretary and any other Officers, if any, are designated on Exhibit B who shall serve the Company without compensation. The President shall have the same rights, powers, and authorities as that of the Manager on a non-exclusive basis and may delegate any such rights, powers, or authorities to any other officer or an authorized representative of the Company as appointed by the President. The Secretary and Treasurer shall have those rights, powers, and authorities which are standard for such positions. Both the President and Treasurer shall have the power to open, manage, and close any accounts including with any financial institution on behalf of the Company and each shall be a signatory on such accounts without the need for any further consent.

## ARTICLE X INDEMNIFICATION

10.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in this Article, each person who was or is made a party or is threatened to be made a party to or is involved in any 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 or Manager of the Company or while a Member or Manager of the Company is or was serving at the request of the Company as a Manager, 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 TBOC, 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 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 shall be deemed contract rights, and no amendments, modification or repeal of this Article 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 could involve indemnification for negligence or under theories of strict liability.

**10.02 Advance Payment.** The right to indemnification conferred in this Article 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 paragraph 10.01 of this Agreement 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 person of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article 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 or otherwise.

**10.03 Indemnification of Officers, Employees and Agents.** The Company, by adoption of a resolution of the Managers, may indemnify and advance or reimburse 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 Managers under this Article; and, the Company may indemnify and advance or reimburse expenses to persons who are not or were not Managers, officers, employees, or agents of the Company but who are or were serving at the request of the Company as a Manager, 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 Managers under this Article.

**10.04 Appearance as a Witness.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Member or Manager 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.

**10.05 Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Member or Manager or other person indemnified pursuant to paragraph 10.03 of this Agreement may have or



hereafter acquire under any law (common or statutory), provision of the Certificate of Formation or this Agreement, agreement, vote of disinterested Managers or otherwise.

10.06 **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 a Manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a Manager, 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.

10.07 **Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member or Manager in accordance with this Article 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.

10.08 **Savings Clause.** If this Article 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 Manager or any other person indemnified pursuant to this Article 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 that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE XI TAXES

11.01 **Tax Returns.** The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in paragraph 11.02 of this Agreement. Each Member shall furnish to the Managers 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.

11.02 **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 for keeping the Company's books and records;
- (c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue 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 Internal Revenue Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Internal Revenue Code; and

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

Either the Company or any Manager or 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 Internal Revenue Code or any similar provisions of applicable state law.

**11.03 "Tax Matters Partner."** A majority of the Managers shall designate one Manager that is a Member to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Internal Revenue Code; or, if there is no Manager that is a Member, the "tax matters partner" shall be a Member that is designated as such by a Simple Majority. 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 Internal Revenue 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 Internal Revenue Code without the Unanimous Consent of the Members, but this sentence does not authorize such Manager (or any other Manager) to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Internal Revenue Code.

**11.04 Employment Identification Number.** A separate individual as authorized by the Company may have originally obtained an Employment Identification Number ("EIN") from the IRS on behalf of the Company which designated such person as a member or sole member of the Company on its letter issuing the EIN as a result of the limitations of the IRS's online EIN request process but such designation by the IRS is not determinative of such person's capacity or ownership interests in the Company and as such as of the Effective Date, such person has no rights or interests in the Company except to the extent specifically stated in this Agreement.

## **ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS**

**12.01 Maintenance of Books.** The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, its Managers and each committee of the Managers. 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 Article IV of this Agreement. The calendar year shall be the accounting year of the Company. The Members shall have full access to the Company's books of account, and any other financial or other records of the Company, upon reasonable advance notice.

12.02 **Accounts.** The Managers 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 Managers determine. The Managers 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 Managers' investment of their own funds or investments by their Affiliates.

### **ARTICLE XIII TRANSFERS**

13.01 **Limited Right to Transfer.** No Member or Assignee shall make any Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired, except (a) with the Unanimous Consent of the Members; (b) as provided by Article XIV of this Agreement; (c) as a Defaulting Member as provided by paragraph 15.01(f) of this Agreement; or (d) upon winding up or termination, as provided by paragraph 16.03 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void *ab initio*.

#### **13.02 Rights of an Assignee.**

(a) Unless and until an Assignee becomes a Substituted Member of the Company as provided in this Agreement, the Assignee shall be entitled only to (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. The Membership Interest of the Assignee shall not be considered in the voting requirements of the Company, and the Assignee shall have no right to participate in the operations or management of the Company.

(b) In the event that the Members make additional contributions to the Company which the Membership Interest is held by an Assignee, the Assignor Member and its Assignee shall be jointly and severally liable for the corresponding contribution in connection with the Membership Interest held by Assignee. If the Assignor Member or Assignee does not make such contribution in accordance with the provisions of this Agreement, then the Assignor Member and Assignee shall be treated as being in Default. In the event that one or more new Members are admitted into the Company, or one or more existing Members increase their Membership Interest, the Membership Interest of the Assignee may be correspondingly reduced and no consent or other action on the part of such Assignee shall be required.

13.03 **Legal Opinion.** For the right of a Member to transfer 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, the Company must receive an opinion from legal counsel acceptable to the Managers that states (a) the Transfer is exempt from registration under federal and state securities laws, (b) the Transfer will not cause the Company to be in violation of federal and state securities laws, (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury Regulations, and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury Regulations. The Managers, however, may waive the requirements of this paragraph.

13.04 **Admission as Substituted Member.** An Assignee has the right to be admitted to the Company as a Substituted Member with the Percentage Interest and the Capital Commitment so transferred to such person, in the event that:

(a) the Member making such Transfer grants the Assignee the right to be so admitted;

(b) such Transfer is consented to in accordance with paragraph 13.01 of this Agreement; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Managers, and said instrument contains (i) the agreement by the Assignee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws, (iii) the Percentage Interests and the Capital Commitments after the Transfer of the Member effecting the Transfer and the person to which the Membership Interest of part thereof is transferred (which together must total the Percentage Interest and the Capital Commitment of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions.

13.05 **Transfer to Existing Member.** In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member.

13.06 **Third Party Offer.** In the event a Member desires to sell all or any portion of its Membership Interest to another person (other than an existing Member), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from a Third Party to purchase such Membership Interest, the selling Member shall promptly deliver a copy of the Third Party offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, then the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party offer.

13.07 **Reasonable Expenses.** The Member effecting a Transfer and the Substituted Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in paragraph 13.03 of this Agreement) on or before the tenth (10th) 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.

## ARTICLE XIV

## **BUYOUT OF MEMBERSHIP INTEREST**

### **14.01 Termination of Marital Relationship.**

(a) If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's community or separate interest, if any, in the Membership Interest (such spouse is referred to hereafter in this Article as the "Assignee Spouse"), either as outright owner of such Membership Interest or as a trustee of a trust holding such Membership Interest, whether or not such Member is a beneficiary of such trust, then such Member shall have the option to purchase at Fair Value (determined as of the date of the death or divorce of the Member) the Assignee Spouse's interest in the Membership Interest to which such Member does not succeed. Such option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest at Fair Value for a period of ninety (90) days after the lapse of the initial 90-day period.

(b) Any Membership Interest of the Company held by a Member as a trustee of a trust as a result of the death of or the Member's divorce from the Assignee Spouse shall be treated as owned by such Member for purposes of this agreement. If such Member ceases to act as trustee of such trust for any reason, then such Member shall have the option to purchase all of the Membership Interest at Fair Value held in such trust. Such option must be exercised within ninety (90) days after such Member ceases to act as trustee of such trust. Should such Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest for a period of ninety (90) days after the lapse of the initial 90-day period.

### **14.02 Intentionally Omitted.**

**14.03 Bankruptcy of Member.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Managers to the Bankrupt Member (or its representative) at any time prior to the one hundred eightieth (180th) day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of such option is given by the Managers); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Managers. In the event that notice of the exercise of such option is given by the Managers to the Bankrupt Member (or its representative), the Bankrupt Member shall sell its interest to the Company as provided by this Article.

**14.04 Insufficient Surplus.** If the Company shall not have sufficient surplus to permit it lawfully to purchase the Membership Interest under paragraph 14.01 or 14.02 of this Agreement at the time of the closing, the other Members may take such action to vote their respective Membership Interests to reduce the capital of the Company or to take such other steps as may be appropriate or necessary in order to enable the Company lawfully to purchase such Membership Interest.

**14.05 Option by Other Members.** If the Company fails or declines to exercise an option to purchase a Membership Interest of a Member as provided by this Agreement within the period of time specified for such option, then the other Members shall have the option for a period of ninety (90) days thereafter to purchase such Membership Interest in such proportions as they mutually agree or in proportion to their respective Percentage Interests for the same price and upon the same terms

available to the Company.

**14.06 Exercise of Option.** Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise such option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

**14.07 Determination of Fair Value.** The "Fair Value" of a Membership Interest shall be the amount that would be distributable to the Member holding such interest in the event that the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests pursuant to this Agreement. In the event that the Fair Value of a Membership Interest is to be determined under this Agreement, the Managers shall select a qualified independent appraiser to make such determination, and the Managers shall make the books and records available to the appraiser for such purpose. The determination of Fair Value made by such appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

**14.08 Fees and Expenses of Appraiser.** In the case of a purchase and sale of Membership Interest under paragraph 14.01 of this Agreement (in the event of divorce of a Member), the fees and expenses of such appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under paragraph 14.02 or 15.01 (in the event of the bankruptcy or default of a Member), the fees and expenses of such appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing such fees and expenses from the purchase price to be paid to such Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of such appraiser shall be shared equally by the purchaser and seller.

**14.09 Right to Withdraw Option.** In the event that a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by paragraph 14.08 of this Agreement, such Member may elect to terminate its right to purchase within fifteen (15) days following its receipt of the determination of Fair Value, by delivery of written notice to the Company and to the Assignee. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Percentage Interests.

**14.10 Terms of Purchase.**

(a) The closing date for any sale and purchase made pursuant to this Article shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party, or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.

(b) Payment of the purchase price for a Membership Interest may be made by the Company and/or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing, and (ii) the balance of the purchase price, bearing interest at the General Interest Rate determined on the date of closing, to be paid in twenty-four (24) equal monthly

installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of such obligation at any time or times in advance of maturity without penalty. In the event that the Company becomes a party to a Fundamental Business Transaction, such obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to such transaction.

(c) At the closing, the person selling the Membership Interest will transfer 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.

(d) In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the selling Member, Assignee, or 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. The parties shall perform such actions and execute such documents that may be reasonably necessary to effectuate and evidence such purchase and sale, and release as provided by this paragraph.

## **ARTICLE XV DEFAULT OF A MEMBER**

**15.01 Failure to Contribute.** 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 "Defaulting Member"), one or more of the following remedies:

(a) taking such action (including, without limitation, court proceedings) as the Managers may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting 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 Defaulting Member;

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

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

(ii) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member,

(iii) 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,

(iv) all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination 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),

(v) the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in paragraph 15.02 of this Agreement, and

(vi) 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 Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member;

(c) proportionately reducing the Defaulting Member's Membership Interest or other interest in the Company;

(d) subordination of the Defaulting Member's Membership Interest to the non-defaulting Member; OR

(e) exercising any other rights and remedies available at law or in equity.

**15.02 Security.** 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 Defaulting Member under this Article, 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 Defaulting Member pursuant to paragraph 15.01(b) of this Agreement, 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. It is expressly agreed that the security interest created thereby shall be governed by Chapter 8 of 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 Article. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Managers or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article. At the option of the Managers or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

**15.03 Compromise or Release.** The obligation of a Defaulting 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 Defaulting Member in violation of the TBOC or this Agreement may be compromised or released only with the approval of the u Unanimous Consent of the non defaulting 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.

15.04 **Suspension.** A Member's right to vote and otherwise exercise the rights of a Member in the Company may be suspended upon the Unanimous Consent of all other Members (not including the Member to be suspended) for such period as determined by such other Members which may be indefinite if that Member is found to have (a) willfully and knowingly violated any material provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, or (c) knowingly engaged in wrongful conduct that such person should have known would adversely and materially affects the business or operation of the Company and which actually adversely and materially affected the business or operation of the Company (collectively, "Good Cause"). Such a Member shall be considered in breach of this Agreement, and the Company or other Members may also exercise any available remedies as provided in this Agreement or at law or in equity. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the breaching Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

## **ARTICLE XVI WINDING UP AND TERMINATION**

16.01 **Event Requiring Termination.** The Company shall begin to wind up its affairs upon the first of the following to occur:

- (a) the execution of an instrument approving the termination of the Company by a Simple Majority of the Members;
- (b) the occurrence of any event that terminates the continued membership of the last remaining Member of the Company; provided, however, that the Company is not dissolved if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member agrees to cancel the event requiring winding up, to continue the Company and to become a Member, or to designate another person who agrees to become a Member, as of the date of termination of the membership of the last remaining Member;
- (c) entry of a decree of judicial dissolution of the Company;
- (d) the occurrence of a non-waivable event under the terms of the TBOC which requires the Company to be terminated; or
- (e) by the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

16.02 **Business May Be Continued.** Except as provided in paragraph 16.01(b) of this

Agreement:

(a) an event that requires the winding up of the Company's business shall not terminate the Company if, no later than one year after the date of the event, the Members unanimously consent to cancel the event requiring winding up.

(b) the expiration of a period of duration that requires the winding up of the Company's business shall not terminate the Company if, no later than three years after the date the period of duration expires, the Members unanimously consent to amend the Company's Certificate of Formation and this Agreement to extend the Company's period of duration.

**16.03 Purchase of Former Member's Membership Interest.** Upon an event requiring winding up as provided in 16.01 of this Agreement, the Company's books shall be closed upon the date of such event, so as to determine the Former Member's Membership Interest value on the date ending all of the Former Member's financial interest in the Company. Within one hundred eighty (180) days of such event, the Company shall purchase the Former Member's Membership Interest at Fair Value (as determined by paragraph 14.06 of this Agreement), upon terms of purchase as provided in Article XIV of this Agreement.

**16.04 Liquidation.** As soon as possible following an event requiring termination of the Company, the Managers shall act as liquidator or may appoint one or more Managers or Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the TBOC. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after such event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;

(b) the liquidator shall cause the notice described in Section 11.052 of the TBOC to be delivered to each known claimant against the Company;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in paragraph 4.04 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); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

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 paragraph. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**16.05 Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Percentage Interests, upon termination of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

**16.06 Certificate of Termination.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other person or persons as the TBOC may require or permit) shall execute, acknowledge and cause to be filed a Certificate of Termination, at which time the Company shall cease to exist as a limited liability company.

## **ARTICLE XVII AMENDMENT OR MODIFICATION**

**17.01 Amendment or Modification.** This Agreement may be amended or modified from time to time only with a written instrument executed with the Unanimous Consent of the Members.

## **ARTICLE XVIII GENERAL PROVISIONS**

18.01 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one Member, then references to Members in the plural should be construed as singular; likewise, in the event there is only one Manager, then references to Members in the plural should also be construed as singular.

18.02 **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.

18.03 **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. 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 or the Managers must be given to the Managers at the following address:

13901 Midway, Suite 102-243  
Farmers Branch, Texas 75244

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.

18.04 **Entire Agreement; Supersedes Other Agreements.** 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.

18.05 **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.

18.06 **Binding Effect.** Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. However, unless and until properly admitted as a Member, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the TBOC to assignees.

18.07 **Governing Law.** 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.

18.08 **Severability.** 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.

18.09 **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.

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

18.11 **Indemnification.** To the fullest extent permitted by law, each Member shall indemnify the Company, each Manager 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.

18.12 **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.

## ARTICLE XIX NOTICES AND DISCLOSURES

19.01 **Compliance with Regulation D of the Securities Act of 1933.** THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MANAGERS (WHICH, IN THE DISCRETION OF THE MANAGERS, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

19.02 **Notice to Members.** By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Certificate of Formation. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 8 of the Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

19.03 **Limitation of Liability.** Pursuant to Article 581-1 *et seq.* of the Texas Revised Civil

Statutes (the "Texas Securities Act"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other person engaged to provide services relating to an offering of securities of the Company ("Service Providers") is limited to a maximum of three times the fee paid by the Company or seller of the Company's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By executing this Agreement, each Member hereby acknowledges the disclosure contained in this paragraph.

*[Signature Page to Follow]*

IN WITNESS HEREOF, the Managers and Members have adopted and executed this Company Agreement as of the Effective Date set forth above.

**MANAGER:**

ONE SF Residential, LLC  
a Delaware limited liability company



\_\_\_\_\_  
Maximilien Barton  
President

**MEMBERS:**

ONE SF Residential, LLC  
a Delaware limited liability company



\_\_\_\_\_  
Maximilien Barton  
President

MXBA, LLC  
a Delaware limited liability company



\_\_\_\_\_  
Maximilien Barton  
President

 25 Aug 2022  
\_\_\_\_\_  
Daniel Crow, Individually

**EXHIBIT "A"**  
**MEMBERS**

<u>Member Name &amp; Address</u>	<u>Initial Capital Contributions</u>	<u>Membership Interest %</u>	<u>Profit/Loss</u>
MXBA, LLC	\$122,329.01*	39.00%	39.00%
ONE SF Residential, LLC	\$10.00	1.00%	1.00%
Daniel Crow	\$1,058,000.00*	60.0%	60.00%

\*As itemized and detailed on the following *Use of Proceeds from Capital Contributions of Members*.



**EXHIBIT A (Continued)**  
**Use of Proceeds from Capital Contributions of Members**

**TOTAL CAPITAL CONTRIBUTIONS OF CROW**

<b>1. <u>Closing of 59 Acre Contract</u></b> (as defined in the 59 Acre Purchaser’s Statement)	
“Balance Due by Purchaser”	<b>\$744,985.56</b>
<b>2. <u>Closing of 3 Acre Contract</u></b> (as defined in the 3 Acre Purchaser’s Statement)	
“Estimated Total” due by Purchaser	<b>\$254,229.80</b>
<b>3. <u>Invoices to be Paid on behalf of Venus59, LLC</u></b>	
Jones Carter Invoice 00320691	\$19,440.00
Alpha Testing, Inc., Invoice 602974	\$ 6,300.00
CCN Settlement with Mountain Peak The AL Law Group (David Tuckfield) Invoice 40763	\$ 1,120.00
Barrett & Associates, PLLC Invoice 1539	<u>\$10,000.00</u>
<b>Total Invoices to be Paid:</b>	<b>\$36,860.00</b>

**Total Initial Capital Contributions of Crow**

<b>4. <u>Estimated Cost to complete Preliminary Plat:</u></b>	
Preliminary Plat	\$29,000.00
Meeting and Coordination	\$ 2,000.00
Easement Preparation	\$ 1,000.00
Downstream Assessment and Flood Study	\$24,225.00
Downstream Assessment Agency Comments	<u>\$ 6,375.00</u>
<b>Total Billing Remaining for Preliminary Plat:</b>	<b>\$62,600.00</b>
<b>LESS: MXBA Additional Contribution:</b>	<b>(\$40,675.36)</b>

**Estimated Costs Apportioned to the**  
**Crow Additional Contribution** **\$21,924.64**

**TOTAL CAPITAL CONTRIBUTIONS OF CROW:** **\$1,058,000.00**

**TOTAL CAPITAL CONTRIBUTIONS OF MXBA**

**4. Estimated Cost to complete Preliminary Plat:**

Preliminary Plat	\$29,000.00
Meeting and Coordination	\$ 2,000.00
Easement Preparation	\$ 1,000.00
Downstream Assessment and Flood Study	\$24,225.00
Downstream Assessment Agency Comments	<u>\$ 6,375.00</u>
<b>Total Billing Remaining for Preliminary Plat:</b>	<b>\$62,600.00</b>
<b>LESS: Crow’s Additional Contribution:</b>	<b>(\$21,924.64)</b>

**Estimated Costs Apportioned to the  
MXBA Additional Contribution** **\$40,675.36**

**5. Invoices and Monies Paid on behalf of Venus59, LLC**

City of Venus Professional Services Agreement Fee Invoice 2021-01-112-1	\$15,000.00
Retainer for Development Agreement with Miklos Cinclair Attorneys & Counselors	\$ 5,000.00
Retainer for Decertification Filing with Mountain Peak The AL Law Group (Andy Barrett)	\$ 5,000.00
Mountain Peak Settlement for Decertification 51-158	\$10,000.00
Jones Carter – Services for Johnston Tract Legal Description – Invoice 00302850-2	\$ 1,116.33
Invoice 00303581-2	\$ 372.11
Non-Applicable Non-Refundable Deposit for Contract Extension Johnston Seventh Amendment, May 31, 2021	\$10,000.00
Non-Applicable Non-Refundable Deposit for Contract Extension Johnston Eighth Amendment, July 31, 2021	\$10,000.00
59 Acres: Gross Amount Due By Purchaser Less Balance Due By Purchaser (per the Purchasers Statement including Applicable Earnest Money of \$20,000.00) (\$765,150.77 - \$744,985.56)	\$20,165.21
“Earnest and Option” (per 3 Acre “Estimated Fees”)	\$ 5,000.00
	<b>\$81,653.65</b>

**TOTAL CAPITAL CONTRIBUTIONS OF MXBA** **\$122,329.01**

**EXHIBIT “B”  
MANAGER AND OFFICERS**

**Manager:** ONE SF Residential, LLC

**President:** Maximilien “Max” Barton

**Treasurer:** Saskya Bedoya

**Secretary:** Saskya Bedoya

# EXHIBIT A-13

10/31/22, 2:33 PM

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

**TEXAS SECRETARY of STATE**  
**JOHN B. SCOTT**

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	801308593	<b>Entity Type:</b>	Domestic Limited Liability Company (LLC)
<b>Original Date of Filing:</b>	August 20, 2010	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>FEIN:</b>	
<b>Tax ID:</b>	32042478134		
<b>Duration:</b>	Perpetual		
<b>Name:</b>	TRTX Properties, LLC		
<b>Address:</b>	13901 MIDWAY RD STE 102-243 Farmers Branch, TX 75244 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>	<a href="#">INITIAL ADDRESS</a>
<b>Last Update</b>	<b>Name</b>	<b>Title</b>	<b>Address</b>			
August 4, 2020	The MXBA Trust	Manager	2999 Turtle Creek Blvd Dallas, TX 75219 USA			

Instructions:

● To place an order for additional information about a filing press the 'Order' button.

10/31/22, 2:33 PM

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

**TEXAS SECRETARY of STATE**  
**JOHN B. SCOTT**

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

**Filing Number:** 801308593 **Entity Type:** Domestic Limited Liability Company (LLC)  
**Original Date of Filing:** August 20, 2010 **Entity Status:** In existence  
**Formation Date:** N/A  
**Tax ID:** 32042478134 **FEIN:**  
**Duration:** Perpetual  
  
**Name:** TRTX Properties, LLC  
**Address:** 13901 MIDWAY RD STE 102-243  
 Farmers Branch, TX 75244 USA

<a href="#">REGISTERED AGENT</a>		<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>	<a href="#">INITIAL ADDRESS</a>
View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count	
	322333270002	Certificate of Formation	August 20, 2010	August 20, 2010	No	1	
	457541320001	Public Information Report (PIR)	December 31, 2012	December 16, 2012	No	1	
	480684010002	Change of Registered Agent/Office	May 10, 2013	May 10, 2013	No	2	
	501623590001	Public Information Report (PIR)	December 31, 2013	September 9, 2013	No	1	
	553630480001	Public Information Report (PIR)	December 31, 2013	July 17, 2014	No	1	
	554023240001	Public Information Report (PIR)	December 31, 2013	July 17, 2014	No	1	
	558842190001	Public Information Report (PIR)	December 31, 2014	August 5, 2014	No	1	
	625203610001	Public Information Report (PIR)	December 31, 2015	August 19, 2015	No	1	
	741246170001	Public Information Report (PIR)	December 31, 2016	May 31, 2017	No	1	
	773033030001	Public Information Report (PIR)	December 31, 2017	November 10, 2017	No	1	
	878197030001	Public Information Report (PIR)	December 31, 2018	March 29, 2019	No	1	
	852102050001	Public Information Report (PIR)	December 31, 2018	November 29, 2018	No	1	
	948780320001	Public Information Report (PIR)	December 31, 2019	February 20, 2020	No	1	
	986838770003	Certificate of Amendment	July 31, 2020	July 31, 2020	No	3	
	1133537920001	Public Information Report (PIR)	December 31, 2021	March 26, 2022	No	1	
	1144928130003	Change of Registered Agent/Office	May 2, 2022	May 2, 2022	No	2	
	1178038500001	Public Information Report (PIR)	December 31, 2022	September 14, 2022	No	1	

**Instructions:**

To place an order for additional information about a filing press the 'Order' button.

10/31/22, 2:33 PM

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

**TEXAS SECRETARY of STATE  
JOHN B. SCOTT**


**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	801308593	<b>Entity Type:</b>	Domestic Limited Liability Company (LLC)
<b>Original Date of Filing:</b>	August 20, 2010	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>FEIN:</b>	
<b>Tax ID:</b>	32042478134		
<b>Duration:</b>	Perpetual		
<b>Name:</b>	TRTX Properties, LLC		
<b>Address:</b>	13901 MIDWAY RD STE 102-243 Farmers Branch, TX 75244 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>	<a href="#">INITIAL ADDRESS</a>
<b>Name</b>	<b>Address</b>		<b>Inactive Date</b>			
One Agent Texas, LLC	13901 Midway Rd, suite - 102, LB243 Dallas, TX 75244 USA					

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  Filing Fee: \$300	  <b>Certificate of Formation                  Limited Liability Company</b>	<p style="text-align: center;"><b>Filed in the Office of the                  Secretary of State of Texas</b></p> <p style="text-align: center;"><b>Filing #: 801308593 08/20/2010</b></p> <p style="text-align: center;"><b>Document #: 322333270002</b></p> <p style="text-align: center;"><b>Image Generated Electronically                  for Web Filing</b></p>
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**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**TRTX Properties, LLC**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

**McMurry & McMurry, LLP**

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

**Street Address:**  
**2912 Whitemarsh Cir. Richardson TX 75080**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

**OR**

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Managing Member 1: <b>William McMurry</b>	Title: <b>Managing Member</b>
Address: <b>2912 Whitemarsh Cir. Richardson TX, USA 75080</b>	
Managing Member 2: (Business Name) <b>TR CARNEGIE INVESTMENTS, LLC</b>	
Address: <b>ONE COMMERCE CENTER 1201 ORANGE ST. #600 Wilmington DE, USA 19899</b>	

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**



[The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer are set forth below.

**William McMurry**      **2912 Whitemarsh Cir, Richarson, TX 75080**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**William McMurry**

Signature of Organizer

**FILING OFFICE COPY**

**REINSTATED  
REGULATIONS  
OF  
TRTX PROPERTIES, LLC  
A TEXAS LIMITED LIABILITY COMPANY**

**FEBRUARY 8, 2015**

THE MEMBERSHIP INTERESTS OF TRTX PROPERTIES, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR PURSUANT TO THE PROVISIONS OF ANY STATE SECURITIES ACT.

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These **TEXAS REGULATIONS OF TRTX PROPERTIES, LLC**, a Texas limited liability company, are adopted effective as of the date set forth above by the undersigned Members of the Company.

## ARTICLE I.

### DEFINED TERMS

The capitalized terms used in these Regulations shall, unless the context otherwise requires, have the meanings specified in this Article I.

**Act.** The Texas Business Organization Code as it may be amended from time to time, and any successor to such Act.

**Additional Capital Contribution(s).** Any Capital Contributions in excess of the Initial Capital Contribution as may be approved in accordance with the provisions of Article VI hereof.

**Affiliate(s).** As applied to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with that Person. Controlling, controlled by or under common control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or otherwise.

**Approved by the Members.** Unless otherwise stated, shall mean a decision, direction, approval and/or consent of the Members that has been determined by a Majority-in-Interest of the Members.

**Approval of the Managing Members.** Unless otherwise stated, shall mean a decision, direction, approval and/or consent of the Managing Members that has been determined by a Majority of the Managing Managers. Unless stated otherwise, as long as notice is given to all Managing Members, consent of all Managing Members shall be implied unless a Managing Member expressly dissents.

**Articles of Organization.** The Articles of Organization of the Company described in Article II, Section 1 of these Regulations.

**Assets.** All interest, assets and rights of any type owned by the Company, whether owned by the Company at the date of its formation or thereafter acquired.

**Bankruptcy.** Bankruptcy under the federal Bankruptcy Code or insolvency under any state insolvency act.

**Business Day.** Any day other than a Saturday, Sunday and those legal public holidays specified in 5 U.S.C. '6103 (a), as may be amended from time to time.

**Capital Account.** The Capital Account maintained for each Member pursuant to Article VI, Section 3 of these Regulations.

**Capital Contributions.** The total amount of cash or property contributed to the Company by all the Members or any one Member, as the case may be.

**Code.** The Internal Revenue Code of 1986, as it has been and may be amended.

**Company.** TRTX Properties, LLC., as such limited liability company may from time to time be constituted.

**Initial Capital Contribution.** Such amounts designated as such on Schedule A hereof.

**Interest(s).** All rights and interests of a Member with regard to the Company, under these Regulations and the Act, including (i) the right of a Member, expressed as a percentage on Schedule A, to receive distributions of revenues, allocations of income and loss and distributions of liquidation proceeds under these Regulations, and (ii) all management rights, voting rights or rights to consent.

**Majority-in-Interest of the Members.** Members who are holding more than fifty percent (50%) of the total Interest who are entitled to vote hereunder at the applicable date after receipt by all Members of notice of such item requiring a vote.

**Managing Members.** At any time, the Person who is then managing the business of the Company in accordance with Article X of these Regulations. The initial Managing Members are Enoch Investments, LLC (a Delaware Limited Liability Company with Timothy Barton serving as the Managing Member).

**Member(s).** At any time, the Person(s) who then own Interests in the Company. The initial Members are listed on Schedule A.

**Notification.** A writing containing any information required by these Regulations to be communicated to any Persons which may be personally delivered, sent by registered or certified mail, postage prepaid, electronic mail with delivery confirmation to the email address specified in the Company records, or sent by facsimile transmission with delivery confirmation, to such Person, at the last known address of such Person in the Company records. Any such Notification shall be deemed to be given (i) when delivered, in the case of personal delivery, (ii) on the third business day after it is deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid, in the case of mail, and (iii) when transmitted properly (being 9:00 a.m. to 5:00 p.m., local time for the recipient, on any Business Day) in the case of facsimile transmission. Any communication containing information sent to any Person other than as required by the foregoing sentences, but which is actually received by such Person, shall constitute Notification as of the date of such receipt by such person for all purposes of these Regulations.

**Operating Budget.** The annual budget prepared by the Managing Members and submitted to and approved by the Members. The Operating Budget shall reflect all costs and expenses projected or expected to be incurred by the Company during the Company's fiscal year.

**Operating Costs.** Any costs incurred by or on behalf of the Company or the Partnership pursuant to the Operating Budget.

**Operating Plan.** The annual business plan prepared by the Managing Members and submitted to and approved by the Members and the Company. The Operating Plan shall reflect all activities to be undertaken by the Company during each fiscal year of the Company, including, without limitation, any development work.

**Option.** The option of each Member hereto to purchase the other Member's Interest as set forth in Article XIII hereof.

**Persons.** Any natural person, limited liability company, general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association.

**Purpose.** The "Purpose" of the Company as set forth in Article IV hereof.

**Regulations.** These Regulations, including any Schedules, as originally executed and as they may be subsequently amended from time to time, by requisite vote of the Members.

**Representative(s).** The Representative(s) shall mean the Representative designated by or on behalf of each Sponsoring Member and authorized to act on behalf of such Sponsoring Member pursuant to the terms and provisions hereof.

**Right of First Refusal.** Right of First Refusal shall mean the right of first refusal of each Member to acquire another Members' Interests as set forth in Article XIII.

**Schedule A.** The schedule attached hereto and labeled "Schedule A", containing: (i) the identity of each initial Member, (ii) Initial Capital Contributions, (iii) each Member's Interest and (iv) profit/loss sharing ratio.

**Sponsoring Member.** Sponsoring Member shall mean a Member who designates a certain Representative to act on its behalf pursuant to the terms and provisions of this Agreement.

**Transfer.** Any assignment, hypothecation or change in the record ownership of an Interest, whether made voluntarily or involuntarily by operation of law, including, but not limited to, the following:

1. a sale, pledge, encumbrance, assignment, gift or other transfer to any Person;
2. a general assignment for the benefit of creditors, or any assignment to a creditor resulting from the creditor's foreclosure upon or execution against such Interest;



3. the filing by the transferor Member of a voluntary Bankruptcy petition; or
4. the entry of a judicial order granting the relief requested by the petitioner in an involuntary Bankruptcy proceeding filed against the transferor Member.

**Updated Business Plan.** Annual revisions to the Business Plan, or more frequently, if revisions are agreed upon, which provisions shall be prepared by the Managing Members and approved by the company.

## ARTICLE II.

### ORGANIZATION

1. Articles of Organization. Articles of Organization for the Company were filed with, and a Certificate of Formation was issued by, the Secretary of State of the State of Texas.
2. Term. Pursuant to the Act, the existence of the Company began upon the effective date of the Articles of Organization. The Company shall exist for the duration specified in the Articles of Organization unless sooner terminated in accordance with these Regulations.
3. No State-Law Partnership. No provision of these Regulations (including, without limitation, the provisions of Article X) shall be deemed or construed to constitute the Company a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of any other Member or Managing Members, for any purposes other than federal and state tax purposes.

## ARTICLE III.

### NAME; PLACE OF BUSINESS; REGISTERED OFFICE AND AGENT

1. Name. The name of the Company is "TRTX PROPERTIES, LLC." The name may be changed at anytime by the President without the approval of the Members as long as such name conforms with state law.
2. Assumed Names. The Managing Members may cause the Company to do business under one or more assumed names. In connection with the use of any such assumed names, the Managing Members shall cause the Company to comply with the Act.
3. Registered Office; Registered Agent; Principal Office in the United States; Other Offices. The registered office of the Company required by the act to be maintained in the State of Texas shall be the initial registered office named in the Articles of Organization or such other office (which need not be a place of business of the Company) as the Managing 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 Articles of Organization or such other Person or Persons as the Managing 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 Managing 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 Act. The Company may have such other offices as the Managing Members may designate from time to time.

#### ARTICLE IV.

##### PURPOSE

The purpose of the Company is to conduct any lawful business which includes but is not limited to the acquisition, development, holding, improvement, subdivision, maintenance, operation, and investment in real estate and to engage in any other business or activity that may be incidental, proper, advisable or convenient to accomplish the foregoing purpose that is not forbidden by the law of the jurisdiction in which the Company engages in that business.

#### ARTICLE V.

##### MEMBERS

1. Members. The names and addresses of the Members of the Company are as set forth on Schedule A of these Regulations which shall be updated as necessary.
2. Admission of Additional Members. Additional Members of the Company may be admitted as follows:
  - (a) If the proposed additional Member desires to purchase an Interest from the Company, such purchase may be made and the admission of the additional Member shall become effective only if the identity of the proposed additional Member and the amount of the Capital Contribution to be made by such proposed additional Member in exchange for such proposed additional Member's Interest is approved by the Managing Members.
  - (b) If the proposed additional Member desires to acquire an Interest in a Transfer from an existing Member, such Transfer may be made and the admission of the additional Member shall become effective only in accordance with Article XI, Section 2 hereof and Article XIII, Section I hereof. All other attempted Transfers of any Interest or right, or any part thereof, in or in respect of the Company shall be null and void ab initio.

- (c) The Managing Members may deny the membership of any proposed additional member for any reason.

## ARTICLE VI.

### CAPITAL CONTRIBUTIONS AND INTERESTS

1. Capital Contributions.

- (a) Each Member shall contribute to the capital of the Company the amounts set forth as such Member's Initial Capital Contribution on Schedule A. The Initial Capital Contribution shall be in the form of cash and shall be paid simultaneously with the execution by each respective Member of these Regulations. Schedule A may not be amended without the written approval of all Members, unless modifications to Interests occur by virtue of other provisions of these Regulations.
- (b) In the event any Member fails to make full payment of its Initial Capital Contribution, as and when required by Article VI, Section I (a) hereof, said Member shall be deemed in default hereunder and shall automatically, and without notice or further proceeding, forfeit its full Interest in and to the Company. Upon such default, the non-defaulting Member's shall be entitled to acquire the defaulting Member's forfeited Interest upon payment of the amount of Capital Contribution unpaid as to the defaulting Member's Interest prior to the date of Closing, as scheduled or as the same may be extended.
- (c) In the event any Member fails to make full and timely payment of the initial capital contribution or an approved Additional Capital Contribution such failure shall constitute an Event of Default hereunder and the non-defaulting Member(s) shall exercise by written notice to the defaulting Member(s) one (1) of the following rights or remedies, as its exclusive remedy available to the non-defaulting Members:
  - (i) With the Managing Members' approval, upon payment of the delinquent Capital Contribution the non-defaulting Members or the Managing Members may exercise the Option, described in Article XII, Section 2 hereof, as to the Interest of the defaulting Member, or;
  - (ii) With the Managing Members' approval, one or more of the non-defaulting Member or the Managing Members may elect to contribute Additional Capital Contribution to the Company in lieu of the defaulting Member's additional capital contribution requirement in such proportions as the non-defaulting Members shall have agreed upon among themselves, or if they fail to so agree, the non-defaulting Members shall contribute on a pro rata basis based upon their respective Interests in the Company. The Members' Interests will be recalculated accordingly including the dilution of the

defaulting member's interest. All rights to vote and other rights available to the defaulting member shall be reduced accordingly.

- (iii) In the event of default, the defaulting member is not entitled to notice or a cure period unless required by law. The Managing Members have the sole discretion to grant such a cure period for the length of time the Managing Members deems appropriate.

2. Interests.

- (a) Upon making the Capital Contribution specified on Schedule A, in a timely manner, each Member shall own the Interest set forth opposite such Member's name on Schedule A.
- (b) The Interests may, with the approval of the Managing Members, be evidenced by certificates issued by the Company which, if issued, shall be in such form and incorporate such legends, recitals and provisions as the Managing Members shall deem necessary or advisable. If certificates are issued, the Managing Members shall establish reasonable procedures for the delivery and reissuance of certificates in connection with Transfers of Member's Interests, split-ups or combinations of certificates, loss or destruction of certificates and other eventualities. Among other matters, such procedures may set forth required fees, indemnifications, documentation and signatures (including guarantees thereof) to be obtained from parties requesting reissuance of certificates. Such procedures need not be incorporated into these Regulations, but a copy thereof shall be delivered to all Members.
- (c) Additional Capital Contributions may be made with the express unanimous consent of all Members. Membership Interests may be adjusted accordingly to reflect such additional capital contributions upon unanimous approval of the Members.

3. 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 as provided in 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 as provided in 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 (b) (4) (i) or § 1.704-1 (b) (4) (iii). The Members' capital accounts shall also 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 book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. § 1.704-1 (b) (2) (iv) (g). A Member that has more than one Interest shall have a single capital account that reflects all its Interests, regardless of the class of Interests owned by that Member and regardless of the time or manner in which those Interests were acquired. On the Transfer of all or part of an Interest, the capital account of the transferor that is attributable to the transferred 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) (1).

4. Return of Capital Contributions. Except with the approval of the Managing Members and as otherwise provided herein or in the Act, no Member shall have the right to withdraw, or receive any return of, his Capital Contribution.
5. Interest. No interest shall be paid by the Company on Capital Contributions or on balances in Members' capital accounts.
6. Loans from Members. Loans by a Member to the Company shall not be considered Capital Contributions. Any amounts contributed to the Company which are not expressly authorized as Additional Capital Contributions shall be considered Loans by a Member to the Company. If any Member shall advance funds to the Company in excess of the amounts required hereunder to be contributed by him to the capital of the Company, the making of such advances shall not result in any increase in the amount of the capital account of such Member. The amounts of any such advances shall be a debt of the Company to such Member and shall be payable or collectible only out of the Company assets in accordance with the terms and conditions upon which such advances are made. Loans must be approved by the Managing Members. No loans shall earn interest unless expressly agreed to in writing by all Managing Members. The repayment of loans from a Member to the Company upon liquidation shall be subject to the order of priority set forth in Article XIII, Section 4 hereof.

## ARTICLE VII.

### ALLOCATIONS AND DISTRIBUTIONS

1. Allocation of Income and Loss.
  - (a) Except as may be required by Section 704(a) of the Code and Treas. Reg. § 1.704-1(b)(2)(iv)(f)(4), the income, gains, losses, deductions and credits (or items thereof) of the Company shall be shared by the Members in accordance with Schedule A. It is the intention of the Members that allocations of income, gains, losses, deductions and

credits (or items thereof) pursuant to this Article VII, Section 1 be in accordance with the Interests for tax purposes.

- (b) All items of income, gain, loss, deduction and credit allocable to any Interest that may have been transferred shall be allocated between the transferor and the transferee based upon an interim closing of the books as of the date of the transfer; provided, however, that this allocation must be made in accordance with a method permissible under Section 706 of the Code and the regulations thereunder.
2. Determination of Income and Loss. At the end of each fiscal year of the Company, income, gain, loss, deduction and credit (or items thereof) shall be determined for the accounting period then ending and shall be allocated to the Members in accordance with Article VII, Section 1 hereof.
  3. Cash Distributions. The Managing Members have the discretion to distribute to the Members, in accordance with their respective Interests, the amount by which cash on hand exceeds the amount necessary to meet the current costs, expenses, and liabilities of the Company (including, without limitation, a reasonably adequate reserve for working capital and contingencies) as determined by the Managing Members. The distribution should be, at a minimum, sufficient to allow the Members to pay the income tax allocated to the Members as a result of the income generated by the Company. The Company shall not make any distribution to the Members if, immediately after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members with respect to their Interests and liabilities for which the recourse of creditors is limited to specified property of the Company, exceed the fair market value of Company Assets, except that the fair market value of Company Assets that are subject to a liability for which recourse of creditors is limited shall be included in the Company Assets only to the extent that the fair market value of the Company Assets exceeds that liability.
  4. Distributions of Other Property. From time to time, the Managing 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 respective Interests and may be made subject to existing liabilities and obligations. Immediately prior to such distribution, the capital accounts of the Members shall be adjusted as provided in Treas. Reg. §1.704 1(b)(2)(iv)(f).

## ARTICLE VIII.

### OWNERSHIP OF COMPANY ASSETS

Company Assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company Assets or any portion thereof. Title to any or all Company Assets shall be held in the name of the Company. All Company Assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company Assets are held.

## ARTICLE IX.

### FISCAL MATTERS; BOOKS AND RECORDS

1. Bank Accounts; Investments. Capital Contributions, revenues and any other Company funds shall be deposited by the Managing Members in a bank account established in the name of the Company, or shall be invested and/or expended by the Managing Members in furtherance of the Purpose of the Company. No other funds shall be deposited into Company bank accounts or commingled with Company investments. Funds deposited in the Company's bank accounts may be withdrawn only for the purposes described herein or to be distributed to the Members pursuant to these Regulations. All such funds shall be deposited and applied in accordance with the terms of these Regulations.
2. Records Required by Act; Right of Inspection.
  - (a) During the existence of the Company and for a period of four (4) years thereafter, unless the Managing Members approves of an alternative procedure, the Managing Members or the Manger's agent, at the expense of the Company, shall maintain all records required to be kept pursuant to the Act, including, without limitation, (i) a current list of the names, addresses and Member's Interests held by each of the Members (including, if any class or group of interest is established under the Articles of Organization or these Regulations, the names of the Members who are Members of each such class or group); (ii) copies of federal, state and local information or income tax returns for each of the Company's six (6) most recent tax years; (iii) copies of these Regulations and the Articles of Organization, including all amendments or restatements; (iv) if such information is not otherwise set forth in the Articles of Organization or these Regulations, a written statement of (A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an Additional Contribution, (B) the times at which any Additional Contributions are to be made or events requiring contributions to be made, (C) events requiring the Company to be dissolved and its affairs wound up, and (D) the date on which each Member became a Member of the Company; (v) correct and complete books and records of account of the Company; and (vi) copies of any financial statements of the Company for the three (3) most recent years.
  - (b) On written request, an initial Member or an approved assignee of an Interest (an "Eligible Person") may examine and copy in person or by the Eligible Person's representative, at any reasonable time, for any proper purpose, and at the Eligible Person's expense, records required to be maintained under the Act and such other information regarding the business, affairs and financial condition of the Company as is just and reasonable for the Eligible Person to examine and copy. Upon written

request by any Eligible Person made to the Managing Members at the address of the Company's principal office in the United States specified in Article III, Section 3 hereof, the Company shall provide to the Eligible Person copies of (i) these Regulations and the Articles of Organization and all amendments or restatements, and (ii) any of the tax returns of the Company described above.

3. Books and Records of Account. The Managing Members, at the expense of the Company as set forth in the Operating Budget, shall maintain for the Company adequate books and records of account that shall be prepared in accordance with sound accounting principles.
4. Tax Returns and Information. The Members intend for the Company to be treated as a partnership for tax purposes. The Managing Members, at the expense of the Company, shall prepare or cause to be prepared all federal, state and local income and other tax returns that the Company is required to file. Within the shorter of (i) such period as may be required by applicable law or regulation, or (ii) seventy-five (75) days after the end of each calendar year, the Managing Members shall send or deliver to each Person who was a Member at any time during such year such tax information as shall be reasonably necessary for the preparation by such Person of his federal income tax return and state income and other tax returns.
5. Delivery of Financial Statements to Members. As to each calendar year, the Managing Members may send to each Member, or upon request of a member, a copy of (i) a balance sheet of the Company as of the end of the calendar year, (ii) an income statement of the Company for such calendar year, (iii) a statement of changes in Member capital accounts for such calendar year. Such financial statements shall be delivered by no later than thirty (30) days following the end of the calendar year to which the statements apply. Unless the Managing Members so elects, such statements need not be audited.
6. Audits. The Managing Members may conduct an audit of the Company books, with respect to the annual financial statements under Article IX, Section 5 above. The cost of the audit shall be borne by the Company. The audits shall be performed by an accounting firm approved by the Managing Members. Not more than one (1) audit shall be required for any fiscal year.
7. Fiscal Year. The Company's fiscal year shall end on December 31 of each calendar year.
8. 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 appropriate method of accounting and to keep the Company's books and records in accordance with the rules and regulations regarding income tax accounting as opposed to accounting for financial reporting purposes;



- (c) if a distribution of Company Assets as described in Section 734 of the Code occurs or if a transfer of 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 Assets;
- (d) to elect to amortize the organizational expenses of the Company ratably over a period of sixty (60) months as permitted by Section 709(b) of the Code; and
- (e) any other election the Managing Members may reasonably deem appropriate and in the best interest of the Members.

Neither the Company nor any Managing Members may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law.

## ARTICLE X

### MANAGEMENT OF THE COMPANY

2. Control by the Members. The Managing Members, shall manage and control the operation of this Company through their exercise of the decision making powers granted herein.
3. Management.
  - (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 Managing Members with the day to day operations managed by the President. Neither the Managing Members nor President need be a resident of the State of Texas. The initial President is Timothy Barton. (hereinafter collectively referred to as "President.")
  - (b) The Managing Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Managing Members. The Managing Members shall designate the salary and/or bonuses the Officers are to receive, if any. Officers need not be Members, the Managing Members or residents of the State of Texas. Any officer may be removed by the Managing Members at any time, with or without cause. Each officer shall hold office until his or her successor shall be duly designated and take office or until the earlier of the officer's death, resignation or removal. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed by the Managing Members.
4. Powers of the Managing Members. Subject to the foregoing powers and limitations, the Managing Members, shall have the power and authority to manage the affairs of the

Company, and shall have the authority to take any action deemed to be necessary, convenient or advisable in connection with the management of the Company given such actions are approved by a majority of the Managing Members. The Managing Members shall act in place of a Board of Directors. As long as prior notice is given, any Managing Member may exercise the powers granted within this agreement as the consent of the other Managing Member(s) shall be implied unless expressly objected to by the other Managing Member(s). In the event, the Managing Members are unable to reach a consensus of a majority of the Members, then such issue shall be resolved by a vote of the majority in interest of all Members. The Managing Members shall have the power to establish and maintain accounts of the Company at financial institutions and the Managing Members shall be authorized signatories on such financial institution accounts. The Managing Members shall also have the following respective duties:

- (a) shall expend sums on behalf of the Company;
- (b) shall be responsible for the distribution of funds, including the timing of such distributions, to the Members by way of cash, income, return of capital, profits or otherwise, all in accordance with the provisions of this Agreement and perform all matters in furtherance of the objectives of the Company and this Agreement;
- (c) has the right to execute any and all agreements, contracts, documents, certifications and instruments necessary and convenient in connection with the powers described in these regulations;
- (d) Any act of the Managing Members purporting to bind the Company, shall bind the Company and the ratification or consent of the Members to any such act(s) shall not be required;
- (e) The Managing Members shall have the full right and authority to execute any and all documents and instruments relating to the business and affairs of the Company, without the joinder of the Members, or any other person or entity, and any person dealing with the Company may rely upon the Managing Members' execution of any such document or instrument as the act and deed of the Company, without the necessity for further inquiry; and
- (f) The Managing Members shall not receive compensation for management services to the Company other than the reimbursement of any and all out-of-pocket expenses reasonably incurred by the in connection with the furtherance of its duties, obligations and responsibilities hereunder or otherwise with respect to the management and operation of the business and affairs of the Company. Managing Members may contract with the Company and receive compensation for other services not related to the duties of a Managing Member.

4. Powers of the President. The President shall have the following rights and powers in subject to the following restrictions:
- (a) managing the daily operations of the business unless such management conflicts with the powers reserved to the Managing Members or unless the Managing Members restrict such powers.
  - (b) with prior notice to the Managing Members, may contract on behalf of the Company for the employment and services of employees and/or independent contractors and delegate to such persons the duty to manage and supervise certain operations of Company unless the Managing Members requests to approve such decisions;
  - (c) may incur reasonably, ordinary, and necessary expenses in order to manage the daily operations of the Company within the monetary limits set by the Managing Members above which will require the Managing Members' approval;
  - (d) shall make any and all elections for federal, state and local tax purposes including, without limitation, any election if permitted by applicable law: (1) to adjust the basis of property owned by or for the benefit of the Company pursuant to the Internal Revenue Code of 1986, as amended, specifically including, but not limited to, Sections 734(b), 743(b) and 754 thereof, or comparable provisions of state or local law, in connection with the transfer of Percentage Interests and distributions to the Members; (2) to extend the statute of limitations for assessments of tax deficiencies against Members with respect to adjustments to the Company's federal, state and local tax returns; and (3) to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Members in their capacity as Members, and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company or the Members, it being specifically understood and agreed that the Managing Member is specifically authorized to act as the "Tax Matters Member" under the Internal Revenue Code of 1986, as amended, and in any similar capacity under state or local law;
  - (e) shall contract on behalf of the Company for the employment and services of employees and/or independent contractors and delegate to such persons the duty to manage and supervise any of the assets or operations of the Company;
  - (f) with prior notice to the Managing Members, may negotiate or execute any agreements, contracts, documents, certifications and instruments which may bind the company without consent of the non-managing Members;
  - (g) those powers delegated to him by the Managing Members which may be ongoing or for a particular purpose and may be revoked at any time by the Managing Members;

5. Ownership of Information and Materials. The Managing Members shall, upon completion of or upon any earlier termination of its management hereunder, deliver to the Company all books and records and written financial or accounting data and information of or relating to the Company and the Property whether or not prepared by the Managing Members or supplied to the Managing Members by the Company or the Company's contractors or agents, which information shall at all time be the property of the Company.
6. Licenses. The Managing Members shall, at the company's expense, qualify to do business and obtain and maintain such licenses as may be required for the performance by the Managing Members of its services hereunder.
7. Resignation and Removal. Any Managing Member or the President may resign at any time after giving prior notice of such resignation to the Members at least thirty (30) days prior to the effective date of the resignation. 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, if any. Such persons may only be removed by a unanimous vote of all Members entitled to vote and with cause which is defined as the willful and gross misconduct or gross negligence which must result in material economic damage to the company and its members.

## ARTICLE X.

### RIGHTS, POWERS AND OBLIGATIONS OF MEMBERS

1. Authority; Liability to Third Parties.
  - (a) No Member (other than Managing Member or an officer) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditure on behalf of the Company.
  - (b) No Member (including any Member who is Managing Member or Officer) shall be liable for the debts, obligations or liabilities of the Company, including under a judgment, decree or order of a court.
  - (c) The members may amend the regulations with the approval of a majority-in-interest of the members entitled to vote and with approval of the Managing Members. Any amendments to the role of the Managing Members would also require the approval of the Managing Members.
  - (d) Except as otherwise limited by the terms and provisions contained in these regulations, the Members shall have all of the rights, and be afforded the status, of Members as set forth in these regulations and by law.

- (e) Except as provided herein, no Member shall have any right or power to (1) take part in the management or control of the Company or its business or affairs, (2) transact any business for the Company, or (3) sign for or bind the Company in any way.
  - (f) No Member shall have the right to withdraw from the Company unless approved by the Managing Members.
  - (g) No Member shall have the right or power to cause the dissolution and winding up of the Company by court decree or otherwise.
  - (h) All Members hereby agree to execute any and all instruments that they may be required to execute by any approved purchaser of said property in order to effect a sale of the Company Property.
2. Breach. In addition to a member failing to adhere to these regulations, a Member will breach this Agreement if he
- (a) attempts to withdraw from the Company without approval;
  - (b) interferes in the management of the Company affairs;
  - (c) engages in conduct which could result in the Company losing its tax status as a Company;
  - (d) engages in conduct that tends to bring the Company into disrepute;
  - (e) breaches any confidentiality provisions of this Agreement;
  - (f) fails to meet any commitment to the Company; or
  - (g) owns a Company interest that becomes subject to a charging order, attachment, garnishment, or similar legal proceedings.
3. Remedies. A Member who is in breach of this Agreement shall be liable to the Company for damages caused by such breach. The Company may offset the damages against any distributions or return of capital to the Member who has breached this Agreement. Additionally, if a Member violates the terms of this agreement that person may be terminated as a member and their capital contributions shall be refunded without interest including any profits or losses accrued up to the date of the breach. If necessary such capital contribution may be converted to a loan to the company if the assets are not available to refund the capital contribution at the time of the breach and is subject to reasonable interest and payment terms as determined by the Managing Members. These remedies are in addition to any additional remedies that may be available under the law.

4. Transfers of Interests. A Member may make a Transfer of such Member's Interest, only upon the approval of the Managing Members subject to the Managing Members' right of first refusal in this agreement:
  - (a) The Member or the proposed transferee must file with the Company a written and dated instrument of such Transfer, in form and substance reasonably satisfactory to the Managing Members, executed by both the transferor and the proposed transferee, which instrument shall (i) contain the acceptance by the proposed transferee of all of the terms and provisions of these Regulations, to the extent applicable to an assignee of an Interest, and identify all liabilities which the transferee shall assume upon the transfer of the Member's Interest; (ii) contain such representations as the Managing Members may deem necessary or advisable to assure that such Transfer need not be registered under any applicable federal or state securities laws; (iii) instruct the Managing Members as to the Interest to be transferred and to whom and at what address Company distributions and Notifications in respect of such Interest should henceforth be sent; and (iv) contain any information required under the Code that is reasonably requested by the Managing Members.
  - (b) Unless expressly waived by the Managing Members, the transferor or transferee shall deliver to the Company an opinion of counsel reasonably acceptable to the Managing Members that (i) such Transfer is exempt from the registration requirements of the Securities Act of 1933, as amended, applicable state securities laws, and any rules or regulations promulgated thereunder, and will not otherwise cause the Company to be in violation of such laws and regulations; (ii) the Transfer will not result in the termination of the Company within the meaning of Section 708(b) of the Code; and (iii) the Transfer will not adversely affect the status of the Company as a partnership under the Code.
  - (c) The Transfer is approved by the Managing Members, and the transferor Member.
5. Effect of Transfer of Member's Interest. A Transfer of an Interest pursuant to Article XI, Section 2 above does not entitle the transferee to become, or to exercise rights or powers of, a Member. A Transfer only entitles the transferee to receive cash distributions and allocations of Company profits and losses to the extent of the Interest transferred. Until the transferee is admitted as a Member pursuant to Article XI, Section 4 below, the transferor Member shall continue to be a Member and to be entitled to exercise any rights or powers of a Member with respect to the Interest transferred.
6. Admission of Transferee as Member. An approved transferee of an Interest desiring to be admitted as a Member must execute a counterpart of, or an agreement adopting, these Regulations. The admission of such transferee (including, without limitation, a transferee by reason of the death of a Member) is subject to the Managing Members acting in his sole discretion. Upon admission of the transferee as a Member, the transferee shall have, to the extent of the Interest transferred, the rights and powers and shall be subject to the restrictions and liabilities of a Member under these Regulations, the Articles of Formation and the Act.

The transferee shall also be liable, to the extent of the Interest transferred, for the unfulfilled obligations, if any, of the transferor Member to make Capital Contributions. Whether or not the transferee of an Interest becomes a Member, the transferor Member is not released from any liability to the Company under these Regulations, the Articles of Organization or the Act.

7. Other Business. The Members may engage in or possess interests in other business ventures (unconnected with the Company) of every kind and description, independently or with others, except those business in direct competition with the Company upon approval of the Managing Members. Neither the Company nor the other Members shall have any rights in or to such independent ventures or the income or profits therefrom.
8. Voting by Members. Any decisions, directions, approvals and consents required by the Members shall be made by the vote of a Majority-in-Interest (whether by actual vote or deemed vote as provided herein) of the Members, unless these Regulations expressly provide that a decision shall be made by the 2/3 or unanimous vote or consent of all of the Members, which shall mean the 2/3 of the membership interests or unanimous vote of all membership interests or consent of the Members entitled to vote hereunder at the time that the vote is taken, or deemed taken.

## ARTICLE XI.

### MEETINGS OF MEMBERS

1. Place of Meeting. All meetings of Members shall be held at the principal office of the Company as provided in Article III above or at such other place as may be designated by the Member(s) calling the meeting.
2. Annual Meeting. Commencing with the calendar year next following the calendar year in which the Company was organized, annual meetings of the Members may be held on any day of the year at such hour as may be designated in the notice of the meeting, if such day is a Business Day, and if not a Business Day, then on the next following day that is a Business Day. If the annual meeting is not held on the date above specified, the Managing Members shall cause a meeting in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at that meeting shall be as valid as if held at the annual meeting. Failure to hold the annual meeting at the designated time shall not work a dissolution of the Company. This provision shall not be construed to require the holding of any annual meeting.
3. Special Meetings. Special meetings of the Members may be called by resolution of the Members holding thirty percent (30%) or more of the Interests, for the purpose of addressing any matter upon which the Members may vote under these Regulations. Members may call a meeting by delivering to the Managing Members one or more written requests signed by the requisite number of Members, stating that the signing Members wish to call a meeting and indicating the specific purpose for which the meeting is to be held. Action at the meeting

shall be limited to those matters specified in the call of the meeting. This provision shall not be construed to require the holding of any special meetings.

4. Notice. A Notification of all annual and special meetings, 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 by the Managing Members within a reasonable time period prior to the meeting with the presumption that reasonable notice is not less than twenty (20) nor more than sixty (60) days before the meeting to each Member. If the Managing Members fails to timely deliver such notices, then any Member may deliver such notices to the other Members. The period of prior notice for any special meeting, which the Managing Members or any Member deems to be an emergency meeting, shall be shortened to such reasonable period of time, consistent with the nature of the emergency, sufficient to give actual notice to each Member.
5. Waiver of Notice. Attendance of a Member at a meeting or action taken by written consent shall constitute a waiver of Notification of the meeting, except where such Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Notification of a meeting may also be waived in writing. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the Notification of the meeting but not so included, if the objection is expressly made at the meeting.
6. Quorum and Attendance.
  - (a) Members or Representatives (as defined herein) representing a Majority-in-Interest of the Members shall constitute a quorum at any meeting of the Members, whether present in person or by proxy.
  - (b) Each Sponsoring Member may designate a Representative, who must be approved by the Managing Members, to act on its behalf with respect to all decisions reserved to the Members pursuant to this Agreement. Each Sponsoring Member may remove or place its Representative at any time upon written notification to the Managing Members. Each Representative shall have full authority to act on behalf of his Sponsoring Member on all matters reserved or presented to the Members.
  - (c) The initial Representatives shall be Timothy Barton.
  - (d) Upon removal or withdrawal of any Representative, the Sponsoring Member shall immediately designate a substitute to fill the vacancy caused by such removal or withdrawal. If no substitute is designated within thirty (30) days of removal or withdrawal the Sponsoring Member shall be considered its successor Representative.
  - (e) If approved by the Managing Members, a Representative may give a proxy to another person, either in writing or by facsimile or email with a copy to the Managing Members, to be present and act on his behalf in his absence at meetings of the



Members. The person having such proxy shall have the power set forth in such proxy, and his actions in exercising such power shall be deemed to be those of the Member whose Representative granted the proxy. Such Representative may, at any time at his discretion, revoke, either in writing or by facsimile or email with a copy to the Managing Members, such proxy given by him. Such person's proxy shall be deemed automatically revoked upon his death.

- (f) Any Member may designate other parties to attend Member meetings in an ex-officio capacity only upon approval of the Managing Members. Such parties may consult with and advise the Members and/or Representatives but may not vote at such meetings.

9. Voting.

- (a) All Members who are not in default hereunder and who do not have a Default Loan outstanding shall be entitled to vote at meetings unless their membership interests are non-voting. Members may vote either in person or by proxy at any meeting. Each Member's percentage voting power at a meeting shall be in proportion to his Interest. Notwithstanding anything contained herein to the contrary, all references to approval or voting by the Members shall mean those Members who are entitled to vote hereunder at the time the vote is taken on such matter.

- (b) The Managing Members shall be elected by the Majority in Interest and may only be removed in accordance with these regulations.

10. Adjournment. The Managing Members of the meeting shall have the power to adjourn the meeting from time to time, without notice, other than announcement of the time and place of the resumption of the adjourned meeting. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

11. Conduct of Meetings. The Managing Members shall conduct the meetings of the Members, including, without limitation, the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of this Article XII, the conduct of voting, the validity and effectiveness of any proxies, and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The Managing Members shall designate a Person to take minutes of each meeting. The minutes of each meeting of the Members shall be kept in a minute book and shall be approved by the Managing Members at the next meeting of Members.

12. Telephone Meetings. Members, Representatives or any committee appointed by the Members, may participate in a meeting by means of telephone conference or similar communications, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

13. Action by Written Consent. Any action that may be taken at a meeting of the Members may be taken without a meeting, upon prior written notice to each Member of the proposed action, if a consent in writing, setting forth the action to be taken, shall be signed by Members who are entitled to vote hereunder and who are holding the percentage of Interests required to approve such action under these Regulations. Such consent shall have the same force and effect as a vote of the signing Members at a meeting duly called and held pursuant to this Article XII. Notification of any action taken by means of a written consent of Members shall be sent, within a reasonable time after the date of the consent, by the Managing Members, to all Members who did not sign the written consent.
  
14. Proxies. A Member may vote either in person or by proxy executed in writing by the Member or its Representative. A facsimile, electronic mail, telegram, telex, cablegram or similar transmission by the Member, or a photographic, photo static, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this Article. 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 Managing 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 Managing 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 Managing Members, in which event such inspector or inspectors shall decide all such questions. No proxy shall be valid after eleven (11) 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 such 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 Interests that are the subject of such proxy are to be voted with respect to such issue.
  
15. Information.
  - (a) In addition to the other rights specifically set forth in these Regulations, each Member is entitled to all information to which that Member is entitled to have access pursuant to the Act 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 or each other in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or each other or Persons with which they do business. Each Member shall hold in strict confidence any information it receives regarding the Company or each other 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 or Managing Member, except for disclosures (i) compelled by law (but the Member must notify the Managing Members and the other Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisors or representatives of the Member, (iii) to Persons to which that Member's Interest may be transferred as permitted by these Regulations, but only if the recipients have agreed to be bound by the provisions of this Article, (iv) of information that such Member has also received from a source independent of the Company that the Member reasonably believes obtained the information without breach of confidentiality, or (v) of matters which have become of public knowledge. The Members acknowledge that breach of the provisions of this Article 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 Article may be enforced by specific performance.

## ARTICLE XII.

### MUTUAL BUY OUT PROVISIONS

1. Right of First Refusal.
  - (a) In the event a Member shall desire to transfer or sell all or part of its Interest to any third party, it must receive a bona fide written offer therefor which is acceptable to it and which offer complies with the provisions below, and such Member shall, within five (5) days of receipt of the proposed offer, give the written Notice of Sale to the Managing Members. The Notice of Sale shall state that a bona fide offer has been received by the selling Member from such third party, shall contain the price, terms and conditions of sale and the name and address of the third party to whom such interest is proposed to be sold, and shall be accompanied by a copy of the written offer from the third party and a written offer by the selling Member to sell such Member's Interest to the non-selling Members for the same consideration and upon the same terms and conditions as are set forth in the third party offer.
  - (b) The Managing Members shall have the option ("Right of First Refusal"), on a pro-rata basis for a period of fifteen (15) days from the date such Notice of Sale is provided to them (the "Right of First Refusal Periods"), within which to exercise the Right of First Refusal to purchase the Interest of the selling Member by notifying such selling Member of such election in writing prior to the expiration of the Right of First Refusal Period. If the Managing Members exercise such Right of First Refusal, the proposed purchase price shall be payable at the scheduled closing date in the same manner as is set forth in the third party offer.
  - (c) In the event the Managing Members rejects or does not exercise the Right of First Refusal to purchase all of the selling Member's Interest which is the subject of the third party offer on the same terms as such third party offer, the Managing Members

shall not have the right to purchase such portion of the selling Member's Interest, and the selling Member shall have the right to sell its Interest strictly in accordance with the terms of the Notice of Sale, provided, however, the selling Member and the third party making the third party offer must first comply with all other provisions of these Regulations as to Transfers, including the consent of the Managing Members to the sale (and admission of Transferee as a Member, if requested), the Interest sold shall continue to be subject to the terms and provisions of these Regulations and the purchasing third party shall be required, prior to closing, to acknowledge the same in writing.

- (d) If no such sale is made within one hundred twenty (120) days following expiration of the Right of First Refusal Period, the Right of First Refusal provided herein shall be reinstated with respect to such Member's Interest and a new Notice of Sale shall be required in the manner provided hereinbefore.
- (e) It is expressly agreed that the remedy at law for breach of any of the obligations set forth in these regulations is inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member to comply fully with each of the obligations contained herein, and (ii) the uniqueness of the Interests and the development relationship created hereby. Accordingly, each of the aforesaid obligations shall be, and is hereby expressly made, enforceable by specific performance or injunction in addition to any other remedy available at law or in equity.
- (f) Any third Party Offer shall comply with the following requirements:
  - (i) The proposed offer shall include an offer to buy the entire selling Member's Interest, including all of the rights of the Member, under these Regulations.
  - (ii) The proposed purchase price for the Interest shall be payable solely in lawful money of the United States and shall be payable in its entirety in cash.
  - (iii) The offer shall contain provisions whereby the proposed purchaser is obligated to comply with the provisions of these Regulations, at and after closing.
  - (iv) The offer shall be by a principal, identified in the offer, and not an agent acting on behalf of an undisclosed principal, and such principal shall not be an Affiliate of the selling Member.
  - (v) The offer shall be accompanied by a certified check of the prospective purchaser for a sum equal to at least five percent (5%) of the proposed purchase price.
  - (vi) The prospective purchaser shall be of good business character and reputation and shall be financially capable of carrying out all obligations of the selling Member under these Regulations and all related agreements.
- (g) There shall be no sale concluded to a third party of less than 100% of a Member's Interest.

2. Option. Each Member hereby grants the Managing Members, and no other members, the right (the "Option") to acquire such Member's entire Interest on a pro-rata basis, whenever these Regulations specifically reference the availability of the Option, as set forth in these regulations.
  - (a) The Managing Members may exercise the Option at any time by delivering written notice to the other Member(s) or its/their legal representatives setting forth the electing Member's intention to effectuate the Option. The closing of the transaction provided in this Paragraph 2 shall occur on the date which is the later of (i) ninety (90) days after delivery of the electing Member's written notice, or (ii) thirty (30) days after the determination of the purchase price.
  - (b) The Option shall be available only to the Managing Members.
  - (c) If the Managing Members elects to exercise the Option, then the Managing Members shall specify in its notice a closing date and purchase price which the Managing Members is willing to pay for the non-electing Member's Interest. The non-electing Member shall have thirty (30) days (the "Option Period") within which to elect in writing either to (i) sell its Interest to the Managing Members for the purchase price and on the closing date contained in the Managing Members' notice, or (ii) purchase the electing Member's Interest in the Company on the closing date and for the purchase price (adjusted on a pro rata basis, as applicable, to reflect the size of the electing Member's Interest) contained in the Managing Members' notice. If no election is delivered to or received by the Managing Members within the Option Period, then the non-electing Member shall be deemed to have elected to sell its Interest to the electing Member.
  - (d) At the closing, both parties shall execute and deliver all documents necessary or appropriate to effectuate and evidence the transfers described herein. Without limiting the foregoing, each Member grants to the other Members an irrevocable power of attorney, coupled with an interest, to execute and deliver such documents to consummate the transactions described herein.

### **ARTICLE XIII.**

#### **DISSOLUTION AND WINDING UP**

1. Events Causing Dissolution. The Company shall be dissolved upon the first of the following events to occur:
  - (a) the expiration of the term of duration of the Company set forth in the Articles of Organization;

- (b) the written consent of 2/3 (two-thirds) of the Membership interests entitled to vote hereunder at any time with approval of the Managing Members to dissolve and wind up the affairs of the Company;
- (c) the occurrence of any other event that causes the dissolution of a limited liability company under the Act.

2. Winding Up. If the Company is dissolved pursuant to Article XIV, Section 1, the Company's affairs shall be wound up as soon as reasonably practicable in the manner set forth below.

- (a) The winding up of the Company's affairs shall be supervised by a liquidator. The liquidator shall be the Managing Members or, if the Managing Members prefers, a liquidator or liquidating committee selected by the Managing Members.
- (b) In winding up the affairs of the Company, the liquidator shall have the right and unlimited discretion, for and on behalf of the Company;
  - (i) to prosecute and defend civil, criminal or administrative suits;
  - (ii) to collect Company Assets, including obligations owed to the Company;
  - (iii) to settle and close the Company's business;
  - (iv) to dispose of and convey all Company Assets for cash, and in connection therewith to determine the time, manner and terms of any sale or sales of Company Assets, having due regard for the activity and condition of the relevant market and general financial and economic conditions;
  - (v) to pay all reasonable selling costs and other expenses incurred in connection with the winding up of the proceeds of the disposition of Company Assets;
  - (vi) to discharge the Company's known liabilities and, if necessary, to set up, for a period not to exceed five (5) years after the date of dissolution, such cash reserves as the liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company;
  - (vii) to distribute any remaining proceeds from the sale of Company Assets to the Members;
  - (viii) to prepare, execute, acknowledge and file articles of dissolution under the Act and any other certificates, tax returns or instruments necessary or advisable under any applicable law to effect the winding up and termination of the Company; and
  - (ix) to exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Managing Members under the terms of these Regulations to the extent necessary or desirable in the good faith judgment of the liquidator to perform its duties and functions.

3. Compensation of Liquidator. The liquidator appointed as provided herein shall not be entitled to receive any compensation for its services unless otherwise agreed upon by the liquidator and the Managing Members.

4. Distribution of Company Assets and Proceeds of Sale Thereof.
  - (a) Upon completion of all desired sales of Company Assets, and after payment of all selling costs and expenses, the liquidator shall distribute the proceeds of such sales, and the Company Assets that are to be distributed in kind, to the following groups in the following order of priority:
    - (i) to the extent permitted by law, to satisfy Company liabilities to creditors, including Members who are creditors (other than for past due Company distributions) of the Company, whether by payment or establishment of reserves;
    - (ii) to satisfy Company obligations to Members to pay past due Company distributions;
    - (iii) to the Members, in accordance with the positive balance in their respective Capital Accounts; and
    - (iv) to the Members in accordance with their respective Interests.
  - (b) The claims of each priority group specified above shall be satisfied in full before satisfying any claims of a lower priority group. If the assets available for disposition are insufficient to dispose of all of the claims of a priority group, the available assets shall be distributed in proportion to the amounts owed to each creditor or the respective capital account balances or Interests of each Member in such group.
5. Final Audit. Within a reasonable time following the completion of the liquidation, the liquidator shall supply to each of the Members a statement which shall set forth the assets and the liabilities of the Company as of the date of complete liquidation and each Member's pro rata portion of distributions pursuant to these regulations.
6. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in these Regulations, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to these Regulations to all Members in proportion to their respective Interests, upon dissolution of the Company such deficit shall not be an asset of the Company and such Member shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

#### ARTICLE XIV.

#### INDEMNIFICATION AND INSURANCE

1. Indemnification and Advance of Expenses. The Company shall indemnify and/or advance expenses to a Person who was, is, or is threatened to be made a named defendant or

respondent in a proceeding because the person (i) is or was a Managing Members, Member, officer, employee or agent of the Company, or (ii) is or was serving at the request of the Company as a Managing Member, Member, director, officer, partner, 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, to the fullest extent provided by, and in accordance with the procedures set forth in, any applicable laws; provided, however, that in the following respects as applied to the Company, the following provisions shall apply:

- (a) Indemnification of any Person who has satisfied the standard of conduct set forth in the Act shall be mandatory rather than optional. The determination under the Act that indemnification shall be made shall also constitute authorization of indemnification under the Act.
  - (b) Advancement of expenses to a Person who has satisfied the requirements of the Act shall be mandatory rather than optional.
  - (c) Payment or reimbursement of expenses to a Person pursuant to the Act in connection with his appearance as a witness or other participation in a proceeding shall be mandatory rather than optional.
2. Insurance. Subject to certain provisions in the Act, the Company may, but shall not be obligated to, purchase and maintain insurance or other arrangements on behalf of any Person who is or was a Managing Member, Officer, Member, employee, agent or other Person identified above in Article XV, Section 1 against any liability asserted against him or incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under Article XV, Section 1 or otherwise.
  3. Limit on Liability of Members. The indemnification set forth in this regulations shall in no event cause the Members to incur any personal liability beyond their total Capital Contributions, nor shall it result in any other liability of the Members to any third party.

## ARTICLE XV.

### MISCELLANEOUS PROVISIONS

1. Entire Agreement. These Regulations contain the entire agreement among the Members relating to the subject matter hereof, and all prior agreements relative hereto which are not contained herein are terminated.
2. Law Governing. These Regulations shall be governed by and construed in accordance with the local, internal laws of the State of Texas. In particular, these Regulations are intended to comply with the requirements of the Act and the Articles of Organization. In the event of a



direct conflict between the provisions of these Regulations and the mandatory provisions of the Act or any provision of the Articles of Organization, the Act and the Articles of Organization, in that order of priority, will control. In the event that the Act is re-codified by the Legislature, then any such references made within this document shall refer to the newly codified Act and its corresponding sections.

3. Conference Telephone Meetings. Meetings of the Members, Managing Members or any committee may be held by means of conference telephone or similar communications equipment so long as all Persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone shall constitute 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 thereat on the ground that the meeting is not lawfully called or convened.
4. Successors and Assigns. Subject to restrictions on Transfers and assignments herein, these Regulations shall be binding upon and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors and assigns.
5. Severability. These Regulations are intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of these Regulations or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Members as expressed herein, the remainder of these Regulations and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
6. Headings. The Article and Article headings appearing in these Regulations are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article.
7. Construction. Whenever required by the context, as used in these Regulations, the singular number shall include the plural, and vice versa, and the gender of all words used shall include the masculine, feminine and the neuter. Unless expressly stated herein, all references to Articles refer to articles of these Regulations, and all references to Schedules are to schedules attached hereto, each of which is made a part hereof for all purposes.
8. 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.
9. Effect of Waiver or Consent. A waiver or consent 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. No waivers shall be enforceable unless in writing and running in favor of the Person claiming the benefit of same.

10. Further Assurance. In connection with these Regulations 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 these Regulations and those transactions.
11. Waiver of Certain Rights. Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the Property of the Company.
12. Counterparts and Binding Effect. These Regulations may be executed in one or more counterparts, each of which shall be an original but all of which taken together shall constitute a single document. These Regulations shall be binding upon each Member as evidenced by their signatures below.
13. Attorney's Fees. If any Member becomes involved in litigation or proceedings arising out of this Agreement or the performance thereof, the court or tribunal in such litigation or proceeding, or in a separate suit, shall award attorney's fees to the prevailing party. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the Members to fully compensate for all the attorney's fees paid or incurred in good faith.
14. Amendment of Agreement. These Regulations may be amended only in writing, in whole or in part, at any time only by the execution thereof by 2/3 of the Membership interests entitled to vote thereon with Managing Members' approval.
15. Joinder of Managing Members. The Initial Managing Members have joined in these Regulations for the purposes of acknowledging his appointment and agreeing to all requirements for performance by Managing Members hereunder. A Successor Managing Member, if any, shall also be required to join in the Regulations in the same manner and for the same purpose as the Initial Managing Members.
16. Notices. Notifications, as defined above, given under these Regulations shall be duly given to the appropriate addresses, fax number, email addresses set forth below (or to such other addresses or numbers as a party may designate as to itself by notice to the other):

If to Enoch Investments, LLC:

Mr. Timothy Barton  
Managing Member

Enoch Investments, LLC  
13901 Midway Rd  
Suite 102  
Dallas, Texas 75244  
Telephone: (972) 385-9934  
Facsimile: (972) 241-4484  
tbarton@jmjholdings.com


If to Maximilien Barton:

Mr. Maximilien Barton  
1755 Wittington Place  
Unit 340  
Dallas, Texas 75234

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IN WITNESS WHEREOF, the Members of the Company have evidenced the adoption of these Regulations in accordance with the Act by their signatures below, such adoption to be effective as of the date first above written.

**MANAGING MEMBERS:**



\_\_\_\_\_  
Timothy Barton  
Managing Member  
Enoch Investments, LLC



\_\_\_\_\_  
Maximilien Barton

**SCHEDULE A**

<u>Member Name &amp; Address</u>	<u>Initial Capital Contributions</u>	<u>Interest</u>	<u>Profit/Loss</u>
Enoch Investments, LLC 13901 Midway Rd Suite 102 Dallas, Texas 75244	\$50.00	50%	50%
Maximilien Barton 1755 Wittington Place Unit 340 Dallas, Texas 75234	\$50.00	50%	50%

**Saskya Bedoya**

---

**From:** Tim Barton  
**Sent:** Monday, May 23, 2016 6:39 PM  
**To:** Saskya Bedoya

Saskya

Do as Robert says and make Max owner in trtx and we will make him sign and then I will be added as guarantor if needed

T:b

You could make Max a co-owner -member in TRTX properties that way when you go to refinance it in his name personally the lender treats ur as a refinance and he won't have to put any money down Plus it's easier to get a loan refinanced.

Sent from my BlackBerry 10 smartphone.

Resolution  
↓  
JB Guarantor  
MB CO - Owner  
needs to be for this  
one  
Charter  
Owners is —  
—  
—

Steven C. Metzger  
Texas State Bar No. 139825600  
Metzger Law PLLC  
3626 N. Hall Street, Suite 800  
Dallas, Texas 75219  
Tel: 214-740-5030  
Facsimile: 214-224-7555  
Email: [smetzger@pmklaw.com](mailto:smetzger@pmklaw.com)  
*Attorney for JMJ Development LLC, TRTX Properties LLC,  
And Timothy Barton*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	
	§	
<b>FM 544 PARK VISTA, LTD.; and</b>	§	<b>CASE NO. 17-34255-SGJ-11</b>
<b>PAVIST, LLC; and</b>	§	<b>CASE NO. 17-34274-SGJ-11</b>
	§	
<b>Debtors.</b>	§	
	§	

**NOTICE OF APPEAL**

TO THE UNITED STATES BANKRUPTCY COURT:

NOTICE IS GIVEN that JMJ Development, Inc. (“JMJ”) and TRTX Properties, LLC (“TRTX”) including their principals, Timothy Barton, and counsel, Vance McMurry (collectively, “Appellants”), herein, appeal to the United States District Court for the Northern District of Texas, the *Order Granting Motion for Contempt in Part* [Dkt. 390] filed on September 20, 2022 resulting from the hearing held on September 18, 2022 on the *Motion for Order to Show Cause for Violation of the Discharge Injunction, For Contempt, For Permanent Injunction, and for Sanctions* [Dkt. 356] (“Motion for Contempt”) filed by FM 544 Park Vista, Ltd., Pavist, LLC (collectively, “Debtors”), Richard Shaw, Park Vista Seniors, LLC, North/South Building, LLC, GW Equity Capital, LLC, RP Shaw Investments, LLC, and The Trustees of the BOS Trust (collectively,

“Movants”), as joined by Roger Sefzik, Hoss Holdings LLC, Tower 98 LLC and BSPV-Plano, LLC (collectively, “Appellees”).

The Order being appealed is a final order, in order for the United States District Court for the Northern District of Texas to have jurisdiction to hear the appeal pursuant to 28 U.S.C.

§ 158(a)(1).

1. Name of Appellants: JMJ Development, Inc. and TRTX Properties, LLC, including their principals, Timothy Barton, and counsel, Vance McMurry.

2. Position of Appellants: The Appellants, JMJ Development, Inc. and TRTX Properties, LLC were the respondents to the Motion for Contempt.

3. Subject of this Appeal: The Order being appealed is the *Order Granting Motion for Contempt in Part* resulting from the hearing held on September 18, 2022, on the *Motion for Order to Show Cause for Violation of the Discharge Injunction, For Contempt, For Permanent Injunction, and for Sanctions*.

4. Name of Appellees: FM 544 Park Vista, Ltd., Pavist, LLC, Richard Shaw, Park Vista Seniors, LLC, North/South Building, LLC, GW Equity Capital, LLC, RP Shaw Investments, LLC, The Trustees of the BOS Trust, Roger Sefzik, Hoss Holdings LLC, Tower 98 LLC, and BSPV-Plano, LLC

5. Counsel for Appellees:

Mark Stromberg  
STROMBERG STOCK, PLLC  
8350 N. Central Expressway, Suite 1225  
Dallas, TX 75206  
Telephone: (972) 458-5353  
Facsimile: (972) 861-5339  
Email: mark@strombergstock.com  
*Attorneys for FM 544 Park Vista, Ltd.; Pavist, LLC; Richard Shaw; Park Vista Seniors, LLC; North/South Building, LLC; GW Equity Capital, LLC; RP Shaw Investments, LLC; and the Trustees of the BOS Trust*



Joe E. Marshall  
MARSHALL LAW  
2626 Cole Avenue, Suite 300  
Dallas, TX 75201  
Telephone: (214) 579-9173  
Email:  
jmarshall@marshalllaw.net  
*Attorney for Roger Sefzik, Hoss Holdings and Tower 98, LLC*

Thomas D. Berghman, Esq.  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard St., Ste. 3800  
Dallas, Texas 75201  
Telephone: (214) 855-7500  
Email: tberghman@munsch.com  
*Attorney for BSVP-Plano, LLC*

Dated: October 4, 2022.

Respectfully Submitted,

/s/ Steven C. Metzger  
Steven C. Metzger  
Texas State Bar No. 139825600  
Metzger Law PLLC  
3626 N. Hall Street, Suite 800  
Dallas, Texas 75219  
Tel: 214-740-5030  
Facsimile: 214-224-7555  
Email: [smetzger@pmklaw.com](mailto:smetzger@pmklaw.com)

*Attorney for JMJ Development LLC, TRTX  
Properties LLC, and Timothy Barton*

/s/ Vance McMurry  
Vance McMurry  
Texas State Bar No. 24047198  
McMurry Law, PLLC  
508 W Lookout Dr.  
Suite 14-74  
Richardson, Texas 75080  
Tel: 972-746-9656  
Fax: 888-388-0561  
Email: [vance@mcmurrylegal.com](mailto:vance@mcmurrylegal.com)

*Pro Se*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 4, 2022, a true and correct copy of the foregoing document was served via the Court's ECF system upon the parties receiving electronic notice in this case.

Mark Stromberg  
STROMBERG STOCK, PLLC  
8350 N. Central Expressway, Suite 1225  
Dallas, TX 75206  
Telephone: (972) 458-5353  
Facsimile: (972) 861-5339  
Email: mark@strombergstock.com  
*Attorneys for FM 544 Park Vista, Ltd.; Pavist, LLC; Richard Shaw; Park Vista Seniors, LLC; North/South Building, LLC; GW Equity Capital, LLC; RP Shaw Investments, LLC; and the Trustees of the BOS Trust*

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Email:  
jmarshall@marshalllaw.net  
*Attorney for Roger Sefzik, Hoss Holdings and Tower 98, LLC*

Thomas D. Berghman, Esq.  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard St., Ste. 3800  
Dallas, Texas 75201  
Telephone: (214) 855-7500  
Email: tberghman@munsch.com *attorney for BSVP-Plano, LLC*

/s/ Steven C. Metzger  
Steven C. Metzger

**Texas Franchise Tax Public Information Report**



Comptroller of Public Accounts FORM 05-102 (Rev.9-11/30)

To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions  
**This report MUST be signed and filed to satisfy franchise tax requirements**

■ Tcode 13196 Franchise

■ Taxpayer number

■ Report year

*You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.*

3 2 0 4 2 4 7 8 1 3 4

2 0 2 2

Taxpayer name <b>TRTX PROPERTIES, LLC</b>					Secretary of State (SOS) file number or Comptroller file number <b>0801308593</b>				
Mailing address <b>13901 MIDWAY RD STE 102-243</b>									
City <b>FARMERS BRNCH</b>			State <b>TX</b>		ZIP Code <b>75244</b>		Plus 4		

● Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office \_\_\_\_\_  
 Principal place of business \_\_\_\_\_

*Please sign below!*

Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or manager.

3204247813422

Name <b>THE MXBA TRUST</b>	Title <b>MANAGER</b>	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>2999 TURTLE CREEK BLVD</b>	City <b>DALLAS</b>	State <b>TX</b>	ZIP Code <b>75219</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of 10 percent or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
---	--------------------	-------------------------------	-------------------------

Registered agent and registered office currently on file. (see instructions if you need to make changes)  
 Agent: **ONE AGENT TEXAS, LLC**  Blacken circle if you need forms to change the registered agent or registered office information.

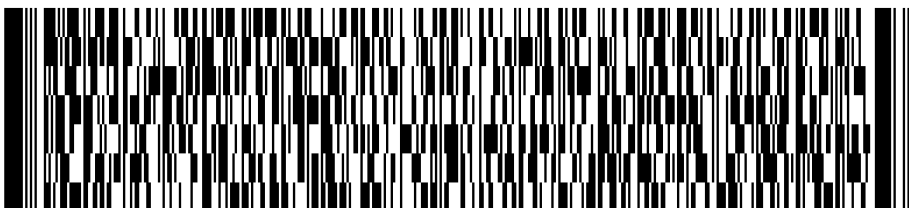
Office: **13901 MIDWAY RD SUITE 102-243** City **Dallas** State **TX** ZIP Code **78701**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or manager and who is not currently employed by this, or a related, corporation or limited liability company.


sign here **Saskya Bedoya** Title **Electronic** Date **05-02-2022** Area code and phone number **( 214 ) 641 - 0122**

**Texas Comptroller Official Use Only**



VE/DE  PIR IND



<b>Form 401</b>  Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  <b>Filing Fee: See Instructions</b>	  <b>Statement of Change of Registered Office/Agent</b>	<p style="text-align: center;"><b>Filed in the Office of the Secretary of State of Texas</b></p> <p style="text-align: center;"><b>Filing #: 801308593 05/02/2022</b></p> <p style="text-align: center;"><b>Document #: 1144928130003</b></p> <p style="text-align: center;"><b>Image Generated Electronically for Web Filing</b></p>
<b>Entity Information</b>		
The name of the entity is :		
<b><u>TRTX Properties, LLC</u></b>		
The file number issued to the entity by the secretary of state is: <b><u>801308593</u></b>		
The registered agent and registered office of the entity as currently shown on the records of the secretary of state are:		
<b><u>ONE Agent Texas, LLC</u></b>		
<b><u>815 Brazos St, Suite 500, Austin, TX, USA 78701</u></b>		
<b>Change to Registered Agent/Registered Office</b>		
The following changes are made to the registered agent and/or office information of the named entity:		
Registered Agent Change		
<input checked="" type="checkbox"/> A. The new registered agent is an organization by the name of:		
<b><u>One Agent Texas, LLC</u></b>		
OR		
<input type="checkbox"/> B. The new registered agent is an individual resident of the state whose name is:		
Registered Office Change		
<input checked="" type="checkbox"/> C. The business address of the registered agent and the registered office address is changed to:		
<b><u>13901 Midway Rd, suite - 102, LB243, Dallas, TX, USA 75244</u></b>		
The street address of the registered office as stated in this instrument is the same as the registered agent's business address.		
Consent of Registered Agent		
<input type="checkbox"/> A. A copy of the consent of registered agent is attached.		
<input checked="" type="checkbox"/> B. The consent of the registered agent is maintained by the entity.		
<b>Statement of Approval</b>		
The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.		
<b>Effectiveness of Filing</b>		
<input checked="" type="checkbox"/> A. This document becomes effective when the document is filed by the secretary of state.		
<input type="checkbox"/> B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:		
<b>Execution</b>		
The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.		
Date: <b><u>May 2, 2022</u></b>		<b><u>Timothy Barton</u></b>

Signature of authorized person(s)

**FILING OFFICE COPY**

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK? HOLD AT ANGLE TO VIEW?

JMJ VC Management, LLC  
13901 Midway Road Suite 102LB243  
Dallas, TX 75244  
(214) 702-8897

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1053

Date 3/1/2022

Pay To The Order Of Noah Burns

\$ \*\*95,000.00

Ninety-Five Thousand and 00/100\*\*\*

Dollars

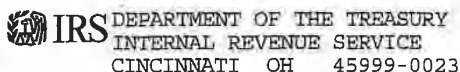
Noah Burns  
3427 Cedar Springs Road, APT 1736  
Dallas, TX 75219  
(210) 954-6444

Memor: 3600 Gillespie (assignment) TRTX Properties



⑈0000001053⑈ ⑈71192511301024637⑈

# EXHIBIT A-14



Date of this notice: 08-31-2021

Employer Identification Number:  
87-2433225

Form: SS-4

Number of this notice: CP 575 G

MXBA  
MAXIMILIEN BARTON SOLE MBR  
13901 MIDWAY RD SUITE 102  
DALLAS, TX 75244

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

---

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 87-2433225. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

A limited liability company (LLC) may file Form 8832, *Entity Classification Election*, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, *Election by a Small Business Corporation*. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

**IMPORTANT REMINDERS:**

- \* Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.** You may give a copy of this document to anyone asking for proof of your EIN.
- \* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- \* Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is MXBA. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.





THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1276

Date 8/18/2022

Pay To The Order Of MXBA LLC

\$ \*\*153.00

One Hundred Fifty-Three and 00/100\*\*\*

Dollars

MXBA LLC  
13901 Midway RD STE 102-243  
Dallas, TX 75244  
(972) 385-9934



Memo: \_\_\_\_\_

⑈000001276⑈ ⑆111925113⑆ 1024611⑈

# EXHIBIT A-15

**STATEMENT OF ORGANIZER**

**TITAN INVESTMENT, LLC**

**August 20, 2020**

The Undersigned being the Organizer of Titan Investment, LLC, a Delaware limited liability company, ("Company") does hereby adopt the following resolutions and takes the following action by written consent in lieu of a meeting which is effective as of August 20, 2020.

RESOLVED, that Organizer has filed the Certificate of Formation of the Company in the office of the Secretary of State of Delaware on August 19, 2020 which was accepted and filed as document number 20206819687 / file number 3477768 a true and correct copy of which is attached as Exhibit A which shall be filed in the minute book of the Company as a part of the permanent records of such limited liability company.

RESOLVED, that the Company shall be managed by managers who need not be members of the Company and that the Company shall have a single initial manager ("Initial Manager").

RESOLVED that the Initial Manager of the Company shall be such person or entity as designated and consented to below as evidenced by their execution of this statement.

RESOLVED that the Initial Manager is authorized to draft and execute the initial company agreement of the Company as authorized under §18-204 of the of the Delaware Limited Liability Company Act ("Act") which will identify and be executed by the members of the Company and retained by the Company.

RESOLVED, that upon filing the Certificate of Formation the Organizer has fulfilled his sole duty to the Company, has resigned as Organizer, and has relinquished all further duties to the initial Manager of the Company and further confirms that he is not an officer, member, agent, or manager of the Company and has no interests in or other obligations to the Company.

Signed and executed by the Organizer and effective as of August 20, 2020.

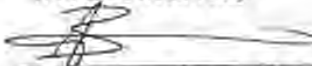
**ORGANIZER**



Vance McMurry

Approved and consented to by:

**INITIAL MANAGER**  
**TITAN INVESTMENTS, LLC**

By:   
Name: Maximilian Barton  
Title: \_\_\_\_\_

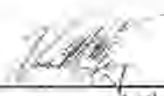
State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:01 AM 08/19/2020  
FILED 10:01 AM 08/19/2020  
20206819687 - File Number 3477768

STATE OF DELAWARE  
CERTIFICATE OF FORMATION  
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is Titan Investments, LLC

2. The Registered Office of the limited liability company in the State of Delaware is located at 919 North Market Street, Suite 950 (street), in the City of Wilmington, Zip Code 19801. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is Incorp Services, Inc.

By:   
Authorized Person

Name: Vance McMurry  
Print or Type

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
TITAN INVESTMENTS, LLC**

**(Single-Member Delaware Limited Liability Company)**

This Limited Liability Company Agreement of **TITAN INVESTMENTS, LLC** (this "Agreement" or these "Regulations"), dated as of **August 19, 2020**, are adopted, executed and agreed to by the sole Member (as defined below).

1. Formation. **TITAN INVESTMENTS, LLC**, a Delaware limited liability company (the "Company") has been organized as a Texas limited liability company under the Delaware Limited Liability Company Act, 6 *Del. C. § 18-101 et seq.*, as amended from time to time (the "LLC Act") by filing of the Certificate of Formation for the Company in the office of the Secretary of State of Delaware, on **August 19, 2020**, file number **3477768**.

2. Sole Member. **MAXIMILIEN BARTON**, shall be the sole member of the Company (the "Member").

3. Contributions. The Member has made an initial contribution to the capital of the Company in the amount of \$100.00. Without creating any rights in favor of any third party, the Member may, from time to time, make additional contributions of cash or property to the capital of the Company, but shall have no obligation to do so.

4. Distributions. The Member shall be entitled (a) to receive all distributions (including, without limitation, liquidating distributions) made by the Company, and (b) to enjoy all other rights, benefits and interests in the Company.

5. Management. Management by Managers. 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 Manager(s), who shall make all decisions and take all actions for the Company. No Member (other than a Manager or an Officer) has the right, power or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company. The Initial Manager(s) of the Company shall be: **MAXIMILIEN BARTON**.

Officers:

SECTION 1. NUMBER; TITLES AND TERM OF OFFICE. The officers of the Company shall be a President, one or more Vice-Presidents and a Secretary-Treasurer, and such other officers as the Manager(s) may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any two (2) or more offices may be held by the same person.

**LIMITED LIABILITY COMPANY AGREEMENT OF  
TITAN INVESTMENTS, LLC**- Page 1

APP000320

SECTION 2. SALARIES. The salaries or other compensation of the officers and agents of the Company shall be fixed from time to time by the Manager(s).

SECTION 3. REMOVAL. Any officer or agent or member of a committee elected or appointed by the Manager(s) may be removed by the Manager(s) whenever in its judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. VACANCIES. Any vacancy occurring in any office of the Company may be filled by the Manager(s).

SECTION 5. POWERS AND DUTIES OF THE CHIEF EXECUTIVE OFFICER. The President shall be the chief executive officer of the Company, unless the Manager(s) designates the Chairman of the Board as chief executive officer. Subject to the control of the Manager(s) and the executive committee (if any), the chief executive officer shall have general executive charge, management and control of the properties, business and operations of the Company with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company and may sign all certificates for shares of capital stock of the Company; and shall have such other powers and duties as designated in accordance with these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 6. POWERS AND DUTIES OF THE CHAIRMAN OF THE BOARD. If elected, the Chairman of the Board shall preside at all meetings of the shareholders and of the Manager(s); and the Chairman shall have such other powers and duties as designated in these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 7. POWERS AND DUTIES OF THE PRESIDENT. The President, unless the Manager(s) otherwise determines, shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company; and, unless the Manager(s) otherwise determines, he shall, in the absence of the Chairman of the Board or if there be no Chairman of the Board, preside at all meetings of the shareholders and (should he be a director) of the Manager(s); and the President shall have such other powers and duties as designated in accordance with these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 8. VICE PRESIDENTS. In the absence of the Chairman of the Board (if any), or President, or in the event of their inability or refusal to act, a Vice President designated by the Manager(s) shall perform the duties of the Chairman of the Board (if any), or the President. In the absence of a designation by the Manager(s) of a Vice President to perform the duties of the Chairman of the Board (if any) or President, or in the event of their absence or inability or refusal to act, the Vice President who is present and who is senior in terms of time as a Vice President of the Company shall so act. The Vice

Presidents shall perform such other duties and have such other powers as the Manager(s) may from time to time prescribe.

SECTION 9. TREASURER. The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Company. He shall perform all acts incident to the position of Treasurer subject to the control of the chief executive officer and the Manager(s); and the Treasurer shall, if required by the Manager(s), give such bond for the faithful discharge of his duties in such form as the Manager(s) may require.

SECTION 10. ASSISTANT TREASURERS. Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the chief executive officer or the Manager(s). The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

SECTION 11. SECRETARY. The Secretary shall keep the minutes of all meetings of the Manager(s) and the minutes of all meetings of the shareholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Company affix the seal of the Company to all contracts of the Company and attest thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Company; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Manager(s) may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Company during business hours, and he shall in general perform all duties incident to the office of Secretary, subject to the control of the chief executive officer and the Manager(s).

SECTION 12. ASSISTANT SECRETARIES. Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the Chief Executive Officer or the Manager(s) or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

Officers. The initial officers of the Company shall be:

**Maximilien Barton – President, Secretary & Treasurer.**



6. Dissolution. The Company shall dissolve and its affairs shall be wound up at such time, if any, as the Member may elect.

7. Governing Law. THIS LIMITED LIABILITY COMPANY AGREEMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE (EXCLUDING ITS CONFLICT-OF-LAWS RULES).

MEMBER(S):



MAXIMILIEN BARTON

Being the sole Member of the Company

MANAGER(S):



MAXIMILIEN BARTON

Being the sole Manager(s) of the Company

LIMITED LIABILITY COMPANY AGREEMENT OF  
TITAN INVESTMENTS, LLC - Page 4

APP000323

<b>Form 304</b>		<b>Filed in the Office of the Secretary of State of Texas Filing #: 804757546 10/05/2022 Document #: 1184202700002 Image Generated Electronically for Web Filing</b>
Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  Filing Fee: \$750	<b>Application for Registration of a Foreign Limited Liability Company</b>	

1. The entity is a foreign limited liability company. The name of the entity is :

**TITAN INVESTMENTS, LLC**

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation which it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

**TITAN 2022 INVESTMENTS, LLC**

3. Its federal employer identification number is:

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: **DELAWARE, USA**  
and the date of its formation in that jurisdiction is: **8/9/2020**

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below. The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

**For the transaction of any lawful business for which liability companies maybe organized.**

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: **10/05/2022**

8. The principal office address of the limited liability company is:

**3600 GILLESPIE ST, DALLAS, TX, USA 75219**

9A. The initial registered agent is an organization by the name of:

9B. The initial registered agent is an individual resident of the state whose name is:

**ANISH KAREDA**

9C. The business address of the registered agent and the registered office address is:

**22415 MARY ROGERS TRAIL RICHMOND TX 77469**

**Consent of Registered Agent**

A. A copy of the consent of Registered Agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both):
IF INDIVIDUAL
<b><u>MAXIMILIEN E BARTON</u></b>
OR
IF ORGANIZATION
ADDRESS OF GOVERNING PERSON :
<b><u>3600 GILLESPIE ST DALLAS TX, USA 75219</u></b>

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: **October 5, 2022**

**RANDY P MARX, AUTHORIZED AGENT for MAXIMILIEN E BARTON, MANAGER**

Signature and title of authorized person on behalf of the foreign entity

FILING OFFICE COPY

CONTRACT OF SALE

IN CONSIDERATION of the mutual terms, provisions, covenants and agreements contained in this Contract of Sale (the "Contract"), the parties hereto agree as follows, as of the Effective Date (as defined herein).

1. **PARTIES.** **First Development Co. of Ohio, LLC, a Texas limited liability company** ("Seller"), shall cause the sale and convey same to **Titan Investments, LLC, a Texas limited liability company** (the "Purchaser"), and Purchaser shall buy and pay for the Property (defined below).

2. **PROPERTY.** Upon the terms and conditions hereinafter stated, Seller hereby agrees to sell and convey to Purchaser good and indefeasible title of an estimated **16.3 acres situated along Woodlawn Boulevard and West Coffin Street, in the City of Denison, Grayson County, Texas**, an approximate legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference for all purposes (the "Land"), together with

(1) all rights and appurtenances pertaining to the Land, including, without limitation, (a) all roads, alleys, easements, streets and rights of ways adjacent to or serving the Land, (b) strips and gores of real property lying between the boundaries of the Land and adjoining real estate, and (c) any and all rights of ingress and egress thereto; and all of Seller's right, title and interest in any minerals, utilities, licenses and permits related to the Land,

(2) all benefits, privileges, tenements, hereditaments, rights and appurtenances thereon or pertaining to such real property,

(3) all permits, approvals, licenses, leases, contracts, reports, water and sewer capacity commitments, all engineering and architectural plans, Declarant status under any Property Associations formed on or respecting the Land, rights to develop and rights to reimbursements from any governmental or quasi-agency for either utility impacts fees, taxing district bond sale proceeds if any, and other rights and interests owned or held by Seller, if any, in connection with the Land (collectively, "Intangible Property"), and

(4) all appurtenant easements owned by Seller, if any, which are used, usable or needed in connection with the development of the Land

(the foregoing is collectively referred to herein as the "Property"), and Purchaser agrees to purchase the Property at the Purchase Price (hereinafter defined) and upon the terms set forth herein. The metes and bounds description of the Land contained in the Survey (hereinafter defined), if different from the legal description attached hereto, shall be substituted for Exhibit "A" and shall become a part of this Contract as the description of the Land to be conveyed hereunder. Furthermore, Exhibit "A" shall be automatically updated to include the description of the tract(s) within the Property, and or easements appurtenant to the Property, that Seller owns upon disclosure to the Purchaser by Seller which shall occur prior to the expiration of the Seller Delivery Date (as defined herein).

3. **PURCHASE PRICE.** The purchase price for the Property is **Two Million, Two Hundred And Eighty-Two Thousand U. S. Dollars (\$2,282,000.00)** (the "Purchase Price").

4. EARNEST MONEY.

A. Initial Earnest Money. Within 5 business days of the Effective Date of this Contract, Purchaser shall deposit earnest money in the form of a check or wire transfer of funds in the amount of **FIVE THOUSAND DOLLARS (\$5,000)** (the "Initial Earnest Money") with **Title Partners, LLC, attn: Judd Whiteman**, in its capacity as escrow agent, to be held in escrow pursuant to the terms of this Contract. Additional Earnest Money. Not later than ninety (90) days after the Effective Date, if this Agreement shall not have terminated prior to such time, then Purchaser shall deposit additional earnest money with the Escrow Agent in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)** by check or in cash, which sum shall be invested by the Escrow Agent in a federally-insured, interest-bearing account pending disposition thereof in accordance with this Agreement (such sum and the interest accrued thereon being hereinafter referred to collectively as the "**Additional Earnest Money**", and together with the **Initial Earnest Money, shall be referred to herein as the "Earnest Money"**). Notwithstanding anything herein to the contrary, a portion of the Earnest Money in the amount of \$100.00 shall be non-refundable and shall be distributed to Seller upon any termination of this Contract as full payment and independent consideration (the "Independent Consideration") for Seller's execution of and performance under this Contract.

B. If Purchaser fails to timely deposit the Earnest Money, Seller may terminate this Contract at any time before Purchaser deposits the Earnest Money with the Title Company. The Earnest Money, at Purchaser's election, may be placed in an interest-bearing account by the Title Company, and any interest earned thereon shall become a part of the Earnest Money. If Purchaser terminates this Contract on or prior to the expiration of the Inspection Period, all Earnest Money, other than the Independent Consideration, shall be returned to Purchaser. If Purchaser does not terminate this Contract on or prior to the expiration of the Inspection Period, the Earnest Money (**referring to both the Initial and Additional Earnest Money**) shall be non-refundable to Purchaser; unless:

- (a) Seller fails or refuses to comply in a timely manner with its obligations hereunder, or
- (b) at the Closing, any of Seller's representations, warranties or covenants contained herein is not true or has been breached or modified, or
- (c) or in the event that, at the Closing, any condition precedent to Purchaser's obligations hereunder, **as set forth in Section 14 hereof**, is not fully satisfied as herein required, or
- (d) this Contract is terminated pursuant to Sections 6 (Review of Title Documents), 10 (Casualty Loss; Condemnation) or 13(A) (Purchaser's Remedies) hereof,

(herein the "**Limited Special Circumstances**") in which case such shall be disposed in accordance with the provisions of this Agreement relating to Earnest Money. If this Contract is terminated pursuant to either Sections 6 (Review of Title Documents), 10 (Casualty Loss; Condemnation) or 13(A) (Purchaser's Remedies) after the expiration of the Inspection Period, the Earnest Money shall be returned to Purchaser. The Earnest Money shall be paid to Seller at the Closing and shall be applicable to the Purchase Price.

C. Disposition of Earnest Money. If Purchaser terminates this Agreement pursuant to any right to do so as specified herein, the Earnest Money, together with any interest thereon, if applicable, shall be returned to Purchaser, without any requested or required notice to or approval of any person or party. If Purchaser completes this Agreement and purchases the Property, such Earnest Money, including interest, shall be applied towards the Purchase Price. If Purchaser fails to perform its obligations, or otherwise terminates this Agreement, without any right to do so as specified herein, Seller shall be entitled to receive the Earnest Money as its sole damages under this Agreement.

D. Disbursement of Earnest Money. In the event that the sale of the Property is consummated as contemplated in this Agreement, then the Earnest Money shall be applied to the Purchase Price or returned to Purchaser at Closing, as Purchaser shall direct. In the event that this Agreement is terminated prior to consummation of the sale of the Property in accordance with this Agreement, then the Earnest Money shall be delivered as provided herein or as otherwise directed in writing by Purchaser and Seller.

E. Authority to Disburse Earnest Money. The Escrow Agent shall be authorized to make disbursements of the Earnest Money authorized herein without any further joinder or approval of Seller or Purchaser; provided, however, that, if Purchaser does not terminate this Agreement pursuant to an express right to do so as provided herein, then the Escrow Agent shall not thereafter disburse the Earnest Money to either party hereto until and unless either (i) the Escrow Agent has received a notice signed jointly by both parties or a court order directing such disbursement or (ii) the Escrow Agent has received a request for such disbursement signed by one of the parties and has given the other party notice of such request not less than five (5) business days prior to consummating such disbursement.

## 5. SURVEY AND TITLE DOCUMENTS.

A. **Survey.** Within ten (10) days after the Effective Date, Seller, at its sole cost and expense, shall deliver to Purchaser its existing survey on the Property. The Survey shall be in a form acceptable to the Title Company for the deletion of the standard survey exception relating to boundaries, which if applicable may require the Seller providing an affidavit to the Title Company that there have not been any changes to the condition of the Property which would render the existing survey inaccurate for any reason; which the Seller covenants to provide, if and to the extent such is factual. The Survey must: (a) Identify the Land by metes and bounds, and by platted lot description; (b) Show that the Survey was made and staked on the ground with corner permanently marked; (c) Set forth the dimensions and total area of the Land; (d) Show the location of all improvements, highways, streets, roads, railroads, rivers, creeks or other waterways, fences, easements and rights-of-way on the Land with all easements and rights-of-way referenced to their recording information; (e) Show any discrepancies or conflicts in boundaries, any visible encroachments and any portion of the Land lying in a special flood hazard area (an "A" or "V" zone as show on the current Federal Emergency Management Agency (FEMA) flood insurance rate map); and (f) Contain the surveyor certificate that the survey is true and correct. If the Survey is not acceptable to the Purchaser or the Title Company, then Purchaser may update the Survey prior to Closing at Purchaser's cost (provided however, that if and conditioned upon the Closing, then the Seller shall reimburse Purchaser for the costs of any such update of the Survey up to the

amount of \$3,000.00, but not otherwise). At Closing, the metes and bounds description of the Land reflected in the Survey (or update thereof, as the case may be), upon approval of the Purchaser and Title Company, shall be used in the warranty deed and any other closing documents requiring a legal description of the Property.

B. Title Commitment. Within ten (10) days after the Effective Date, Seller shall, at Seller's sole cost and expense, deliver or cause to be delivered to Purchaser (1) a title commitment (the "Title Commitment") covering the Property binding the Title Company to issue a Texas Owner Policy of Title Insurance (the "Title Policy") on the standard form prescribed by the Texas State Board of Insurance at the Closing, in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property to be good and indefeasible, subject only to the Permitted Exceptions as defined below, and (2) the following documents (collectively, the "Title Documents"): (a) true and legible copies of all recorded instruments affecting the Property and recited as exceptions in the Title Commitment, (b) a current tax certificate, and (c) written notices as required in Section 5(C).

C. Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of Section 50.301, Texas Water Code, then Seller shall give to Purchaser as part of the Title Documents the required written notice and Purchaser agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code. If the Property is subject to mandatory membership in a property owner's association, Seller shall notify Purchaser of the current annual budget of the property owners' association, and the current authorized fees, dues and/or assessments relating to the Property.

## 6. REVIEW OF TITLE DOCUMENTS.

A. Review Period. Purchaser shall have Ten (10) days (the "Review Period") after Purchaser's receipt of the last of (i) the Survey (or any update thereof, as the case may be), (ii) the Title Commitment, and (iii) the Title Documents, to review them. If Purchaser has any objections to the Survey, Title Commitment or Title Documents, then Purchaser may deliver the objections to Seller prior to the expiration of the Review Period. Except as otherwise provided herein, any item to which Purchaser or its lender does not object prior to the expiration of the Inspection Period which is not otherwise required to be cured by the Title Company shall be deemed a "Permitted Exception." Any other provision herein to the contrary notwithstanding, all liquidated liens disclosed in the Title Commitment (or any subsequent commitment) and all other exceptions disclosed in the Title Commitment (or any subsequent commitment) which arise on or after the Effective Date of this Agreement and are not attributable to actions by Purchaser (collectively, the "**Mandatory Cure Items**"), shall be satisfied, cured or removed by Seller, at Seller's sole cost and expense, at or prior to the Closing. The Mandatory Cure Items and any other items that the Title Company identifies that it requires to be released at Closing will be deemed objections by Purchaser that must be cured and shall not be Permitted Exceptions. If there are objections by Purchaser, including a third party lender, Seller may, but is not obligated to attempt to satisfy such objections except as otherwise provided herein, and Seller shall respond in writing irrevocably identifying which objections it will not cure and which objects it will cure which shall occur within

ten (10) days after receipt of Purchaser's objections (the "Cure Period"). If Seller fails to respond to Purchaser's written objections, then Seller shall be deemed to be obligated to cure all such objections prior to or at Closing, by a credit toward the Purchase Price, as a condition to Purchaser's closing. Regardless of any conflict herein or Purchaser's objections or any failure to object, any blanket easements, Seller's retained rights or rights of third parties including mineral owners and lessees, restrictions, or other encumbrances which would prohibit or materially interfere with or increase the costs of Purchaser's redevelopment of the Land shall be deemed objections which must be cured by Seller at Seller's expense prior to Closing which shall be a condition to Purchaser's closing. Otherwise, Purchaser's failure to object within the time provided shall be a waiver of the right to object.

B. Cure Period. If Seller cannot cure the objections as required above within the Cure Period, then Purchaser may terminate this Contract by delivering a written notice to Seller within ten (10) days after the expiration of the Cure Period and otherwise shall be deemed to have elected to extend the Cure Period as necessary but not later than the Closing Date in order for Seller to cure such objection which shall be a condition for Purchaser to close but which may be waived by Purchaser prior to Closing. If Purchaser terminates this Contract or elects not to close because of Seller's failure to cure any required objection, the refundable portion of the Earnest Money and any fees remitted by Purchaser shall be immediately returned to Purchaser and thereafter neither party shall have any rights or obligations under this Contract (except for those which may expressly survive the termination of this Contract). If Purchaser does not terminate this Contract and proceeds with Closing, then Purchaser shall be deemed to have waived any uncured objections and must accept such title as Seller is able to convey as of Closing, subject to the other terms and provisions of this Contract. Notwithstanding the foregoing, at or prior to Closing, Seller shall discharge or cause to be discharged all: (i) matters set forth on Schedule C of the Title Commitment; (ii) exceptions to title created after the Effective Date without the written consent of Purchaser; and (iii) judgments, liens and mortgages affecting the Property, and same shall not constitute Permitted Exceptions.

C. Updated Commitment. If Purchaser elects not to terminate this Agreement in accordance with Section 6A or 6B above, Seller, upon request of Purchaser, shall cause Title Company to reissue from time to time the Commitment prior to Closing. Purchaser shall have the right to object to any new exceptions other than the Permitted Exceptions shown on any updated Commitment. If Seller fails to cure such items, Purchaser shall again have the right to terminate this Agreement and be reimbursed the Earnest Money or waive the objection. The time periods for objecting to and curing the additional exceptions and for terminating this Agreement shall be the same as those set forth in Sections 6A and 6B above, commencing with the date Purchaser receives the updated Commitment, and, if necessary, the Closing Date shall be extended for such purposes.

## 7. SELLER'S WARRANTIES AND REPRESENTATIONS.

A. Statements. Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing as follows:



(1) Title. Seller has the right to, and will, convey to Purchaser good and indefeasible fee simple title to the Property free and clear of any and all liens, assessments, unrecorded easements, security interests and other encumbrances except only to the Permitted Exceptions.

(2) Leases. There are not any parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers.

(3) Negative Covenants. Seller shall not further encumber any of the Property or allow an encumbrance upon the title to any of the Property, or execute or modify the terms or conditions of any leases, contracts or encumbrances, if any, currently affecting the Property without the written consent of Purchaser.

(4) Liens and Debts. Except for the liens securing any existing mortgages which will be paid in full at Closing, there are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Property, and Seller shall not allow any such liens to attach to the Property prior to Closing, which will not be satisfied out of the Closing proceeds. All obligations of Seller arising from the ownership and operation of the Property and any business operated on the Property, including, but not limited to, taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid prior to Closing. Except for obligations for which provisions are made in this Contract for prorating at Closing, there will be no obligations of Seller with respect to the Property outstanding as of Closing.

(5) Litigation. There is no pending or, to the knowledge of Seller, threatened litigation, condemnation, or assessment affecting Seller or any of the Property, pending or being prosecuted in any court or by or before any federal, state, county or municipal department, commission, board, bureau or agency or other governmental entity. Seller shall promptly advise Purchaser of any litigation, condemnation or assessment affecting the any of Property which is threatened or instituted after the Effective Date.

(6) Hazardous Materials. Except as otherwise disclosed in writing by Seller to Purchaser prior to the Effective Date, to the knowledge of Seller, the Property (including the improvements located thereon) does not contain any Hazardous Materials (defined below). For purposes of this Contract, the term "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the Effective Date, or subsequently enacted.

(7) Surface Use. No party has any right to use the surface of the Land or otherwise, Seller shall provide a surface use waiver at Closing under which any party which has any surface use rights, including any mineral owner or lessee, waives any right to use the surface of the Land.

(8) Operation of the Property. After the Effective Date until the Closing Date, Seller shall (a) operate the Property in the same manner as the Property has been operated, and (b) maintain the Property in the same condition and in the same manner as existed on the Effective Date, except for ordinary wear and tear and any casualty loss.

(9) Seller's Authority. This Agreement has been duly authorized by requisite action and is enforceable against Seller in accordance with its terms; neither the execution and delivery of this Agreement nor the consummation of the sale provided for herein will constitute a violation or breach by Seller of any provision of any agreement or other instrument to which Seller is a party or to which Seller may be subject although not a party, or will result in or constitute a violation or breach of any judgment, order, writ, junction or decree issued against or binding upon Seller or the Property.

(10) Seller Not Foreign Person. Seller is not a foreign person or entity as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and Purchaser is not obligated to withhold portions of the Purchase Price for the benefit of the Internal Revenue Service.

(11) No Insolvency Proceedings. No attachment, execution, assignment for the benefit of creditors, receivership, conservatorship or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws is contemplated or has been filed by or against Seller or the Property, nor is any such action pending by or against Seller or the Property.

(12) No Competing Rights. No person, firm or entity, other than Purchaser, has any right to purchase, lease or otherwise acquire or possess the Property or any part thereof;

(13) No Regulatory Violations. Seller has no knowledge that, and has not received any written or other notice that, the Property is in breach of any law, ordinance or regulation, or any order of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality wherever located, including, without limitation, those relating to environmental matters and hazardous waste, and no claim, action, suit or proceeding is pending, or, to the best of Seller's knowledge and belief and after due inquiry, threatened against or affecting Seller or affecting the Property, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or entity wherever located, with respect to the Property or the Seller's present use and operation of the Property;

B. Definitions of "Knowledge" and "Belief." When reference is made in this Agreement to Seller's "knowledge" or "belief", such terms shall include only the actual knowledge and belief of Spiro Traicevski and \_\_\_\_\_ and shall be deemed to imply that Seller and the above identified person or persons has conducted such inquiry or investigation with respect to the subject matter of any representation or warranty which is so qualified as shall have been reasonably necessary to make such representation or warranty. Seller acknowledges that Purchaser has relied and will rely on the representations and warranties of Seller in executing this Agreement and in closing the purchase and sale of the Property pursuant to this Agreement, and Seller, during the term of this Agreement, agrees to notify Purchaser in writing promptly in the event of any change affecting any of such representations and warranties,

in which event Purchaser shall be entitled to exercise the remedies set forth in Section 13A hereof. Until and unless Seller's warranties and representations shall have been qualified and modified as appropriate by any such additional information provided by Seller to Purchaser, Purchaser shall continue to be entitled to rely on Seller's representatives and warranties set forth in this Agreement, notwithstanding any contrary information resulting from any inspection or investigation made by or on behalf of Purchaser.

C. Remedies. If Purchaser discovers prior to Closing that any of Seller's warranties or representations has been misrepresented or is inaccurate, Purchaser may notify Seller promptly in writing, and Seller shall correct or remedy the misrepresentation or inaccuracy at Seller's expense. If the misrepresentation or inaccuracy is not remedied prior to Closing, upon written notice to Seller, Purchaser may: (i) proceed to Closing without waiving any claim for breach of warranty or misrepresentation; or (ii) delay Closing until ten (10) days after the misrepresentation or inaccuracy is remedied or such other period necessary for Seller to cure such issue; or (iii) exercise Purchaser's remedies for default by Seller under this Contract including terminating this Contract and being refunded all Earnest Money and any other fees paid to Seller. If Purchaser discovers after Closing that any of Seller's warranties or representations has been misrepresented or is inaccurate, Purchaser may notify Seller promptly in writing, and Seller may attempt to correct or remedy the misrepresentation within thirty (30) days of such notice and to the extent Seller is unable to remedy such warranty or misrepresentation then Purchaser may pursue any remedy available at law or in equity except that Purchaser may not pursue any punitive, speculative, or consequential damages. The Parties agree that Seller will incur no liability or damages pursuant to this Section 7 for any claim or cause of action asserted more than ONE HUNDRED EIGHTY (180) DAYS after the date of the Closing.

D. **NO OTHER WARRANTIES AND DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED(S), PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS, AND PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (D) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, OR (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED CONVEYING THE PROPERTY TO PURCHASER, PURCHASER UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS PURCHASER MIGHT HAVE (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY)**

**REGARDING THE NATURE, CONDITION OR SUITABILITY OF THE PROPERTY OR ANY FORM OF WARRANTY WITH RESPECT TO THE PROPERTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING.**

8. **NONCONFORMANCE.** Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any limitations or permitted uses of the Property. Purchaser acknowledges that the current use of the Property or any improvements located on the Property (or both) may not conform to applicable Federal, State or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, requirements of the Americans with Disabilities Act, wetlands restrictions and other matters may have a significant economic impact upon the intended use of the Property by Purchaser. However, if Seller is aware of nonconformance with any Federal, State or local laws, ordinances, codes or regulations, Seller shall disclose same to Purchaser. Purchaser is not relying upon any warranties or representations of Seller or the Broker concerning the permitted uses of the Property or with respect to any nonconformance of the Property.

9. **INSPECTION.**

A. **Inspection.** Purchaser shall have a period of **Ninety (90) days** after the Effective Date (the "Inspection Period"), subject to the conditions listed in Section 9(B) below, to inspect the Property and to conduct feasibility studies regarding Purchaser's intended use of the Property. Purchaser's studies may include without limitation: (i) core borings; (ii) environmental and architectural tests and investigations; (iii) physical inspections of all improvements, fixtures, equipment, subsurface soils, structural members, and personal property; and (iv) examination of plans specifications, manuals, and other documents relating to the construction and condition of the Property. Purchaser and Purchaser's agents employees, consultants and contractors shall have the right of reasonable entry onto the Property during normal business hours, and upon reasonable advance notice to Seller and/or Seller's tenants, for purposes of the inspections, studies, tests and examinations deemed necessary by Purchaser. **Purchaser and or its agents, employees, consultants and or contractors shall have and maintain adequate liability insurance in force and effect covering the activities of such persons on the Property.** All inspections, studies, tests and examinations performed hereunder shall be at Purchaser's expense. If Purchaser terminates this Contract, Purchaser shall reasonably restore the Property to substantially its same state or condition prior to such inspection, and shall deliver copies of third party studies it obtains on the Property to the Seller, all of which shall be delivered without representation or warranty by Purchaser. Purchaser shall not, however, be required to deliver to Seller copies of any reports or other "work product" prepared or developed by Purchaser or any of its employees or affiliates.

B. **Report.** Prior to the expiration of ten (10) days following the Effective Date ("Seller Delivery Date"), Seller shall deliver or cause to be delivered to Purchaser, copies of any and all other documents, instruments and information known to Seller or in Seller's actual possession or control and/or received pursuant to or in connection with the Property including relating to the condition, status, and approvals of the Land including, without limitation, all platting and zoning

applications and proposed zoning documents, contracts, development agreements, permits, annexation, approvals, compliance, declarations, restrictions, preliminary plans, site plans, conceptual plans, preliminary plats, final plats, topographical maps, soil tests, inspection reports, environmental reports, flood plain information and building restrictions and any and all documents creating, evidencing, governing or created by or for any property or homeowners' association affecting, governing or relating to the Land or the Lots. Seller shall use its best efforts to cause any soils tests and environmental reports, if any, to be reissued and/or updated at Purchaser's cost (subject to Purchaser's approval prior to such cost being incurred), and to have reliance letters issued on any existing soils tests and environmental reports, to Purchaser relating thereto, at no cost to Purchaser.

C. Termination. If Purchaser determines, in Purchaser's sole discretion, no matter how arbitrary, that the Property is not in satisfactory condition or is not suitable for Purchaser's intended use or purpose, or if Purchaser for any reason does not desire to proceed with the acquisition of the Property, then Purchaser may terminate this Contract by delivering a written notice to Seller on or before the last day of the Inspection Period, in which event, the Earnest Money, other than the Independent Consideration, shall be promptly returned by the Title Company to Purchaser and neither party shall have any further rights or obligations under this Contract (except for those which may expressly survive the termination of this Contract).

D. Restoration. If the transaction described in this Contract does not close through no fault of Seller, and the condition of the Property was altered due to tests and inspections performed by Purchaser or on Purchaser's behalf, Purchaser must restore the Property to its original condition. Purchaser shall not permit any liens or encumbrances to arise against the Property in connection with or as a result of such inspections, studies, or investigations. **PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS OF AND FROM ANY AND ALL LOSSES, LIABILITIES, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS OF COURT), DAMAGES, LIENS, CLAIMS (INCLUDING, WITHOUT LIMITATION, MECHANICS' OR MATERIALMEN'S LIENS OR CLAIMS OF LIENS), ACTIONS AND CAUSES OF ACTION (COLLECTIVELY, "CLAIMS") ARISING FROM OR RELATING TO PURCHASER'S (OR PURCHASER'S AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR REPRESENTATIVES) ENTERING UPON THE PROPERTY TO TEST, STUDY, INVESTIGATE, OR INSPECT THE PROPERTY, WHETHER PURSUANT TO THIS SECTION 9, OR OTHERWISE, UNLESS DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER.** Purchaser will not be required to indemnify, defend or hold Seller harmless of or from any condition affecting any of the Property prior to Purchaser's entry thereon. This Section 9(E) shall survive termination of this Contract or a Closing of the transaction contemplated hereunder.

E. Extension of Inspection Period. Purchaser may extend the Inspection Period for an additional thirty (30) days upon the delivery to the Title Company of an Additional Earnest Money deposit of **TEN-THOUSAND AND 00/100 DOLLARS (\$10,000.00)** (this and any other "Additional Earnest Money" together with the initial "Earnest Money" referred to collectively as "Earnest Money") prior to the expiration of the Inspection Period which shall be treated as any other Earnest Money; BUT SHALL NOT be applicable to the Purchase Price at the Closing.

10. CASUALTY LOSS; CONDEMNATION. All risk of loss to the Property shall remain upon Seller prior to the Closing. If, prior to the Closing, any portion of the Property is damaged or destroyed by fire or other casualty, or subject to a condemnation or taking or the threat of a condemnation or taking, Seller shall have a duty to notify Purchaser, and Purchaser may either terminate this Contract by delivering a written termination notice to Seller or elect to close. If the transaction is to proceed to Closing, there shall be no reduction in the Purchase Price, but Seller shall assign to Purchaser all of Seller's right and interest in any insurance proceeds and/or condemnation awards, as applicable, plus an amount equal to any insurance deductible.

11. ASSIGNMENT. Purchaser may assign this Contract without the prior written consent of Seller. This Contract shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties; however, Seller may not assign this Contract without Purchaser's consent.

12. CLOSING.

A. Closing Date. The closing of the transaction described in this Contract (the "Closing") shall be held on the date which is **sixty (60) days following the last day of the Inspection Period** (the "Closing Date"), at the offices of the Title Company. Purchaser may extend the Closing Date for two (2) thirty (30) day periods upon the delivery to the Title Company of a non-refundable extension fee equal to **Twenty Thousand and 00/100 Dollars (\$20,000.00)** for each extension prior to the applicable Closing Date. The extension fee shall be **non-refundable** to Purchaser unless:

- (a) Seller fails or refuses to comply in a timely manner with its obligations hereunder, or
- (b) at the Closing, any of Seller's representations, warranties or covenants contained herein is not true or has been breached or modified, or
- (c) or in the event that, at the Closing, any condition precedent to Purchaser's obligations hereunder is not fully satisfied as herein required, or
- (d) this Contract is terminated pursuant to Sections 6 (Review of Title Documents), 10 (Casualty Loss; Condemnation) or 13(A) (Purchaser's Remedies) hereof,

in which case such shall be disposed in accordance with the provisions of this Agreement relating to Earnest Money. The extension fee shall **NOT** be applicable to Purchase Price at Closing.

B. Seller's Closing Documents. At the Closing, Seller shall deliver to Purchaser at Seller's expense:

(1) A duly executed Special Warranty Deed (the "Deed"), in a form reasonably acceptable to Seller and Purchaser, conveying the Property in fee simple according to the legal description as prepared by the surveyor as shown on the Survey, subject only to the Permitted Exceptions;

(2) The Title Policy issued by the underwriter for the Title Company pursuant to the Title Commitment, subject only to the Permitted Exceptions, in the full amount of

the Purchase Price, dated as of the date of Closing, and with the survey exception deleted except as to "shortages in area;"

(3) Bill of Sale conveying the personal property, if any, including all Intangible Property and other items described in section 2 which are not considered part of the Land;

(4) Possession of the Property;

(5) Evidence of Seller's authority and capacity to close this transaction;

(6) Assignment of all Intangible Property; if any, relating to the Property;

(7) Any required surface use waiver; as may be requested or required by Purchase or its lender,

(8) All other documents reasonably required in this Contract or by the Title Company from Seller to close this transaction.

C. Purchaser's Closing Documents. At the Closing, Purchaser shall deliver to Seller at Purchaser's expense:

(1) The Cash Payment;

(2) [reserved];

(3) Evidence of Purchaser's authority and capacity to close this transaction; and

(4) All other documents reasonably required by the Title Company from Purchaser to close this transaction.

D. Closing Costs. The base title policy premiums shall be paid by Seller and any endorsements or extended coverage shall be paid by Purchaser. Any survey costs shall be allocated to the party listed at Section 5(A). The Seller shall pay the costs of recording any releases, and the Purchaser shall pay the cost of recording the deed and any lender costs on its side of the transaction. The escrow fees shall be equally split between the parties. All other costs shall be allocated among the Parties as is customary for a transaction of this character in the county where the Property is located, or as otherwise agreed.

E. Real Estate Commissions. Seller shall be responsible for paying **Vanguard Real Estate Advisors** commission(s) as agreed under a separate agreement. Otherwise, each party to this Contract represents and warrants to the other party that such party has had no dealings with any person, firm, agent or finder in connection with the negotiation of this Contract and/or the consummation of the purchase and sale contemplated herein and no real estate broker, agent, attorney, person, firm or entity is entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such party. Each party hereby agrees to indemnify, defend, protect, and hold the other party harmless from and against any costs, expenses

or liability for compensation, commission, fee, or charges which may be claimed by any agent, finder, or other similar party by reason of any dealings or acts of the indemnifying party.

F. Prorations. Prior to Closing, Seller shall pay prior to delinquency all taxes and expenses applicable to the Property. Ad valorem taxes applicable to the Property shall be prorated at the Closing effective as of the Closing date. If the Closing occurs before the tax rate is fixed for the current tax year, the apportionment of the taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference between estimated taxes for the current tax year and the actual taxes paid by Purchaser shall be adjusted equitably between the parties upon proof of payment of the taxes by Purchaser. This provision shall survive the Closing.

G. Rollback Taxes. Seller shall pay Purchaser any rollback taxes (i) within the three (3) year period immediately following the calendar year in which the Closing occurs; and (ii) attributable to the period that Seller owned the applicable portion of the Property. For purposes of calculating the Additional Tax, Seller shall be deemed to have owned the applicable portion of the Property for the five year period immediately preceding the Closing Date. Appropriate prorations shall be made in the calculation of any rollback taxes payable by Seller hereunder based upon the date on which the rollback taxes are actually triggered with respect to the Property. Alternatively, Purchaser may reduce the payment on the Note by the amount of Rollback Taxes assessed against the Property and owed by Seller following Closing. This provision shall survive Closing.

H. Foreign Person Notification. If Seller is a Foreign Person, as deemed by the U.S. Internal Revenue Code, or if Seller fails to deliver to Purchaser a non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code, then Purchaser may withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the withheld proceeds to the Internal Revenue Service together with appropriate tax forms. The required affidavit(s) from Seller(s) shall include (1) a statement that Seller is not a foreign person, (2) the U. S. taxpayer identification number(s) of Seller(s), and (3) other information required by Section 1445 of the Internal Revenue Code.

### 13. DEFAULT.

A. Purchaser's Remedies. If Seller fails to perform its obligations under this Contract for any reason (except resulting from Purchaser's default or the termination of this Contract by Seller pursuant to a right to terminate as set forth in this Contract) which continues for more than five (5) business days following delivery of written notice of such default from Purchaser to Seller, Seller shall be in default and Purchaser may elect one of the following, as Purchaser's sole remedies: (1) enforce specific performance of this Contract; provided, however, that if Seller shall have **intentionally or wrongfully** taken or omitted to take any action which shall preclude or impair the ability of Purchaser to maintain any such action for specific performance, then Purchaser shall be entitled to seek damages for Seller's default; or (2) terminate this Contract and receive a refund of the Earnest Money along with any extension fees paid, other than the Independent Consideration, immediately. In the event of any breach of the representations or warranties in this Contract discovered after Closing or if Purchaser elects to enforce specific



performance and such remedy is not available as a result of Seller's actions, such as conveying the Property to a third party, then Purchaser shall be entitled to seek damages.

B. Seller's Remedies. If Purchaser fails to perform its obligations under this Contract for any reason (except resulting from Seller's default or the termination of this Contract by Purchaser pursuant to a right to terminate as set forth in this Contract) which continues for more than five (5) business days following delivery of written notice of such default from Seller to Purchaser, Purchaser shall be in default and Seller may, as Seller's sole remedy, terminate this Contract, in which event, the Earnest Money along with any extension fees paid by Purchaser shall be delivered to Seller as liquidated damages for the Purchaser's breach of this Contract, thereby releasing Purchaser from this Contract.

14. Conditions Precedent. Purchaser's obligation to consummate the transaction contemplated herein is conditioned upon satisfaction of each of the following conditions at or prior to the Closing, any one or more of which conditions precedent may be waived by Purchaser in Purchaser's sole discretion:

(a) Representations and Warranties. None of the representations and warranties of Seller set forth in Article V hereof shall be untrue or inaccurate in any respect; and

(b) Seller's Obligations. Seller shall have performed or complied with Seller's covenants, agreements and obligations hereunder in all respects; and

(c) No Bankruptcy Proceeding. There shall not have been instituted by or against Seller or the Property any bankruptcy proceeding.

15. MISCELLANEOUS PROVISIONS.

A. Effective Date. The term "Effective Date" means the date the Contract is marked received by the Title Company (if any).

B. Notices. All notices and other communications required or permitted under this Contract must be in writing and shall be deemed delivered on the earlier of: (i) actual receipt, if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("Fax") with a transmission confirmation receipt; or email transmission, or (iii) three (3) business days after deposit in the United States Mail as required below. Notices may be transmitted by Fax to the Fax telephone numbers specified below, if any. Notices delivered by mail must be deposited with the U.S. Postal Service and sent by certified mail return receipt requested with postage prepaid, and properly addressed to the intended recipient at the address set forth below. Any party may change its address for notice purposes by delivering written notice of its new address to all other parties in the manner set forth above. For the purposes of notice, the addresses of the parties shall be as follows:

Purchaser: Titan Investments, LLC  
13901 Midway Road. Ste 102.

Dallas, Texas 75244  
[TBarton@jmidevelopment.com](mailto:TBarton@jmidevelopment.com)

With a Copy to: The Marx Firm, LLC  
Attn: Randy Marx  
2999 Turtle Creek Blvd.  
Dallas, Texas 75219  
[Randy@themarxfirm.com](mailto:Randy@themarxfirm.com)  
214.360.9343  
214.405.5120 cell

Seller: First Development Company of Ohio, LLC  
111 Lilyfield Dr.  
Allen, Tx 75002  
Phone: 586-709-6182  
Email: spiro1000@gmail.com

With a Copy to:

Title Company: **Title Partners, LLC**  
**Attn: Mr. Judd Whiteman**  
[judd.whiteman@titlepartnersllc.com](mailto:judd.whiteman@titlepartnersllc.com)  
**8350 N. Central Expressway, North Mezzanine Suite #M1090**  
**Dallas, Texas 75206**  
**Mobile: 214.649.4845**  
**Fax: 214.987.6771**

C. Forms and Construction. This Contract is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Purchaser hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Contract or any earlier draft of the same.

D. Attorneys Fees. The prevailing party in any legal proceeding brought in relation to this Contract or transaction shall be entitled to recover from the non-prevailing parties court costs, reasonable attorneys' fees and all other reasonable litigation expenses.

E. Integration. This Contract contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement of the parties hereto. The parties agree that there are no oral or signed agreements, understandings, representations or warranties made by the parties which are not expressly set forth herein.

F. Survival. Any warranty, representation, covenant, condition or obligation contained in this Contract not otherwise consummated at the Closing along with any rights and obligations under any promissory note and deed of trust agreed to as part of any Seller financing will survive the Closing of this transaction and nothing herein shall act as an election, release, or waiver of any legal or equitable remedies related thereto.

G. Binding Effect. This Contract shall inure to the benefit of and be binding upon the parties to this Contract and their respective heirs, legal representatives, successors and assigns.

H. Time for Performance. Time is of the essence under each provision of this Contract. If any date of performance hereunder falls upon a Saturday, Sunday or recognized holiday, such date will be deemed moved forward to the next day which is not a Saturday, Sunday or recognized holiday.

I. Right of Entry. Subject to the requirements of Section 9, upon reasonable advance notice and during normal business hours, Purchaser, Purchaser's representatives and the Broker have the right to enter upon the Property prior to Closing for purposes of viewing, inspecting and conducting studies of the Property, so long as they do not unreasonably interfere with the use of the Property by Seller or any tenants, or cause undue damage to the Property.

J. Business Day. The term "business day" shall mean days elapsed exclusive of Saturday, Sunday or recognized holidays.

K. Governing Law. This Contract shall be construed under and governed by the laws of the State of Texas, and unless otherwise provided herein, all obligations of the parties created under this Contract are to be performed in the county where the Property is located.

L. Severability. If any provision of this Contract is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal or unenforceable provision shall not affect any other provisions, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Contract.

M. Counterparts. This Contract may be executed in a number of identical counterparts. Each counterpart is deemed an original and all counterparts shall, collectively, constitute one agreement.

N. Gender; Number. Unless the context requires otherwise, all pronouns used in this Contract shall be construed to include the other genders, whether used in the masculine, feminine or neuter gender. Words in the singular number shall be construed to include the plural, and words in the plural shall be construed to include the singular.

O. Cessation of Marketing Activities. From and after the Effective Date, Seller (i) shall suspend all activities to market the Property for sale; (ii) shall refer all persons making inquiry about the sale of the Property to Purchaser; and (iii) shall not enter into any contract to sell the Property to anyone other than Purchaser, including without limitation any contract denominated as a so-called "back-up contract".


16. CONTRACT AS OFFER. The execution of this Contract by the first party to do so constitutes an offer to purchase or sell the Property on the conditions contained in this Contract. Unless within ten (10) business days from the date of execution of this Contract by the first party, this Contract is accepted by the other party by signing the offer and delivering a fully executed copy to the first party, the offer of this Contract may be rescinded and the Earnest Money, if any, shall be promptly returned to Purchaser.

*[Signature Page to Follow]*

EXECUTED on the dates stated below, to be effective on the Effective Date

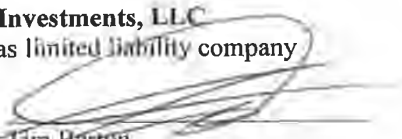
**SELLER:**

**First Development Company of Ohio, LLC**  
A Texas limited liability company

By:   
Name: Spiro Trajcevski  
Title: President  
Date: February 10, 2022

**PURCHASER:**

**Titan Investments, LLC**  
A Texas limited liability company


By:   
Name: Tim Barton  
Title: President  
Date: Feb 10, 2022

Title Company Receipt and Acknowledgement

The Title Company acknowledges receipt of a fully executed copy of this Contract on February 10, 2022 (the "Effective Date") and agrees to accept the Earnest Money, when deposited, subject to the terms and conditions set forth in this Contract and shall notify the parties once the Earnest Money is received.

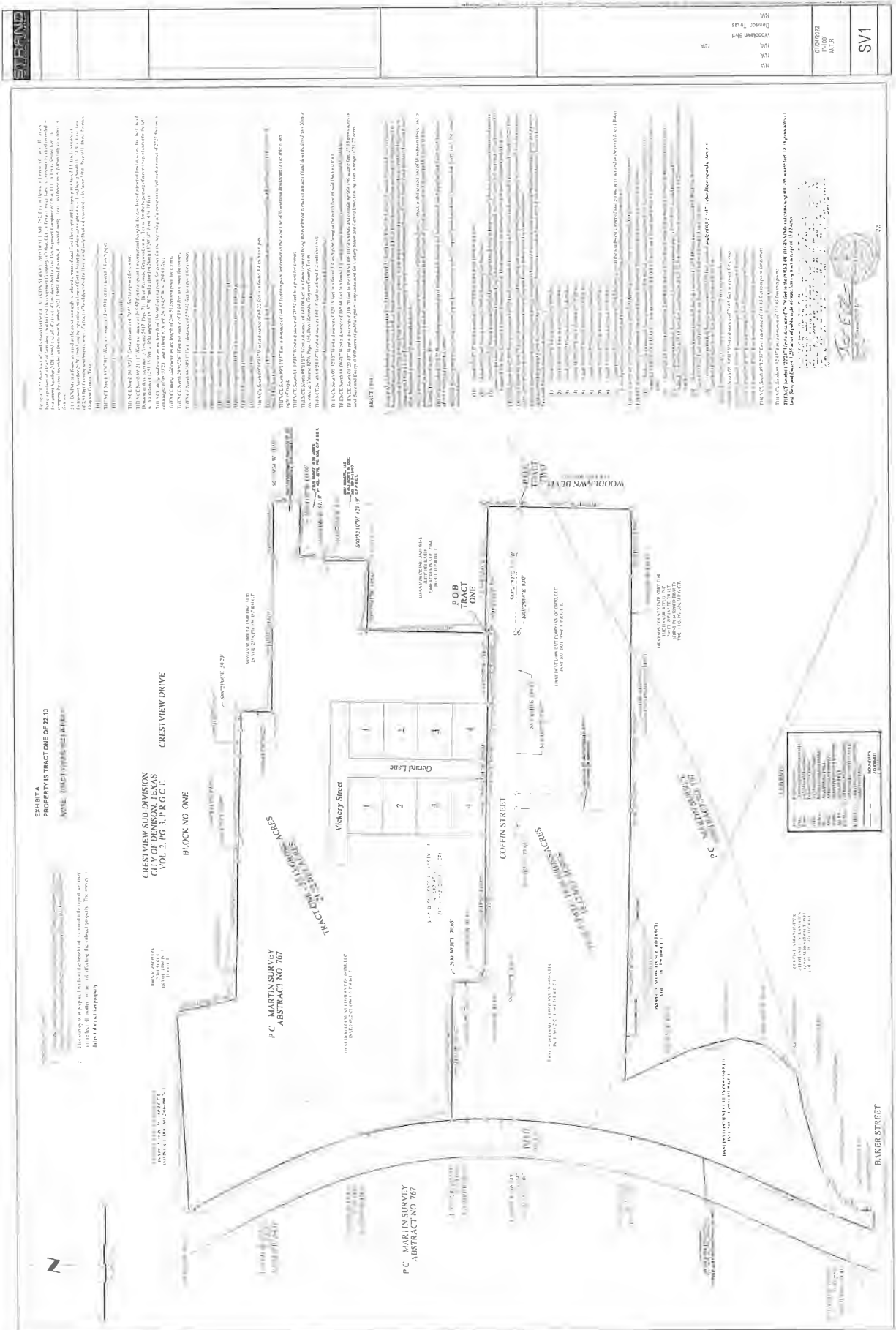
TITLE COMPANY:

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By:   
Name: Jessica Pickett  
Title: Commercial Escrow Officer

**Exhibit "A"**  
**Property Legal Description**

**As per the attached.**



**EXHIBIT A**  
**PROPERTY IS TRACT ONE OF 22-13**  
**MOORE TRACT 22-13**

**CRESTVIEW CLUB DIVISION**  
**CITY OF DICKINSON, TEXAS**  
**BLK. 2, PG. 2, P.R.C.C.L.**

**TRACT ONE**

**TRACT TWO**

**TRACT THREE**

**TRACT FOUR**

**TRACT FIVE**

**TRACT SIX**

**TRACT SEVEN**

**TRACT EIGHT**

**TRACT NINE**

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M:\JMJ 20220119 TitanFirstDevelopOhio16.3 acres\Purchase Agreement\20220208 b\PSA Titan Inv - First Development Co. of Ohio (16.3 ac Denison) v6.docx

## Titan Investments, LLC

Tuesday, January 18, 2022

Titan Investments LLC  
13901 Midway Road. Ste 102  
Dallas, Texas 75244  
[tbarton@jmjdevelopment.com](mailto:tbarton@jmjdevelopment.com)

Re: **Letter of Intent for 152+/- acres situated in Sherman, Texas.**

To Whom It May Concern:

This letter of intent (“LOI”) serves to communicate the non-binding intent of Seller (defined below) to sell and the non-binding intent of Purchaser (defined below) to purchase the real property and any improvements of the **152 +/- acres in Sherman, Texas**, generally in accordance with the terms set forth herein. If Seller accepts the terms as set forth in this LOI, please so indicate by executing the signature block below.

**PURCHASER:** Titan Investments, LLC

**SELLER:** Datavault Joint Venture

**PURCHASE PRICE:** **\$5,940,000**, Seller shall deliver the property free and clear of all encumbrances following the funding schedule below:

**PROPERTY:** **152.187** acre lot, tract, or parcel of land east of U.S. Hwy 75 in the northeast quadrant of Sherman along Texoma Pkwy.

**CONVEYANCE:** The Property shall be conveyed to Purchaser by Special Warranty Deed. Any and all rights held by the Seller or affiliates that directly pertain to the Property as well as all mineral rights and any rights to development plans completed for the property shall transfer to Purchaser.

**EARNEST MONEY:** Within **Five (5)** business days of the execution of the contract, Purchaser shall place in escrow, to be held by the title company, the “Earnest Money Deposit”, to **Sendera Title** (hereinafter “Escrow” and the “Title Company”), an earnest money deposit (the “Deposit”) in the amount of **Ten Thousand Dollars (\$10,000)** under the terms of the Contract. The Deposit shall be refundable upon execution of

13901 Midway Road. Suite 102. Dallas, TX. US 75234  
Phone (972) 385-9934 Fax (972) 241-4484

Page 1 of 5

APP000348

the Contract. The Deposit shall not be applied towards the Purchase Price.

TITLE COMPANY: **Sendera Title**  
1800 Valley View Ln. # 160.  
Farmers Branch, Texas 75234  
Attn: Jeanie Acord or Julie Lyssy

TITLE AND SURVEY: Seller shall furnish to Purchaser within **Ten (10)** business days following the full execution of a Contract and the payment of the Deposit, at Seller's sole cost and expense, a Commitment for Title Insurance (the "Title Commitment") and an existing survey of the Property (the "Survey"). Purchaser shall have **Ten (10)** business days following the date of receipt of the Title Commitment and the Survey (the "Title Review Period") in which to review the state of Seller's title to the Property. If the Title Commitment and/or Survey reflect or disclose any defect, exception or other matter affecting the Property that is unacceptable to Purchaser for any reason whatsoever then, prior to the end of the Title Review Period, Purchaser shall provide Seller with written notice of its objections (the "Title Defect Notice"). Seller shall have no obligation to remove or cure such objections. If within **Ten (10)** business days following Seller's receipt of the Title Defect Notice the Seller fails to notify Purchaser in writing that it will cure all of the matters contained in the Title Defect Notice (the "Title Cure Notice"), then Purchaser may terminate the Contract at any time prior to (i) **Ten (10)** business days after the date of the Title Cure Notice, (ii) the end of the Feasibility Period and/or Extended Feasibility Period, or (iii) the end of the Entitlement Period. If any or all of the exceptions are not approved and accepted by the Purchaser, Purchaser shall be entitled to a full refund of all Deposits.

FEASIBILITY PERIOD: Purchaser shall have a period of **One-Hundred Eighty (180)** business days after the date of the Escrow Deposit in which to inspect the property, perform studies and generally determine if the property is suitable for Purchaser's needs (the "Feasibility Period"). Prior to the end of the Feasibility Period, Purchaser may declare, in its sole discretion, the contract null and void, whereupon neither Seller nor Purchaser shall have any further obligations or liabilities to the other in connection with the transaction contemplated hereby. Purchaser shall have the right to extend the Feasibility Period for one **Thirty (30)** business day period by delivering to Title Company the extension fee of **\$10,000.00** for the **Thirty (30)** business day



extension **One (1)** business day prior to the expiration of the Feasibility Period, which shall be non-refundable. The extension fee shall be applicable to the Purchase price at closing.

CLOSING:

Closing shall occur at the offices of the Title Company on that date which is **Thirty (30)** business days after the expiration of the Feasibility Period, unless extended. Purchaser shall have the right to extend the closing date for **Two, Thirty (30)** business day periods by delivering to Title Company the extension fee of **\$25,000.00** for each **Thirty (30)** day extension **Thirty (30)** business days prior to the scheduled closing date. The extension fee shall be applicable to the Purchase price at closing.

REMEDIES UPON  
DEFAULT:

In the event Seller defaults, Purchaser's sole remedy is to enforce specific performance of the Contract.

In the event Purchaser defaults, Seller may elect, in its sole discretion, to terminate the Contract by giving written notice thereof to Purchaser, whereupon neither party shall have any further rights or obligations under the Contract, and Seller shall retain the Earnest Money, free of any claims by Purchaser, as liquidated damages,

COUNTERPARTS:

The parties agree that this letter agreement may be executed in multiple counterparts and that facsimile transmitted copies will be acceptable as if executed as original.

REAL ESTATE  
COMMISSIONS:

Seller shall be responsible for paying Justin Tidwell of Vanguard Real Estate Advisors commissions as agreed under a separate agreement. Otherwise, each party to this Contract represents and warrants to the other party that such party has had no dealings with any person, firm, agent or finder in connection with the negotiation of this Contract and/or the consummation of the purchase and sale contemplated herein and no real estate broker, agent, attorney, person, firm or entity is entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such party. Each party hereby agrees to indemnify, defend, protect, and hold the other party harmless from and against any costs, expenses or liability for compensation, commission, fee, or charges which may be claimed by any agent, finder, or other similar party by reason of any dealings or acts of the indemnifying party.

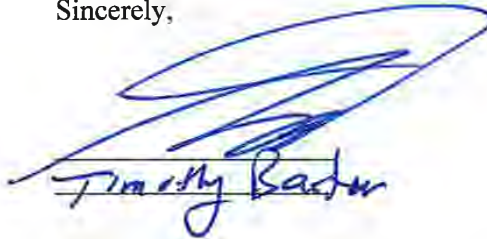


This Letter of Intent shall terminate without liability to any party upon the occurrence of any one of the following events: (a) all parties are unable to agree upon all terms, representations, covenants, warranties, conditions and provisions of the Contract, as to both form and substance, or evidenced by the execution of a definitive purchase and sale agreement (the "Contract") by the parties; or (b) either Purchaser or Seller submits, at any time prior to execution of a definite contract, written notification of its intent to abandon the proposed transaction.

The foregoing merely constitutes a possible structure for a potential transaction and does not constitute a binding agreement because it does not contain all matters upon which agreement must be reached in order for such a transaction to be consummated. A binding commitment with respect to the potential transaction outlined herein will result only from the mutual execution of a Contract.

Upon acceptance and approval of this Letter of Intent, along with final definition of the Property, Purchaser shall cause a draft Contract to be prepared and delivered to Seller by Buyer and both parties agree to move in good faith to execute a final agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy Bader", is written over a horizontal line. Above the signature is a large, stylized blue scribble or flourish.

AGREED AND ACCEPTED as of  
the \_\_ day of \_\_\_\_\_, 2022:

\_\_\_\_\_  
\_\_\_\_\_  
By:

## Titan Investments, LLC

Wednesday, January 12, 2022

Titan Investments LLC  
13901 Midway Road, Ste 102  
Dallas, Texas 75244  
[tharton@jmiddevelopment.com](mailto:tharton@jmiddevelopment.com)

Re: **Letter of Intent for 16.3 acres situated in Denison, Texas.**

Dear

This letter of intent ("LOI") serves to communicate the non-binding intent of Seller (defined below) to sell and the non-binding intent of Purchaser (defined below) to purchase the real property and any improvements of the **16.3 acres in Denison, Texas**, generally in accordance with the terms set forth herein. If Seller accepts the terms as set forth in this LOI, please so indicate by executing the signature block below.

**PURCHASER:** Titan Investments, LLC

**SELLER:** First Development Co. of Ohio, LLC

**PURCHASE PRICE:** \$2,282,000, Seller shall deliver the property free and clear of all encumbrances following the funding schedule below:

- \$5,000 Earnest Money with execution of contract

**PROPERTY:** 16.3 +/- acre lot, tract, or parcel of land along **Woodlawn Boulevard and West Coffin Street** in the City of Denison, Grayson County, Texas.

**CONVEYANCE:** The Property shall be conveyed to Purchaser by Special Warranty Deed. Any and all rights held by the Seller or affiliates that directly pertain to the Property as well as all mineral rights and any rights to development plans completed for the property shall transfer to Purchaser.

**EARNEST MONEY:** Within **Five (5)** calendar days of the execution of the contract, Purchaser shall place in escrow, to be held by the title company, the "Earnest Money Deposit", to ~~DLP Closing Services~~ (hereinafter "Escrow" and the "Title Company"), an earnest money deposit (the

13901 Midway Road, Suite 102, Dallas, TX, US 75234  
Phone (972) 385-9934 Fax (972) 241-4484  
Page 1 of 5

*Fidelity* *notum*

APP000352

"Deposit") in the amount of **Five Thousand (\$5,000)** under the terms of the Contract. The Deposit shall be refundable upon execution of the Contract. The Deposit shall be applied towards the Purchase Price.

TITLE COMPANY:

*Josh Samuel, Fidelity National Title, Samuel@fidelityplg.com*  
~~DEP Closing Services LLC Amanda V. Dean,~~  
~~amanda@dhpclosings.com (484) 831-3341~~

TITLE AND SURVEY:

Seller shall furnish to Purchaser within **Ten (10)** days following the full execution of a Contract and the payment of the Deposit, at Seller's sole cost and expense, a Commitment for Title Insurance (the "Title Commitment") and an existing survey of the Property (the "Survey"). Purchaser shall have **Ten (10)** days following the date of receipt of the Title Commitment and the Survey (the "Title Review Period") in which to review the state of Seller's title to the Property. If the Title Commitment and/or Survey reflect or disclose any defect, exception or other matter affecting the Property that is unacceptable to Purchaser for any reason whatsoever then, prior to the end of the Title Review Period, Purchaser shall provide Seller with written notice of its objections (the "Title Defect Notice"). Seller shall have no obligation to remove or cure such objections. If within **Ten (10)** days following Seller's receipt of the Title Defect Notice the Seller fails to notify Purchaser in writing that it will cure all of the matters contained in the Title Defect Notice (the "Title Cure Notice"), then Purchaser may terminate the Contract at any time prior to (i) **Ten (10)** days after the date of the Title Cure Notice, (ii) the end of the Feasibility Period and/or Extended Feasibility Period, or (iii) the end of the Entitlement Period. If any or all of the exceptions are not approved and accepted by the Purchaser, Purchaser shall be entitled to a full refund of all Deposits.

FEASIBILITY PERIOD:

*After 90 days, Purchaser shall deposit an additional \$50,000 with Title Company which shall be non-refundable but applicable to Purchase Price at Closing.*

Purchaser shall have a period of **One-Hundred Twenty (120)** day(s) after the date of the Escrow Deposit in which to inspect the property, perform studies, rezone the property, and generally determine if the property is suitable for Purchaser's needs (the "Feasibility Period"). Prior to the end of the Feasibility Period, Purchaser may declare, in its sole discretion, the contract null and void, whereupon neither Seller nor Purchaser shall have any further obligations or liabilities to the other in connection with the transaction contemplated hereby. Purchaser shall have the right to extend the Feasibility Period for **Thirty (30)** day(s) period by delivering to Title Company the extension fee of **\$10,000** for the **Thirty (30)** day extension **One (1)** days prior to the expiration of

*which shall be non-refundable.*

(the Feasibility Period. The extension fee shall <sup>not</sup> be applicable to the Purchase price at closing.

**CLOSING:**

Closing shall occur at the offices of the Title Company on that date which is **Thirty (30)** days after the expiration of the Feasibility Period, unless extended. Purchaser shall have the right to extend the closing date for **Two, Thirty (30)** day periods by delivering to Title Company the extension fee of **\$20,000.00** for each **Thirty (30)** day extension **Thirty (30)** days prior to the scheduled closing date. The extension fee shall be applicable to the Purchase price at closing.

**REMEDIES UPON DEFAULT:**

*not*  
In the event Seller defaults, Purchaser's sole remedy is to enforce specific performance of the Contract.

In the event Purchaser defaults, Seller may elect, in its sole discretion, to terminate the Contract by giving written notice thereof to Purchaser, whereupon neither party shall have any further rights or obligations under the Contract, and Seller shall retain the Earnest Money, free of any claims by Purchaser, as liquidated damages,

**COUNTERPARTS:**

The parties agree that this letter agreement may be executed in multiple counterparts and that facsimile transmitted copies will be acceptable as if executed as original.

This Letter of Intent shall terminate without liability to any party upon the occurrence of any one of the following events: (a) all parties are unable to agree upon all terms, representations, covenants, warranties, conditions and provisions of the Contract, as to both form and substance, or evidenced by the execution of a definitive purchase and sale agreement (the "Contract") by the parties; or (b) either Purchaser or Seller submits, at any time prior to execution of a definite contract, written notification of its intent to abandon the proposed transaction.

The foregoing merely constitutes a possible structure for a potential transaction and does not constitute a binding agreement because it does not contain all matters upon which agreement must be reached in order for such a transaction to be consummated. A binding commitment with respect to the potential transaction outlined herein will result only from the mutual execution of a Contract.

Upon acceptance and approval of this Letter of Intent, along with final definition of the Property, Purchaser shall cause a draft Contract to be prepared and delivered to Seller by Buyer and both parties agree to move in good faith to execute a final agreement.



Sincerely,



TITAN INVESTMENTS LLC  
TIM BARTON

AGREED AND ACCEPTED as of  
the \_\_ day of \_\_\_\_\_, 2022:

\_\_\_\_\_  
\_\_\_\_\_  
By:

**EXHIBIT A**  
**LEGAL TO BE ADDED**

13901 Midway Road, Suite 102, Dallas, TX, US 75234  
Phone (972) 385-9334 Fax (972) 241-4484  
Page 5 of 5

APP000356

**RESIGNATION**  
**TITAN INVESTMENTS, LLC**

**(Resignation of Mr. Timothy L. Barton)**

In accordance with the General Corporation Law of Delaware (the "GCL"), the undersigned, respecting **TITAN INVESTMENTS, LLC**, a Delaware limited liability company (the "Company"), hereby provides as follows:

I, the undersigned, **Timothy L. Barton**, hereby resign in all respects from any capacity as authorized signatory, or agent or agency of any kind or character whatsoever respecting the Company, if any, said resignation to become effective immediately:

  
\_\_\_\_\_  
**Timothy L. Barton**

RESOLVED, that the undersigned manager(s) and or member(s) of the Company hereby acknowledge receipt and acceptance of the following resignation, effective October 6, 2022.

**TITAN INVESTMENTS, LLC**  
**A Delaware limited liability company**

BY:   
\_\_\_\_\_  
**Maximilien Barton, President**

**RESIGNATION; AND ACCEPTANCE THEREOF**  
**(TITAN INVESTMENTS, LLC)- Page 1**

APP000357

**CONTRACT OF SALE**

IN CONSIDERATION of the mutual terms, provisions, covenants and agreements contained in this Contract of Sale (the "Contract"), the parties hereto agree as follows.

1. PARTIES. Kingdom Road Equities, LLC ("Seller"), shall cause the sale and convey same to Titan Investments, LLC (the "Purchaser"), and Purchaser shall buy and pay for the Property (defined below).

2. PROPERTY. Upon the terms and conditions hereinafter stated, Seller hereby agrees to sell and convey to Purchaser good and indefeasible title of two tracts totaling an estimated 25.958 acres situated in the City of Denison, Grayson County, Texas, an approximate legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference for all purposes (the "Land"), together with (1) all benefits, privileges, tenements, hereditaments, rights and appurtenances thereon or pertaining to such real property, (2) all permits, approvals, licenses, leases, contracts, reports, water and sewer capacity commitments, all engineering and architectural plans, Declarant status under any Property Associations formed on the Land, rights to reimbursements from any governmental or quasi-agency for either utility impacts fees, taxing district bond sale proceeds if any, and other rights and interests owned or held by Seller, if any, in connection with the Land (collectively, "Intangible Property"), and (3) all easements owned by Seller, if any, which are used or needed in connection with the development of the Land (the foregoing is collectively referred to herein as the "Property"), and Purchaser agrees to purchase the Property at the Purchase Price (hereinafter defined) and upon the terms set forth herein. The metes and bounds description of the Land contained in the Survey (hereinafter defined), if different from the legal description attached hereto, shall be substituted for Exhibit "A" and shall become a part of this Contract as the description of the Land to be conveyed hereunder. Furthermore, Exhibit "A" shall be automatically updated to include the description of the tract(s) within the Property that Seller owns upon disclosure to the Purchaser by Seller which shall occur prior to the expiration of the Inspection Period.

3. PURCHASE PRICE. The purchase price for the Property is Three Million, Five Hundred Thousand Dollars (\$3,500,000) (the "Purchase Price").

4. EARNEST MONEY.

A. Within execution of this Contract, Purchaser shall deposit earnest money in the form of a check or wire transfer of funds in the amount of Ten Thousand Dollars (\$10,000) (the "Earnest Money") with Chapin Title Company, Mr. Loren Siems, in its capacity as escrow agent, to be held in escrow pursuant to the terms of this Contract. Notwithstanding anything herein to the contrary, a portion of the Earnest Money in the amount of \$100.00 shall be non-refundable and shall be distributed to Seller upon any termination of this Contract as full payment and independent consideration (the "Independent Consideration") for Seller's performance under this Contract.

B. If Purchaser fails to timely deposit the Earnest Money, Seller may terminate this Contract at any time before Purchaser deposits the Earnest Money with the Title Company. The Earnest Money, at Purchaser's election, may be placed in an interest-bearing account by the Title



Company, and any interest earned thereon shall become a part of the Earnest Money. If Purchaser terminates this Contract on or prior to the expiration of the Inspection Period, all Earnest Money, other than the Independent Consideration, shall be returned to Purchaser. If Purchaser does not terminate this Contract on or prior to the expiration of the Inspection Period, the Earnest Money shall be non-refundable to Purchaser unless this Contract is terminated pursuant to Sections 6, 10 or 13(A) hereof. If this Contract is terminated pursuant to either Sections 6, 10 or 13(A) after the expiration of the Inspection Period, the Earnest Money shall be returned to Purchaser. The Earnest Money shall be paid to Seller at the Closing and shall be applicable to the Purchase Price.

5. SURVEY AND TITLE DOCUMENTS.

A. Survey. Within ten (10) days after execution of the Contract, Seller, at its sole cost and expense, shall deliver to Purchaser its existing survey on the Property. The Survey shall be in a form acceptable to the Title Company for the deletion of the standard survey exception relating to boundaries, which if applicable may require the Seller providing an affidavit to the Title Company that there have not been any changes to the condition of the Property which would render the existing survey inaccurate for any reason. If the Survey is not acceptable to the Title Company, Purchaser may update the Survey prior to Closing at Purchaser's cost. At Closing, the metes and bounds description of the Land reflected in the Survey shall be used in the warranty deed and any other closing documents requiring a legal description of the Property.

B. Title Commitment. Within ten (10) days after execution of the Contract, Seller shall, at Seller's expense, deliver or cause to be delivered to Purchaser (1) a title commitment (the "Title Commitment") covering the Property binding the Title Company to issue a Texas Owner Policy of Title Insurance (the "Title Policy") on the standard form prescribed by the Texas State Board of Insurance at the Closing, in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property to be good and indefeasible, subject only to the Permitted Exceptions as defined below, and (2) the following documents (collectively, the "Title Documents"): (a) true and legible copies of all recorded instruments affecting the Property and recited as exceptions in the Title Commitment, (b) a current tax certificate, and (c) written notices as required in Section 5(C).

C. Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of Section 50.301, Texas Water Code, then Seller shall give to Purchaser as part of the Title Documents the required written notice and Purchaser agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code. If the Property is subject to mandatory membership in a property owner's association, Seller shall notify Purchaser of the current annual budget of the property owners' association, and the current authorized fees, dues and/or assessments relating to the Property.

6. REVIEW OF TITLE DOCUMENTS.

A. Review Period. Purchaser shall have thirty (30) days (the "Review Period") after Purchaser's receipt of the last of (i) the Survey, (ii) the Title Commitment, and (iii) the Title

7/5/22  
S

Documents, to review them. If Purchaser has any objections to the Survey, Title Commitment or Title Documents, Purchaser may deliver the objections to Seller prior to the expiration of the Review Period. Except as otherwise provided herein, any item to which Purchaser or lender does not object which is not otherwise required to be cured by the Title Company shall be deemed a "Permitted Exception." Items that the Title Company identifies that it requires to be released at Closing will be deemed objections by Purchaser that must be cured and shall not be Permitted Exceptions. If there are objections by Purchaser, including a third party lender, Seller may, but is not obligated to attempt to satisfy such objections except as otherwise provided herein, and Seller shall respond in writing identifying which objections it will not cure and which objects it will cure which shall occur within ten (10) days after receipt of Purchaser's objections (the "Cure Period"). If Seller fails to respond to Purchaser's written objections, then Seller shall be deemed to be obligated to cure all such objections prior to Closing as a condition to Purchaser's closing. Regardless of any conflict herein or Purchaser's objections or any failure to object, any blanket easements, Seller's retained rights or rights of third parties including mineral owners and lessees, restrictions, or other encumbrances which would prohibit or materially interfere with or increase the costs of Purchaser's redevelopment of the Land shall be deemed objections which must be cured by Seller at Seller's expense prior to Closing which shall be a condition to Purchaser's closing. Otherwise, Purchaser's failure to object within the time provided shall be a waiver of the right to object.

B. Cure Period. If Seller cannot cure the objections as required above within the Cure Period, then Purchaser terminate this Contract by delivering a written notice to Seller within ten (10) days after the expiration of the Cure Period and otherwise shall be deemed to have elected to extend the Cure Period as necessary but not later than the Closing Date in order for Seller to cure such objection which shall be a condition for Purchaser to close but which may be waived by Purchaser prior to Closing. If Purchaser terminates this Contract or elects not to close because of Seller's failure to cure any required objection, the refundable portion of the Earnest Money and any fees remitted by Purchaser shall be immediately returned to Purchaser and thereafter neither party shall have any rights or obligations under this Contract (except for those which may expressly survive the termination of this Contract). If Purchaser does not terminate this Contract and proceeds with Closing, then Purchaser shall be deemed to have waived any uncured objections and must accept such title as Seller is able to convey as of Closing, subject to the other terms and provisions of this Contract. Notwithstanding the foregoing, at or prior to Closing, Seller shall discharge or cause to be discharged all: (i) matters set forth on Schedule C of the Title Commitment; (ii) exceptions to title created after the Effective Date without the written consent of Purchaser; and (iii) judgments, liens and mortgages affecting the Property, and same shall not constitute Permitted Exceptions.

## 7. SELLER'S WARRANTIES AND REPRESENTATIONS.

A. Statements. Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing as follows:

(1) Title. Seller has the right to, and will, convey to Purchaser good and indefeasible fee simple title to the Property free and clear of any and all liens, assessments,

unrecorded easements, security interests and other encumbrances except only to the Permitted Exceptions.

(2) Leases. There are not any parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers.

(3) Negative Covenants. Seller shall not further encumber any of the Property or allow an encumbrance upon the title to any of the Property, or execute or modify the terms or conditions of any leases, contracts or encumbrances, if any, currently affecting the Property without the written consent of Purchaser.

(4) Liens and Debts. Except for the liens securing any existing mortgages which will be paid in full at Closing, there are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Property, and Seller shall not allow any such liens to attach to the Property prior to Closing, which will not be satisfied out of the Closing proceeds. All obligations of Seller arising from the ownership and operation of the Property and any business operated on the Property, including, but not limited to, taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid prior to Closing. Except for obligations for which provisions are made in this Contract for prorating at Closing, there will be no obligations of Seller with respect to the Property outstanding as of Closing.

(5) Litigation. There is no pending or, to the knowledge of Seller, threatened litigation, condemnation, or assessment affecting any of the Property. Seller shall promptly advise Purchaser of any litigation, condemnation or assessment affecting the any of Property which is threatened or instituted after the Effective Date.

(6) Hazardous Materials. Except as otherwise disclosed in writing by Seller to Purchaser prior to the Effective Date, to the knowledge of Seller, the Property (including the improvements located thereon) does not contain any Hazardous Materials (defined below). For purposes of this Contract, the term "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the Effective Date, or subsequently enacted.

(7) Surface Use. No party has any right to use the surface of the Land or otherwise, Seller shall provide a surface use waiver at Closing under which any party which has any surface use rights, including any mineral owner or lessee, waives any right to use the surface of the Land.

(8) Operation of the Property. After the Effective Date until the Closing Date, Seller shall (a) operate the Property in the same manner as the Property has been operated, and (b) maintain the Property in the same condition and in the same manner as existed on the Effective Date, except for ordinary wear and tear and any casualty loss.

B. Remedies. If Purchaser discovers prior to Closing that any of Seller's warranties or representations has been misrepresented or is inaccurate, Purchaser may notify Seller promptly in writing, and Seller shall correct or remedy the misrepresentation or inaccuracy at Seller's expense. If the misrepresentation or inaccuracy is not remedied prior to Closing, upon written notice to Seller, Purchaser may: (i) proceed to Closing without waiving any claim for breach of warranty or misrepresentation; or (ii) delay Closing until ten (10) days after the misrepresentation or inaccuracy is remedied or such other period necessary for Seller to cure such issue; or (iii) exercise Purchaser's remedies for default by Seller under this Contract including terminating this Contract and being refunded all Earnest Money and any other fees paid to Seller. If Purchaser discovers after Closing that any of Seller's warranties or representations has been misrepresented or is inaccurate, Purchaser may notify Seller promptly in writing, and Seller may attempt to correct or remedy the misrepresentation within thirty (30) days of such notice and to the extent Seller is unable to remedy such warranty or misrepresentation then Purchaser may pursue any remedy available at law or in equity except that Purchaser may not pursue any punitive, speculative, or consequential damages. The Parties agree that Seller will incur no liability or damages pursuant to this Section 7 for any claim or cause of action asserted more than three hundred sixty five (365) days after the date of the Closing. The representations and warranties herein shall survive Closing.

C. **NO OTHER WARRANTIES AND DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED(S), PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS, AND PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (D) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, OR (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED CONVEYING THE PROPERTY TO PURCHASER, PURCHASER UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS PURCHASER MIGHT HAVE (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY) REGARDING THE NATURE, CONDITION OR SUITABILITY OF THE PROPERTY OR ANY FORM OF WARRANTY WITH RESPECT TO THE PROPERTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING.**





8. **NONCONFORMANCE.** Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any limitations or permitted uses of the Property. Purchaser acknowledges that the current use of the Property or any improvements located on the Property (or both) may not conform to applicable Federal, State or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, requirements of the Americans with Disabilities Act, wetlands restrictions and other matters may have a significant economic impact upon the intended use of the Property by Purchaser. However, if Seller is aware of nonconformance with any Federal, State or local laws, ordinances, codes or regulations, Seller shall disclose same to Purchaser. Purchaser is not relying upon any warranties or representations of Seller or the Broker concerning the permitted uses of the Property or with respect to any nonconformance of the Property.

9. **INSPECTION.**

A. **Inspection.** Purchaser shall have a period of sixty (60) days after the Effective Date (the "Inspection Period"), subject to the conditions listed in Section 9(B) below, to inspect the Property and to conduct feasibility studies regarding Purchaser's intended use of the Property. Purchaser's studies may include without limitation: (i) core borings; (ii) environmental and architectural tests and investigations; (iii) physical inspections of all improvements, fixtures, equipment, subsurface soils, structural members, and personal property; and (iv) examination of plans specifications, manuals, and other documents relating to the construction and condition of the Property. Purchaser and Purchaser's agents employees, consultants and contractors shall have the right of reasonable entry onto the Property during normal business hours, and upon reasonable advance notice to Seller and/or Seller's tenants, for purposes of the inspections, studies, tests and examinations deemed necessary by Purchaser. All inspections, studies, tests and examinations performed hereunder shall be at Purchaser's expense. If Purchaser terminates this Contract, Purchaser shall deliver copies of third party studies it obtains on the Property to the Seller, all of which shall be delivered without representation or warranty by Purchaser. Purchaser shall not, however, be required to deliver to Seller copies of any reports or other "work product" prepared or developed by Purchaser or any of its employees or affiliates.

B. **Report.** Prior to the expiration of ten (10) days following the Effective Date, Seller shall deliver or cause to be delivered to Purchaser, copies of any and all other documents, instruments and information known to Seller or in Seller's actual possession or control and/or received pursuant to or in connection with the Property including relating to the condition, status, and approvals of the Land including, without limitation, all platting and zoning applications and proposed zoning documents, contracts, development agreements, permits, annexation, approvals, compliance, declarations, restrictions, preliminary plans, site plans, conceptual plans, preliminary plats, final plats, topographical maps, soil tests, inspection reports, environmental reports, flood plain information and building restrictions and any and all documents creating, evidencing, governing or created by or for any property or homeowners' association affecting, governing or relating to the Land or the Lots. Seller shall use its best efforts to cause any soils tests and environmental reports, if any, to be reissued and/or updated at Purchaser's cost (subject to Purchaser's approval prior to such cost being incurred), and to have reliance letters issued on any existing soils tests and environmental reports, to Purchaser relating thereto, at no cost to Purchaser.

C. Termination. If Purchaser determines, in Purchaser's sole discretion, no matter how arbitrary, that the Property is not in satisfactory condition or is not suitable for Purchaser's intended use or purpose, or if Purchaser for any reason does not desire to proceed with the acquisition of the Property, then Purchaser may terminate this Contract by delivering a written notice to Seller on or before the last day of the Inspection Period, in which event, the Earnest Money, other than the Independent Consideration, shall be promptly returned by the Title Company to Purchaser and neither party shall have any further rights or obligations under this Contract (except for those which may expressly survive the termination of this Contract).

D. Restoration. If the transaction described in this Contract does not close through no fault of Seller, and the condition of the Property was altered due to tests and inspections performed by Purchaser or on Purchaser's behalf, Purchaser must restore the Property to its original condition. Purchaser shall not permit any liens or encumbrances to arise against the Property in connection with or as a result of such inspections, studies, or investigations. **PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS OF AND FROM ANY AND ALL LOSSES, LIABILITIES, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS OF COURT), DAMAGES, LIENS, CLAIMS (INCLUDING, WITHOUT LIMITATION, MECHANICS' OR MATERIALMEN'S LIENS OR CLAIMS OF LIENS), ACTIONS AND CAUSES OF ACTION (COLLECTIVELY, "CLAIMS") ARISING FROM OR RELATING TO PURCHASER'S (OR PURCHASER'S AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR REPRESENTATIVES) ENTERING UPON THE PROPERTY TO TEST, STUDY, INVESTIGATE, OR INSPECT THE PROPERTY, WHETHER PURSUANT TO THIS SECTION 9, OR OTHERWISE, UNLESS DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER.** Purchaser will not be required to indemnify, defend or hold Seller harmless of or from any condition affecting any of the Property prior to Purchaser's entry thereon. This Section 9(E) shall survive termination of this Contract or a Closing of the transaction contemplated hereunder.

E. Extension. Purchase may extend the Inspection Period for an additional thirty (30) days upon the delivery to the Title Company of an additional Earnest Money deposit of Five-Thousand and 00/100 Dollars (\$5,000.00) ("Additional Earnest Money" together with the initial "Earnest Money" referred to collectively as "Earnest Money") prior to the expiration of the Inspection Period which shall be applicable to the Purchase Price.

10. CASUALTY LOSS; CONDEMNATION. All risk of loss to the Property shall remain upon Seller prior to the Closing. If, prior to the Closing, any portion of the Property is damaged or destroyed by fire or other casualty, or subject to a condemnation or taking or the threat of a condemnation or taking, Seller shall have a duty to notify Purchaser, and Purchaser may either terminate this Contract by delivering a written termination notice to Seller or elect to close. If the transaction is to proceed to Closing, there shall be no reduction in the Purchase Price, but Seller shall assign to Purchaser all of Seller's right and interest in any insurance proceeds and/or condemnation awards, as applicable, plus an amount equal to any insurance deductible.

11. ASSIGNMENT. Purchaser may assign this Contract without the prior written consent of

Seller. This Contract shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties; however, Seller may not assign this Contract without Purchaser's consent.

12. CLOSING.

A. Closing Date. The closing of the transaction described in this Contract (the "Closing") shall be held on the date which is sixty (60) days following the last day of the Inspection Period (the "Closing Date"), at the offices of the Title Company. Purchaser may extend the Closing Date for two (2) thirty (30) day periods upon the delivery to the Title Company of a non-refundable extension fee equal to Ten Thousand and 00/100 Dollars (\$10,000.00) for each extension prior to the applicable Closing Date. The extension fee shall be applicable to Purchase Price at Closing.

B. Seller's Closing Documents. At the Closing, Seller shall deliver to Purchaser at Seller's expense:

(1) A duly executed Special Warranty Deed (the "Deed"), in a form reasonably acceptable to Seller and Purchaser, conveying the Property in fee simple according to the legal description as prepared by the surveyor as shown on the Survey, subject only to the Permitted Exceptions;

(2) The Title Policy issued by the underwriter for the Title Company pursuant to the Title Commitment, subject only to the Permitted Exceptions, in the full amount of the Purchase Price, dated as of the date of Closing, and with the survey exception deleted except as to "shortages in area;"

(3) Bill of Sale conveying the personal property, if any, including all Intangible Property and other items described in section 2 which are not considered part of the Land;

(4) Possession of the Property;

(5) Evidence of Seller's authority and capacity to close this transaction;

(6) Assignment of all Intangible Property;

(7) Any required surface use waiver;

(8) All other documents reasonably required in this Contract or by the Title Company from Seller to close this transaction.

C. Purchaser's Closing Documents. At the Closing, Purchaser shall deliver to Seller at Purchaser's expense:

(1) The Cash Payment;



(2) The Note in the principal amount of the Purchase Price less any and all Earnest Money deposits and applicable fees which have been remitted and the Deed of Trust;

(3) Evidence of Purchaser's authority and capacity to close this transaction; and

(4) All other documents reasonably required by the Title Company from Purchaser to close this transaction.

D. Closing Costs. The base title policy premiums shall be paid by Seller and any endorsements or extended coverage shall be paid by Purchaser. Any survey costs shall be allocated to the party listed at Section 5(A). The Seller shall pay the costs of recording any releases, and the Purchaser shall pay the cost of recording the deed and any lender costs on its side of the transaction. The escrow fees shall be equally split between the parties. All other costs shall be allocated among the Parties as is customary for a transaction of this character in the county where the Property is located, or as otherwise agreed.

E. Prorations. Prior to Closing, Seller shall pay prior to delinquency all taxes and expenses applicable to the Property. Ad valorem taxes applicable to the Property shall be prorated at the Closing effective as of the Closing date. If the Closing occurs before the tax rate is fixed for the current tax year, the apportionment of the taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference between estimated taxes for the current tax year and the actual taxes paid by Purchaser shall be adjusted equitably between the parties upon proof of payment of the taxes by Purchaser. This provision shall survive the Closing.

F. Rollback Taxes. Seller shall pay Purchaser any rollback taxes (i) within the three (3) year period immediately following the calendar year in which the Closing occurs; and (ii) attributable to the period that Seller owned the applicable portion of the Property. For purposes of calculating the Additional Tax, Seller shall be deemed to have owned the applicable portion of the Property for the five year period immediately preceding the Closing Date. Appropriate prorations shall be made in the calculation of any rollback taxes payable by Seller hereunder based upon the date on which the rollback taxes are actually triggered with respect to the Property. Alternatively, Purchaser may reduce the payment on the Note by the amount of Rollback Taxes assessed against the Property and owed by Seller following Closing. This provision shall survive Closing.

G. Foreign Person Notification. If Seller is a Foreign Person, as deemed by the U.S. Internal Revenue Code, or if Seller fails to deliver to Purchaser a non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code, then Purchaser may withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the withheld proceeds to the Internal Revenue Service together with appropriate tax forms. The required affidavit(s) from Seller(s) shall include (1) a statement that Seller is not a foreign person, (2) the U. S. taxpayer identification number(s) of Seller(s), and (3) other information required by Section 1445 of the Internal Revenue Code.

13. DEFAULT.

A. Purchaser's Remedies. If Seller fails to perform its obligations under this Contract for any reason (except resulting from Purchaser's default or the termination of this Contract by Seller pursuant to a right to terminate as set forth in this Contract) which continues for more than five (5) business days following delivery of written notice of such default from Purchaser to Seller, Seller shall be in default and Purchaser may elect one of the following, as Purchaser's sole remedies: (1) enforce specific performance of this Contract; or (2) terminate this Contract and receive a refund of the Earnest Money along with any extension fees paid, other than the Independent Consideration, immediately. In the event of any breach of the representations or warranties in this Contract discovered after Closing or if Purchaser elects to enforce specific performance and such remedy is not available as a result of Seller's actions, such as conveying the Property to a third party, then Purchaser may pursue any legal remedy available at law or in equity.

B. Seller's Remedies. If Purchaser fails to perform its obligations under this Contract for any reason (except resulting from Seller's default or the termination of this Contract by Purchaser pursuant to a right to terminate as set forth in this Contract) which continues for more than five (5) business days following delivery of written notice of such default from Seller to Purchaser, Purchaser shall be in default and Seller may, as Seller's sole remedy, terminate this Contract, in which event, the Earnest Money along with any extension fees paid by Purchaser shall be delivered to Seller as liquidated damages for the Purchaser's breach of this Contract, thereby releasing Purchaser from this Contract.

14. INTENTIONALLY OMITTED.

15. MISCELLANEOUS PROVISIONS.

A. Effective Date. The term "Effective Date" means the later of the date the Contract is marked receipted by the Title Company (if any) or date of execution of the last party executing this Contract and if not dated then the date the fully executed Contract is received by the first party which executed the Contract.

B. Notices. All notices and other communications required or permitted under this Contract must be in writing and shall be deemed delivered on the earlier of: (i) actual receipt, if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("Fax") with a transmission confirmation receipt; or (iii) three (3) business days after deposit in the United States Mail as required below. Notices may be transmitted by Fax to the Fax telephone numbers specified below, if any. Notices delivered by mail must be deposited with the U.S. Postal Service and sent by certified mail return receipt requested with postage prepaid, and properly addressed to the intended recipient at the address set forth below. Any party may change its address for notice purposes by delivering written notice of its new address to all other parties in the manner set forth above. For the purposes of notice, the addresses of the parties shall be as follows:

Purchaser: Titan Investments, LLC  
13901 Midway Road. Ste 102.

Dallas, Texas 75244  
TBarton@jnjdevelopment.com

With a Copy to: The Marx Firm  
Attn: Randy Marx  
2999 Turtle Creek Blvd.  
Dallas, Texas 75244  
Randy@themarxfirm.com

Seller: Kingdom Road Equities, LLC  
8650 Freeport Pkwy, Suite 100  
Irving, TX 75063  
Frank May  
Frankmay683@gmail.com

With a Copy to:

C. Forms and Construction. This Contract is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Purchaser hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Contract that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Contract or any earlier draft of the same.

D. Attorneys Fees. The prevailing party in any legal proceeding brought in relation to this Contract or transaction shall be entitled to recover from the non-prevailing parties court costs, reasonable attorneys' fees and all other reasonable litigation expenses.

E. Integration. This Contract contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement of the parties hereto. The parties agree that there are no oral or signed agreements, understandings, representations or warranties made by the parties which are not expressly set forth herein.

F. Survival. Any warranty, representation, covenant, condition or obligation contained in this Contract not otherwise consummated at the Closing along with any rights and obligations under any promissory note and deed of trust agreed to as part of any Seller financing will survive the Closing of this transaction and nothing herein shall act as an election, release, or waiver of any legal or equitable remedies related thereto.

G. Binding Effect. This Contract shall inure to the benefit of and be binding upon the parties to this Contract and their respective heirs, legal representatives, successors and assigns.

H. Time for Performance. Time is of the essence under each provision of this Contract. If any date of performance hereunder falls upon a Saturday, Sunday or recognized holiday, such date will be deemed moved forward to the next day which is not a Saturday, Sunday or recognized holiday.

I. Right of Entry. Subject to the requirements of Section 9, upon reasonable advance notice and during normal business hours, Purchaser, Purchaser's representatives and the Broker have the right to enter upon the Property prior to Closing for purposes of viewing, inspecting and conducting studies of the Property, so long as they do not unreasonably interfere with the use of the Property by Seller or any tenants, or cause undue damage to the Property.

J. Business Day. The term "business day" shall mean days elapsed exclusive of Saturday, Sunday or recognized holidays.

K. Governing Law. This Contract shall be construed under and governed by the laws of the State of Texas, and unless otherwise provided herein, all obligations of the parties created under this Contract are to be performed in the county where the Property is located.

L. Severability. If any provision of this Contract is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal or unenforceable provision shall not affect any other provisions, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Contract.

M. Counterparts. This Contract may be executed in a number of identical counterparts. Each counterpart is deemed an original and all counterparts shall, collectively, constitute one agreement.

N. Gender: Number. Unless the context requires otherwise, all pronouns used in this Contract shall be construed to include the other genders, whether used in the masculine, feminine or neuter gender. Words in the singular number shall be construed to include the plural, and words in the plural shall be construed to include the singular.

17. **CONTRACT AS OFFER.** The execution of this Contract by the first party to do so constitutes an offer to purchase or sell the Property on the conditions contained in this Contract. Unless within ten (10) business days from the date of execution of this Contract by the first party, this Contract is accepted by the other party by signing the offer and delivering a fully executed copy to the first party, the offer of this Contract may be rescinded and the Earnest Money, if any, shall be promptly returned to Purchaser.

*[Signature Page to Follow]*

EXECUTED on the dates stated below, to be effective on the Effective Date.

**SELLER:**

Kingdom Road Equities LLC

By: 

Name: Frank May

Title: Authorized Signator

1/17/2022

**PURCHASER:**

Titan Investments, LLC

By: 

Name: Jim Barton

Title: President

1/17/2022



**Title Company Receipt and Acknowledgement**

The Title Company acknowledges receipt of the Contract on \_\_\_\_\_  
20\_\_\_\_ and agrees to accept the Earnest Money, when deposited, subject to the terms and  
conditions set forth in this Contract and shall notify the parties once the Earnest Money is received.

TITLE COMPANY:

---

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit "A"**  
**Property Legal Description**

**Tract 1**

BEING a tract of land situated in the J. Stronker Survey, Abstract No. 1156, City of Denison, Grayson County, Texas, being part of Tract 12 - Rural - (Main Hospital Tract) conveyed to OHS of Texas, Inc., by deed recorded in Volume 472, Page 443 of the Deed Records, Grayson County, Texas (DRGCT), and being all of Lots 3 and 4 of the Texoma Industrial Insulation Addition, recorded in Volume 21, Page 147, Plat Records, Grayson County, Texas (PRGCT), with the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod with plastic cap found on the north line of Martin Luther King Street, a variable width public right-of-way (also known as State Highway 91), for the southeast corner of Lot 1, Block 1, North Hill Plaza Addition, Phase One, recorded in Volume 21, Page 54 PRGCT;

THENCE along the common line of Lot 1, Block 1, North Hill Plaza Addition, Phase One, the following:

N 00°25'22" E, 282.60 feet;

S 89°10'11" W, 101.06 feet;

N 0°23'53" W, 40.92 feet;

A tangent curve to the left having a central angle of 28°31'45", a radius of 18.00 feet, a chord of N 15°39'46" W = 6.87 feet, an arc length of 8.96 feet;

N 89°06'54" W, 169.39 feet;

And S 00°53'06" W, 292.57 feet to the north line of Martin Luther King Street;

THENCE N 88°35'39" W, 73.20 feet along the north line thereof;

THENCE continuing along the north line thereof, around a tangent curve to the right having a central angle of 17°28'34", a radius of 807.50 feet, a chord of N 79°51'22" W = 246.30 feet, an arc length of 246.30 feet to the southeast corner of Lot 2, Taxoma Industrial Insulation Addition;

THENCE N 01°00'37" E, 925.62 feet along the east line of Lot 2, and of a tract conveyed to JF-Had Denison, LLC, recorded in Volume 4849, Page 144 DRGCT, to a 1/2" iron rod with plastic cap found on the south line of Memorial Drive, a variable width public right-of-way;

THENCE S 88°51'21" E, 400.80 feet along the south line of Memorial Drive to a point for the upper southwest corner of a right-of-way conveyed by deed to the City of Denison by deed recorded in Volume 1921, Page 639 DRGCT;

THENCE along the south and west line of said dedication, the following:

N 85°08'37" E, 59.16 feet;

N 89°57'15" E, 341.31 feet;

A tangent curve to the right having a central angle of 71°57'52", a radius of 58.30 feet, a chord of S 64°03'49" E = 80.26 feet, an arc length of 85.75 feet;

And S 18°04'54" E, 517.42 feet to the north line of a tract conveyed to Staebore, recorded in Volume 5435, Page 347 DRGCT;

THENCE S 89°14'42" W, 81.63 feet along the north line thereof;

THENCE S 01°08'35" W, 475.00 feet along the west line thereof to the north line of Martin Luther King Street;

THENCE N 88°57'54" W, 362.72 feet along the north line thereof to the POINT OF BEGINNING with the subject tract containing 853,691 square feet or 19.603 acres of land

## Tract 2

BEING a tract of land situated in the J. Streepert Survey, Abstr. No. 1156, City of Denison, Grayson County, Texas, being part of Tract 12 - Parcel A (Main Hospital Tract) conveyed to UMS of Texas, Inc., by deed recorded in Volume 4172, Page 482 of the Deed Records, Grayson County, Texas (DRGCT) and being all of Lot 13, Memorial Medical Addition, recorded in Volume 6, Page 28 PRGCT, with the subject tract being more particularly described as follows:

BEGINNING at a 3/8" iron rod found on the north line of Memorial Drive, a variable width public right-of-way, for the southwest corner of Lot 13 and the southeast corner of Lot 12, Memorial Medical Addition;

THENCE N 00°20'42" E, 174.50 feet along the common line thereof;

THENCE S 89°46'23" E, 70.00 feet along the north line of Lot 13 to the northeast corner thereof;

THENCE S 88°46'59" E, 389.59 feet through Tract 12-Parcel A to a 1/2" iron rod found for an inset northeasterly corner thereof being a southwesterly corner of a tract conveyed to Lifesearch Partners, recorded in Volume 2067, Page 737 DRGCT;

THENCE S 89°26'44" E, 443.65 feet along the south line thereof to the northwest corner of a tract conveyed to the First Baptist Church of Denison, Texas, recorded in Volume 4289, Page 603 DRGCT;

THENCE S 30°14'38" E, 661.40 feet along the west line thereof to the north line of Denison Medical Park Clinic on Memorial Drive, an addition recorded in Volume 17, Page 111 PRGCT;

THENCE N 88°14'58" W, 173.45 feet along the north line thereof to the east line of a right-of-way conveyed by deed to the City of Denison by deed recorded in Volume 1921, Page 539 DRGCT;

THENCE along the east and north line of said dedication, the following:

N 16°04'54" W, 424.35 feet;

A tangent curve to the left having a central angle of 71°57'52", a radius of 138.30 feet, a chord of N 54°03'48" W - 162.51 feet, an arc length of 173.77 feet;

S 82°57'15" W, 344.75 feet;

And S 84°30'47" W, 55.86 feet to the northwest corner of said dedication and the southeast corner of Lot 13;

THENCE N 88°10'46" W, 70.00 feet along the common line thereof to the POINT OF BEGINNING with the subject tract containing 2/6,510 square feet or 6.355 acres of land.

# Receipts and Disbursements Ledger

Printed at 02:20 PM, Nov 21, 2022

Buyer/Borrower: **Titan Investments, LLC, a Texas limited liability company**  
 Seller: **Patricia Talbot Butler**  
 Lender:  
 Closing Date: Open Date: **03/08/2022**  
 File Number: **2201031-VVJL**  
 Property Address: **10932 CR 506, Venus TX**  
 Closer:  
 Primary Bank: **Prosperity Bank - Valley View Comm#51**

**Prosperity Bank - Valley View Comm#51**

Receipts						
Trans ID:	Payor	Description:	Type of Funds	Deposit Date	Amount	
2201031-VVJL-1	Broadview Holdings	Earnest Money	Check	03/10/2022	5,670.00	C
		<b>Total</b>			<b>5,670.00</b>	
2201031-VVJL-2	Broadview Holdings	Earnest Money	Check	03/10/2022	10,000.00	C
		<b>Total</b>			<b>10,000.00</b>	
2201031-VVJL-3	MXBA LLC	Extension Fee	Check	07/11/2022	60,000.00	C
		<b>Total</b>			<b>60,000.00</b>	
2201031-VVJL-4	MXBA LLC	Extension Fee check returned	NSF Check	07/14/2022	(60,000.00)	C
		<b>Total</b>			<b>(60,000.00)</b>	
2201031-VVJL-5	Broadview Holdings	Extension Fee	Wire	07/18/2022	60,000.00	C
		<b>Total</b>			<b>60,000.00</b>	
2201031-VVJL-6	Broadview Holdings	Extension Fee	Wire	07/29/2022	60,000.00	C
		<b>Total</b>			<b>60,000.00</b>	
		<b>Total Receipts</b>			<b>135,670.00</b>	

Disbursements						
Check #:	Payee	Description:	Type of Funds	Check Date	Amount	
Wire	Nancy Raesz	15% EM Release to Seller	Wire	03/15/2022	1,500.00	C
		<b>Total</b>			<b>1,500.00</b>	

Prosperity Bank - Valley View Comm#51

Disbursements						
Check #:	Payee	Description:	Type of Funds	Check Date	Amount	
Wire	Patricia Butler					
		15% EM Release to Seller	Wire	03/15/2022	1,500.00	C
		<b>Total</b>			<b>1,500.00</b>	
Wire	James Tolbert, Jr.					
		15% EM Release to Seller	Wire	03/16/2022	1,500.00	C
		<b>Total</b>			<b>1,500.00</b>	
W-UC000478	Broadview Holdings					
		return of \$60,000 extension	Wire	07/22/2022	60,000.00	C
		<b>Total</b>			<b>60,000.00</b>	
	Patricia Butler, Melinda Barnes, Nancy R					
		to be divided between heirs	Check	Not Issued	5,670.00	
		<b>Total</b>			<b>5,670.00</b>	
Wire	Chase Fielder					
		2nd Amendment	Wire	08/08/2022	10,950.00	C
		<b>Total</b>			<b>10,950.00</b>	
Wire	Nancy Raesz					
		2nd Amendment	Wire	08/08/2022	9,241.00	C
		<b>Total</b>			<b>9,241.00</b>	
Wire	Patricia Butler					
		2nd Amendment	Wire	08/08/2022	9,866.00	C
		<b>Total</b>			<b>9,866.00</b>	
Wire	James W. Tolbert					
		2nd Amendment	Wire	08/08/2022	9,243.00	C
		<b>Total</b>			<b>9,243.00</b>	
Wire	Christy Idrissi Barnes					
		2nd Amendment	Wire	08/08/2022	12,200.00	C
		<b>Total</b>			<b>12,200.00</b>	
Wire	Melinda L. Barnes					
		2nd Amendment	Wire	08/08/2022	12,200.00	C
		<b>Total</b>			<b>12,200.00</b>	
13706	Rick Vehon					
		Commission 2nd Amendment	Check	08/08/2022	1,800.00	C
		<b>Total</b>			<b>1,800.00</b>	
		<b>Total Disbursements</b>			<b>135,670.00</b>	

<b>Scheduled Disbursements:</b>	<b>135,670.00</b>
<b>Actual Disbursements:</b>	<b>130,000.00</b>
<b>Pre-Disbursements Balance:</b>	<b>0.00</b>
<b>Account Balance:</b>	<b>5,670.00</b>

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

*2201031-VVJL*

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1059

Date 3/8/2022

Pay To The Order Of Sendera Title

\$ \*\*5,670.00

Five Thousand Six Hundred Seventy and 00/100\*\*\*

Dollars

Sendera Title  
1800 Valley View Ln. #160  
Farmers Branch, TX 75234  
(972) 428-2855

Memo: Titan Investments (62.75 Acres Johnson County)



⑈000001059⑈ ⑆111925113⑆1024611⑈

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1139

Date 5/11/2022

Pay To The Order Of Title Partners LLC

\$ \*\*10,000.00

Ten Thousand and 00/100\*\*\*

Dollars

Title Partners LLC  
8325 Douglas Av STE 104  
Dallas, TX 75225  
(214) 361-2878

Memo: GF 2307948T Titan Investments LLC (E M 16.3 acres)



⑈000001139⑈ ⑆111925113⑆ 1024611⑈



THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1152

Date 5/19/2022

Pay To The  
Order Of Dooley & Associates

\$ \*\*5,000.00

Five Thousand and 00/100\*\*\*

Dollars

Dooley & Associates  
14228 Midway Road STE 214  
Dallas, TX 75244  
(972) 330-4455



Memo: Titan Investments-106266/40th Court, Ellis county

⑈000001152⑈ ⑆111925113⑆ 1024611⑈

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1152

Date 5/19/2022

Pay To The  
Order Of Dooley & Associates

\$ \*\*5,000.00

Five Thousand and 00/100\*\*\*

Dollars

Dooley & Associates  
14228 Midway Road STE 214  
Dallas, TX 75244  
(972) 330-4455



Memo: Titan Investments-106266/40th Court, Ellis county

⑈000001152⑈ ⑆111925113⑆ 1024611⑈

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1125

Date 4/29/2022

Pay To The Order Of Byron Walker

\$ \*\*15,000.00

Fifteen Thousand and 00/100\*\*\*

Dollars

Byron Walker, TBW Land Castle  
1201 Crisp Rd  
ENNIS, TX 75119  
(940) 626-9201

Memo: Earnest Money- Titan Investments (Walker Ranch)

⑈00000 1 1 25⑈ ⑆1 1 1 9 2 5 1 1 3⑆ 1 0 2 4 6 1 1⑈

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK. HOLD AT ANGLE TO VIEW

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

PM

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1126

Date 4/29/2022

Pay To The Order Of Byron Walker

\$ \*\*30,000.00

Thirty Thousand and 00/100\*\*\*

Dollars

Byron Walker, TBW Land Castle  
1201 Crisp Rd  
ENNIS, TX 75119  
(940) 626-9201

Memo: Earnest Money- Titan Investments (Walker Ranch)



⑈000001126⑈ ⑆111925113⑆ 1024611⑈

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

**Broadview Holdings**  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

*2201031-VVJL*

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1058

Date 3/8/2022

Pay To The Order Of Sendera Title

\$ \*\*10,000.00

Ten Thousand and 00/100\*\*\*

Dollars

Sendera Title  
1800 Valley View Ln. #160  
Farmers Branch, TX 75234  
(972) 428-2855

Memo: Titan Investments (62.75 Acres Johnson County)



⑈000001058⑈ ⑆111925113⑆ 1024611⑈

# EXHIBIT A-16

**PARTICIPATION AGREEMENT**

This Participation Agreement (“Agreement”) is made this \_\_\_\_ day of January, 2022 between **MARINE CREEK SP LLC**, a Delaware limited liability company (“Participant”), and **MARINE CREEK VENTURES LLC**, a Delaware limited liability company (“Owner”) (collectively referred to as the “Parties”).

A. WHEREAS, **MANSIONS APARTMENT HOMES AT MARINE CREEK LLC**, a Texas limited liability company (“*Seller*”, and related to Participant herein), and Owner (as “*Purchaser*” therein have entered into that certain Purchase and Sale Agreement dated on or about December 23, 2021 respecting that certain tract of land containing approximately **40.20 acres**, more or less, located in Tarrant County, Texas, generally located **at the intersection of Loop 820 and Huffines Boulevard, City of Fort Worth, County of Tarrant, State of Texas**, and depicted in **Exhibit A** attached hereto, and depicted in **Exhibit A** attached hereto (the “*Property*”) (the “Purchase and Sale Agreement”). The Property is currently planned to be development in three (3) phases, to include one or more multifamily residential communities and related infrastructure and amenities (the foregoing and related activities upon the Land, referred to herein as the “Development Project”, or at times simply, the “Project”).

B. WHEREAS, Owner’s acquisition and development of the Project would not be possible but for the sale of the Land and assignment of associated development rights identified in the Purchase and Sale Agreement as the Property, from Participant’s related entity, as Seller, to Owner, as the Purchaser, upon the terms and provisions set forth therein. In further consideration thereof, and expressly irrespective of any “entirety” or other provision contained in the Purchase and Sale Agreement, the parties hereto, expressly covenant and agree to the terms and provisions of this Participation Agreement, to among other things, expressly provide for the Participation Fee (as defined herein) to be paid by the Owner.

C. WHEREAS, both parties are experienced real estate developers who wish to participate in the development of the Project in accordance with the provisions hereof.

D. WHEREAS, consistent therewith, Owner has agreed to grant to Participant a right to participate in the Value Created (as defined herein) during the course of the initial development of the Project, and or arising from any near term sale or condemnation of all or any portion of the Property, all as more particularly set forth herein.

THEREFORE, for and in consideration of the foregoing premises and the respective agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated, Owner and Participant hereby covenant and agree as follows:

## AGREEMENTS

### ARTICLE I

#### Assignment; Participation Fee

1.01 Assignment; Payment Following Stabilized Occupancy. Owner agrees to pay to Participant twenty-five percent (25%) (the "**Applicable Percentage**") of the Achieved Increased Value (as defined herein) (the "**Participation Fee**") payable ninety (90) days following the date that any Phase of the Development achieves Stabilized Occupancy, or such earlier date as Participant may elect with no less than thirty (30) days prior notice to Owner ("**Payment Date**"). Stabilized Occupancy shall mean ninety (90%) percent occupancy for a trailing three-month period ("**Stabilized Occupancy**"). The amounts payable pursuant to this Agreement shall be in addition to the amounts due to Participant under the Purchase and Sale Agreement, and the amounts due to an affiliate of Participant, if any, under any development agreement respecting the Project.

1.02 Payment In The Absence of Stabilized Occupancy. In the event that Stabilized Occupancy is not achieved within three (3) years from the date hereof (for whatever reason), and Participant has not previously set a Payment Date, then on the thirtieth (30) day following such anniversary date, Owner shall pay to Participant the Participation Fee based upon a calculation that the Property had been sold for Fair Market Value on such anniversary date. Fair Market Value shall be as determined as such procedure is set forth in **Exhibit "B"** attached hereto. It is understood, acknowledged and agreed by the parties hereto that the provisions of this Section shall only apply in the event that the Property is not sold or exchanged and the Participation Fee not paid until that date which is three (3) years from the date hereof.

1.03 Definitions. Unless otherwise indicated, the capitalized defined terms used in this Agreement shall have the respective means set forth for such terms on **Exhibit "B"** attached hereto and incorporated herein by reference for all purposes as if set forth herein verbatim.

### ARTICLE II

#### Sale or Refinancing of the Property

2.01 Net Proceeds from Sale or Refinancing. **In the event of a Sale or Refinancing prior to the Stabilized Occupancy or Payment Date**, then Owner shall pay to Participant in cash an amount equal to the Applicable Percentage of the Net Proceeds (as a Participation Fee) from any Sale or Refinancing immediately following such Sale or Refinancing unless Section 2.02 is applicable.

2.02 Other Proceeds from Sale. In the event Owner shall receive a note or any other evidence of indebtedness in connection with any Sale, the Participation Fee shall be payable only on the cash portion of such Sale and Participant shall be entitled to receive an interest in Net Proceeds from such note equal to the Applicable Percentage. Owner shall execute and deliver to Participant (i) a Deed of Trust or other appropriate document covering such property in the same form as the **PARTICIPATION AGREEMENT**- Page 2



documents then evidencing the liens securing Owner's obligations under this Agreement to secure Owner's obligations under the profits participation agreement delivered pursuant to subparagraph (ii) below (or such other form as Participant may reasonably require); and (ii) a participation agreement in form and content identical to this Agreement, covering such note (or such other form as Participant may reasonably require).

2.03 Notice of Sale. Owner shall give Participant at least ten (10) days advance written notice of any contemplated Sale or Refinancing, and such notice shall include an executed copy of the contract of sale or loan commitment and shall set forth in detail the terms of such Sale or Refinancing and the identity of the actual contemplated purchaser or lender, including a description of the relationship, if any, which Owner has or will have with such purchaser or lender. Participant may elect to receive the Participation Fee directly from the title company closing such Sale or Refinancing and shall receive a copy of the closing statement for such transaction.

### ARTICLE III Exchange of the Property

3.01 Net Proceeds from Exchange. **In the event of an Exchange prior to the Stabilized Occupancy Date or Payment Date**, and if the Owner shall enter into a transaction to exchange the Property for a different property without the Participant's consent, then Owner shall pay to Participant in cash an amount equal to the the Applicable Percentage of the Net Proceeds (as a Participation Fee) from any Exchange immediately following the occurrence thereof unless Section 3.02 is applicable. For purposes of determining the amount of Net Proceeds from any Exchange, the property other than cash received in connection with such Exchange (hereinafter referred to as the "Exchange Property") shall be deemed to be cash in an amount equal to the greater of the Fair Market Value of the Exchange Property or the value allocated to the Exchange Property in the exchange agreement unless Owner elects to receive an interest in the Exchange Property pursuant to Section 3.02 hereof.

3.02 Other Proceeds from Exchange. In the event Owner shall receive a note or any other evidence of indebtedness in connection with any Exchange, Owner shall pay to Participant the amount which Participant would be entitled to receive if Owner had received cash in lieu of such note in an amount equal to the principal amount due under such note plus the amount, if any, by which the interest payable over the term of such note exceeds the Market Rate in effect at the time of such Exchange or Refinancing. At Participant's option, in Participant's sole and absolute discretion, Participant shall be entitled to receive an interest in Net Proceeds from the Exchange Property equal to the Applicable Percentage in lieu of receiving payment of Net Proceeds resulting from the Exchange. If Participant elects to receive an interest in the Exchange Property, Owner shall execute and deliver to Participant (i) a Deed of Trust or other appropriate document covering such property in the same form as the documents then evidencing the liens securing Owner's obligations under this Agreement to secure Owner's obligations under the profits participation agreement delivered pursuant to subparagraph (ii) below (or such other form as Participant may reasonably require); and (ii) a profits participation agreement in form and content identical to this

Agreement, covering the Exchange Property (or such other form as Participant may reasonably require).

3.03 Notice of Exchange. Owner shall give Participant at least thirty (30) days' advance written notice of any contemplated Exchange, and such notice shall include an executed copy of the exchange agreement, and shall set forth in detail the terms of such Exchange and a description of the relationship, if any, which Owner has or will have with any other parties to such transaction. Participant may elect to receive the Participation Fee directly from the title company closing such Exchange and shall receive a copy of the closing statement for such transaction.

ARTICLE IV  
Net Cash Flow from Operations

4.01 [Reserved].

ARTICLE V  
Significant Events

5.01 Damage or Destruction. In the event of damage to or destruction of all or any portion of the Property, the following provisions shall apply:

(a) So long as this Agreement remains in effect, Owner shall comply with all of the provisions of any Qualified Loan regarding insurance, repair and restoration of the Property, and in the absence thereof, shall reasonably insure, repair and restore the Property, in a manner consistent with customary standards for the management of similar projects in the market area.

(b) All insurance proceeds, if any, paid on account of any damage or destruction to the Property, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be first applied in the manner set forth in any Qualified Loan, and thereafter in a manner consistent with customary standards for the management of similar projects in the market area.

5.02 Condemnation. **In the event of Condemnation of all or any portion of the Property, prior to the Stabilized Occupancy Date or Payment Date**, the following provisions shall apply:

(a) If all of the Property shall be taken in Condemnation, the Condemnation award shall be applied and apportioned as and when received by Owner in the same manner as provided in Section 2.01 of this Agreement; and

(b) If less than all of the Property shall be taken in Condemnation, Owner shall comply with all of the provisions of any then Qualified Loan regarding repair and restoration of the Property. Owner shall promptly pay to Participant an amount equal to the Applicable Percentage of any Condemnation proceeds not used for repair and restoration of the Property.

ARTICLE VI  
General

6.01 Speculative Value. The Parties hereto hereby acknowledge that the entering into and or exercise of any rights by Participant provided under this Participation Agreement, and any payments that may be paid or payable to Participant from the Owner, as a result of such exercise, if any, are of speculative and uncertain value and are contingent upon various factors susceptible to fluctuations in market conditions. Owner and Participant acknowledge that presently it is not possible to determine either the value of the amounts, if any, Participant will receive hereunder, or subsequently, as a result thereof, and that it is possible that the rights granted Participant hereunder will be of no monetary value. Owner makes no representation or guaranty that any distributions from the Owner or proceeds from the sale or refinancing or other disposition of any of the Property, will ever occur or take place. Participant has not required that any fixed amount be paid to Participant pursuant to this Participation Agreement.

6.02 Time of Payment. Any amounts due Participant pursuant to the terms of this Agreement shall be paid to Participant immediately upon receipt by or on behalf of Owner except as otherwise specifically set forth herein.

6.03 Accounting. Immediately upon the occurrence of any Sale or Exchange as a result of which Net Proceeds are payable under this Agreement for any reason, Owner shall immediately provide Participant with a written statement, verified by Owner as to accuracy and completeness, breaking down by line item and category the calculation of Net Proceeds. Within three (3) days after receipt of Participant's written request therefor, Owner shall provide Participant with an additional verified statement setting forth the amounts attributable to such additional items based upon which Net Proceeds are calculated as are specified in Participant's request.

6.04 Books and Records. Participant shall from time to time during normal business hours have access to and may make copies of all Owner's books and records, contracts, invoices, bills pertaining to the Property, and claims for labor, materials, and services supplied for the Property. Participant shall have the right to audit such books and records, including calculations of Net Proceeds or Participation Fee. Owner shall keep full, true and accurate books and records of all revenues and expenses from the Property and permit Participant, at any time during normal business hours, to inspect, audit, review and make copies of all contracts, invoices, cancelled checks and books and records of Owner pertaining to the Property and/or the ownership and operation thereof and/or to any Sale or Exchange. This covenant contained in this paragraph shall survive payment of the Net Proceeds due Participant hereunder.

6.05 Payment of Undisputed Amounts. No matter when a final determination of the amount of Net Proceeds is made, Owner shall pay, immediately following any Sale or Exchange or other event pursuant to which Net Proceeds is due, all amounts which would be due pursuant to this Agreement if Owner's calculation of Net Proceeds were correct, based upon Owner's good faith calculations of such amount.

ARTICLE VII  
Restricted Transactions

7.01 Restricted Transactions. Owner shall not enter into any Sale or Exchange without the prior written consent of Participant. Participant's consent shall be in Participant's sole and absolute discretion unless all of the following conditions have been satisfied:

- (a) [reserved];
- (b) The Sale or Exchange covers all of the Property;
- (c) Participant is paid the amount which Participant would receive if a Sale occurred pursuant to which Net Proceeds were received in cash in an amount equal to the Fair Market Value of the Property; and

If all of the foregoing conditions have been satisfied, Participant's consent to any Sale or Exchange shall not unreasonably be withheld, but may be conditioned upon such terms as are set forth herein.

7.02 [Reserved].

ARTICLE VIII  
Covenants of Owner

Owner represents, warrants, covenants, agrees and undertakes that, during the term of this Agreement, Owner shall:

8.01 Performance of Obligations. Fully and timely observe and perform each and every obligation and covenant of Owner under this Agreement and the provisions of any Qualified Loan.

8.02 Notice of Other Default. Immediately notify Participant if Owner receives, from a party other than Participant, a notice of default or a notice which gives Owner an opportunity to cure a default under or pursuant to any deed of trust or other document pertaining to the Property, and allow Participant, at Participant's election and in Participant's discretion, to cure any default under any such deed of trust or other document (but Participant shall have no obligation to do so). Any advances made by Participant to cure any such default shall bear interest from the date of such advance at the same rate as the principal balance of the Note would bear in the event of an acceleration thereof, shall be secured by the Deed of Trust and shall be repayable by Owner upon demand by Participant;

8.03 No Action to Decrease Value. Not take any action that would cause the Property to decrease in value, or fail to take any reasonable action that would prevent the Property from decreasing in value;

8.04 Notice of Condemnation. Give Participant written notice that Condemnation proceedings have been asserted within five (5) days after Owner has been notified thereof;

8.05 Notice of Damage or Destruction. Give Participant written notice of any occurrence resulting in damage or destruction to the Property within five (5) days of such occurrence;

8.06 Maintain Insurance. Maintain all required Insurance Policies in full force and effect;

8.07 No Related Party Agreement(s). Not enter into any agreement with a Related Party to pay a real estate or other commission or any other fee in connection with a Sale or Exchange or any lease of the Property UNLESS SUCH IS ON FAIR MARKET TERMS;

8.08 No Further Encumbrances or Other Matters Which Affect Title. Not create or cause to be created any liens or other encumbrances or other matters which affect the Property in any manner (including but not limited to the filing of a condominium declaration covering the Property or the granting of easements or agreements pertaining to the Property) without the prior written consent of Participant **which consent shall not be unreasonably withheld, conditioned or delayed**;

8.09 No Sale or Transfer. Unless the prior written consent of Participant is first obtained, not sell, transfer, convey or otherwise dispose of the Property or any interest therein. Participant's consent shall be subject to and governed by the provisions of Article VII hereof entitled "Restricted Transactions";

8.10 No Fee. Not collect or receive any fee, commission, salary or other form of compensation in connection with the Sale or Exchange of the Property or operation of the Property UNLESS SUCH IS ON FAIR MARKET TERMS;

8.11 [Reserved];

8.12 Annual Operating Statement. If requested by Participant, furnish an annual operating statement to Participant within one hundred twenty (120) days after the close of each calendar year. Such annual operating statement shall show in detail the source and amount of income, expense and cash flow from the Property. The annual operating statements shall be in a form satisfactory to Participant and shall be certified by Owner as having been prepared in accordance with generally accepted accounting principles consistently applied on a cash basis and as being true, correct and complete; and

8.13 Further Assurances. Execute and deliver to Participant other instruments reasonably requested by Participant to secure and perfect the interests granted to Participant under this Agreement. Owner shall also execute and deliver to Participant any and all further assurances reasonably requested by Participant to evidence, perfect and protect the rights of Participant under this Agreement and shall do all other acts and things reasonably required by Participant to evidence, perfect and protect the rights of Participant under this Agreement.

ARTICLE IX  
Representations and Warranties

Owner represents and warrants that the execution of this Agreement does not violate or conflict with any other agreements affecting Owner or the Property or, to the best of Owner's knowledge, any provision of applicable law. Further, Owner hereby represents and warrants to Participant as follows:

9.01 Organization. Owner is a **limited liability company organized and existing under the laws of the State of Delaware**;

9.02 Authorization. Owner is duly authorized to execute and deliver this Agreement and is and will continue to be authorized to perform Owner's obligations under this Agreement;

9.03 Consents. No consent, approval, authorization or order of any court or governmental authority, or third party is required in connection with the execution and delivery by Owner of this Agreement or to consummate the transactions contemplated hereby;

9.04 Enforceable Obligations. This Agreement, when duly executed, will be the legal and binding obligation of Owner and enforceable in accordance with its terms;

9.05 Title to the Property. Owner holds good and indefeasible title to the Property free and clear of all liens and encumbrances, except as previously disclosed to and approved by Participant in writing; and

9.06 Other Representations and Warranties. All of the representations and warranties contained in the Loan Documents are true and correct.

ARTICLE X  
Default and Remedies

10.01 Owner Default. The term "Event of Default" shall include the occurrence of any one or more of the following events:

- (a) The failure by Owner to observe or perform any covenant or obligation of Owner contained in this Agreement within thirty (30) days after notice and demand to cure by the Participant;
- (b) The discovery by Participant that any representation or warranty made herein by Owner is false, misleading, erroneous or breached in any material respect; and/ or
- (c) The occurrence of an Event of Default as defined or described in any Qualified Loan.

10.02 Remedies for Owner Default. Upon the occurrence of an Event of Default, Participant may, at Participant's option, and without the requirement of demand, protest or notice of any kind

whatsoever, all of which are hereby expressly waived by Owner, do any one or more of the following:

- (a) Exercise any or all of the remedies of Participant under this Agreement; and/or
- (b) Exercise any remedies Participant may have at law or in equity including, without limitation, the right to bring a suit for specific performance of this Agreement against Owner.

10.02 [Reserved].

10.03 Waivers. No waiver by Participant of any Event of Default shall be deemed to be a waiver of any other then existing or subsequent Event of Default. No waiver by Participant of any right, remedy, power or privilege of Participant hereunder shall be considered a waiver of any subsequent right, remedy, power or privilege hereunder. No delay or omission by Participant in exercising any right, remedy, power or privilege hereunder shall impair such right, remedy, power or privilege of Participant or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such right, remedy, power or privilege of Participant exhaust the same or preclude other or further exercise thereof.

10.04 Cumulative Rights. All rights, remedies, powers and privileges available to Participant may be pursued separately, successively or concurrently at the sole and absolute discretion of Participant.

#### ARTICLE XI Miscellaneous

11.01 Rights in Property. Participant does not have, and nothing contained in this Agreement shall be construed to grant or to vest in Participant the actual fee title in or to the Property; though a Memorandum of this Agreement, in the form attached hereto as Exhibit C, shall be filed in the real property records where the Property is located.

11.02 Transfer of Rights. Participant may assign or encumber any of Participant's rights under this Agreement without the prior written consent of Owner.

11.03 No Partnership. Nothing contained in this Agreement is intended, nor shall it be construed, to create a partnership, agency or joint venture between the parties hereto or to render either of the parties hereto liable or responsible for the debts or obligations of the other, including, but not limited to, interest, taxes, losses or any other liability. Any term or condition of this Agreement to the contrary notwithstanding, Participant shall not have, and by Participant's execution and acceptance of this Agreement hereby expressly disclaims, any obligation, liability or responsibility for the management, conduct or operation of the business and affairs of Owner. Participant shall not have, has not assumed and, by Participant's execution and acceptance of this Agreement, hereby expressly disclaims any liability or responsibility of the payment or performance of any indebtedness or obligation of Owner, and no term or condition of this Agreement shall be construed

otherwise. Owner hereby expressly acknowledges and stipulates that no term or condition of this Agreement shall be construed so as to render the relationship between Owner and Participant other than that of borrower and lender. None of the covenants or other provisions contained in this Agreement shall give Participant the right or power to exercise control over the affairs and/or management of Owner, the power of Participant being limited to the exercise of the rights, remedies, powers and privileges of Participant referred to in this Agreement. Owner hereby indemnifies and agrees to hold Participant harmless from and against any cost, expense or liability incurred or suffered by Participant as a result of any assertion or claim of any obligation or responsibility of Participant for the management, operation and conduct of the business and affairs of Owner, or as a result of any assertion or claim of any liability or responsibility of Participant for the payment or performance of any indebtedness or obligation of Owner.

11.04 Losses. In no event and under no circumstances shall Participant be responsible for any deductions or any losses incurred in connection with the ownership, operation and maintenance of the Property.

11.05 Tax Benefits. Nothing in this Agreement shall be construed to confer upon Participant any tax benefits, depreciation allowances and the like in connection with the Property.

11.06 Governing Law and Venue. The laws of the State of Texas and the applicable laws of the United States shall govern the validity, enforcement and interpretation of this Agreement. Venue for enforcement of this Agreement shall be in Tarrant County, Texas, except to the extent that the location of the Property determines venue as a matter of law.

11.07 Integration, Modification and Waiver. This Agreement constitutes the complete and final expression of the agreement of the parties relating to the subject matter hereof, and supersedes all previous contracts, agreements and understandings of the parties, either oral or written relating to such subject matter. This Agreement cannot be modified, nor any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the party against whom enforcement of the modification or waiver is sought.

11.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

11.09 Construction. The headings which have been used throughout this Agreement have been inserted for convenience or reference only and to not constitute matter to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include the other gender, and singular to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not any particular provision, paragraph or article. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall



be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.10 Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby, but rather, the same shall be enforced to the greatest extent permitted law.

11.11 Sole Benefit. This Agreement has been executed for the sole benefit of Owner and Participant and the respective heirs, successors, assigns and legal representatives of Participant and Owner. No other party will have rights thereunder nor be entitled to assume that the parties hereto will insist upon strict performance of the mutual obligations arising under this Agreement.

11.12 Time of Essence. Time is of the essence of this Agreement.

11.13 Exhibits. All references herein to "Exhibits" are references to exhibits attached hereto, all of which are made a part hereof for all purposes the same as if set forth herein verbatim, it being understood that if any exhibit attached hereto which is to be executed and delivered contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein or in said exhibit prior to or at the time of the execution and delivery thereof.

11.14 Successors and Assigns. All of the terms of this Agreement apply to, are binding upon and inure to the benefit of the parties hereto, such parties' respective successors, assigns, heirs and legal representatives, all subsequent owners of the Property, and all other persons claiming by, through or under such parties.

11.15 No Waiver. Any failure by Participant to insist, or any election by Participant not to insist, upon strict performance by Owner of any of the terms, provisions or conditions of this Agreement will not be deemed to be a waiver of the same or of any other term, provisions or condition thereof, and Participant may at any time or times thereafter insist upon strict performance by Owner of any and all of such terms, provisions and conditions.

11.16 Recording. Owner understands that Participant may elect to record this Agreement or a memorandum hereof.

11.17 Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement by Participant, Participant shall be entitled to recover from Owner all costs incurred by Participant in connection with such action, including, without limitation reasonable attorneys' fees, which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.

11.18 Confidentiality. Each Party agrees (1) to keep this Agreement and the terms herein and the contents of all related documents and correspondence strictly confidential and to require its agents, employees, and representatives to keep this Agreement strictly confidential and (2) to not make any public announcements, press releases or similar disclosures with respect to the subject matter of this Agreement at any time without the written consent of the other Party, provided that nothing contained in this Agreement shall prohibit disclosure of any matter to the extent required by applicable law or order of any competent court or administrative agency or preclude the Parties from making disclosure to its agents, professionals, employees, attorneys, investors and prospective investors and lenders, provided each agrees to keep the information provided to them strictly confidential in accordance with the terms of this Section. This provision does not replace or supersede any previous agreement relating to confidentiality executed between the parties and shall be interpreted in conjunction with any such agreement. This provision shall survive the termination or expiration of this Agreement for a period of 2 years except that the obligation to protect confidential information shall survive for so long as one Party retains any confidential information of the other Party.

11.19 No Interpretation Against Drafter. This Agreement has been negotiated between unrelated Parties who are sophisticated and knowledgeable in the matters contained in this Agreement and who have acted in their own self interest. In addition, each Party has been represented by legal counsel or have been advised to consult with an attorney and had the opportunity to do so. Accordingly, any rule of law, as well as any other statute, law, ordinance, or common law principles or other authority of any jurisdiction of similar effect, or legal decision that would require interpretation of any ambiguities in this Agreement against the Party who has drafted it is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted pursuant to the applicable law, and this Agreement shall not be interpreted or construed against any party to this Agreement because that Party or any attorney or representative for that Party drafted this Agreement or participated in the drafting of this Agreement.

11.20 [Reserved].

11.21 Reserved.

11.22 Reserved.

11.23 Participant's Costs and Expenses. Owner shall pay to Participant the reasonable cost and expenses incurred by Participant (including, without limitation, reasonable attorneys' fees) in connection with any consent or approval required by this Agreement or requested by Owner pursuant to this Agreement and in connection with the determination of any amounts due Participant pursuant to this Agreement.

11.24 Reserved

11.25 Notices. Any notice, consent or approval required or permitted by this Agreement shall be in writing, and shall be effective and deemed to be delivered, whether actually received or not, upon the earlier to occur of (a) actual receipt by the addressee or (b) transmission by tested telex or telecopy to a receiving station located at the address set forth below, or (c) delivery to the address set forth below by courier or by overnight delivery providing for proof of delivery, addressed to the party to whom such notice is being given, or (d) deposit in the United States mail, postage prepaid, certified, return receipt requested, addressed to the party to whom such notice is being given at such party's address set forth below. Owner and Participant may change their respective addresses and the addresses of the parties to receive copies of such notices to another address within the continental United States, effective after ten (10) days' written notice to the other party in the manner hereinabove set forth, which notice shall specifically refer to this Agreement and shall state that it is being given for the purpose of changing the address for notices pursuant to this Agreement. Any notice given pursuant to this Agreement shall be effective upon delivery to Owner or Participant, as the case may be, in the manner set forth herein, and copies to the appropriate parties shall be a matter of courtesy only and shall not be a prerequisite to the effectiveness of any notice. The provisions of this section entitled "Notices" shall not be construed to require any notice or to affect or impair in any manner any waiver of notice of demand contained in this Agreement or any of the other Loan Documents.

If to Owner:

MARINE CREEK VENTURES LLC  
Attn: Barry W. DeGroot  
405 Golfway W Drive  
St. Augustine, FL 32095  
Tel: (904) 342-6880  
Email: [barry@dlpre.com](mailto:barry@dlpre.com)

If to Participant:

MARINE CREEK SP LLC  
13901 Midway Rd, Suite 102-243  
Dallas, Texas 75244  
Attn: Tim Barton, President  
Email: [tbarton@jmjdevelopment.com](mailto:tbarton@jmjdevelopment.com);

With a copy to:

Vance McMurry  
McMurry Law, PLLC  
508 W. Lookout Suite 14-74  
Richardson, Texas 75080  
Email: [vance@mcmurrylegal.com](mailto:vance@mcmurrylegal.com); and

The Marx Firm, LLC  
2999 Turtle Creek Blvd.  
Dallas, Texas 75219

**PARTICIPATION AGREEMENT- Page 13**

APP000397

Attention: Randy P. Marx, Esq.  
Telephone No.: 214/360-9343  
Telephone No.: 214/405-5120 Cell  
E-Mail Address: [randy@themarxfirm.com](mailto:randy@themarxfirm.com)

11.26 **SPECIAL PAYMENT**. In addition to the above, and irrespective of any other provision contained in the Purchase and Sale Agreement, or this Participation Agreement respecting the Property, in further consideration thereof, the Owner hereby covenants and agrees to pay to Participant, an additional fee, in the amount of \$1,781,250.00 upon the earlier of: (a) the commencement of construction upon any portion of the Land, or (b) 90 days from the date of this Agreement; which fee is fully earned in all regards.

**[Signature pages to follow]**

IN WITNESS WHEREOF, the parties hereto have fully executed this Agreement all as of the day and year first above set forth.

**OWNER**

**MARINE CREEK VENTURES LLC,**  
a Delaware limited liability company

By: 

\_\_\_\_\_  
Name: Barry W. DeGroot

Title: Vice President

Signed the 7 day of January, 2022

**PARTICIPANT**

**MARINE CREEK SP LLC**  
A Delaware limited liability company

By:

Name:

Title:

Signed the \_\_\_ day of December, 2021.

**EXHIBIT A**

(Legal Description/Depiction of the Land)

(as per the attached)

Exhibit A

Legal description of land:  
(Marine Creek)

TRACTS 1 & 2:

Being a tract of land situated in the L.H. Brown Survey, Abstract No. 213 and the T. & P.R.R.CO. Survey, Abstract No. 1472, in the City of Fort Worth, Tarrant County, Texas, being all of Lots 2 & 3, Block 3 of MARINE CREEK APARTMENTS, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 8820, Deed Records, Tarrant County, Texas, and being that same tracts of land conveyed to Marine Creek Land Partners, L.P. by Deed recorded in Instrument No. D212240140, Official Public Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for corner in the North line of Shadydell Drive (a 60' right-of-way), said point being the Southeast corner of Lot 1R, Block 3 of Marine Creek Apartments, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 8912, Map Records, Tarrant County, Texas;

Thence North 27 degrees 41 minutes 29 seconds West along the East line of said Lot 1R, Block 3, a distance of 950.88 feet to a 5/8 inch iron rod found for corner, said point being the Northeast corner of said Lot 1R, Block 3, and being in the South line of a tract of land conveyed to the City of Fort Worth by Deed recorded in Volume 7226, Page 721, Deed Records, Tarrant County, Texas;

Thence traversing along the exterior line of said City of Fort Worth tract as follows:

South 88 degrees 00 minutes 01 seconds East, a distance of 110.13 feet to a 5/8 inch iron rod found for corner;

North 86 degrees 00 minutes 56 seconds East, a distance of 866.87 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner;

North 80 degrees 57 minutes 49 seconds East, a distance of 320.54 feet to a 5/8 inch iron rod found for corner;

South 75 degrees 41 minutes 36 seconds East, a distance of 330.06 feet to a 5/8 inch iron rod found for corner;

North 61 degrees 12 minutes 35 seconds East, a distance of 247.16 feet to a 5/8 inch iron rod found for corner;

North 73 degrees 24 minutes 41 seconds East, a distance of 149.78 feet to a 1/2 inch iron rod found for corner;



South 32 degrees 31 minutes 58 seconds East, a distance of 210.60 feet to a 1/2 inch ironrod found for corner;

South 29 degrees 45 minutes 46 seconds West, a distance of 180.02 feet to a 1/2 inch ironrod found for corner;

South 83 degrees 07 minutes 55 seconds West, a distance of 99.67 feet to a 1/2 inch ironrod found for corner;

South 53 degrees 19 minutes 33 seconds West, a distance of 145.03 feet to a 1/2 inch ironrod found for corner;

South 38 degrees 18 minutes 42 seconds West, a distance of 364.19 feet to a 1/2 inch ironrod found for corner;

South 20 degrees 36 minutes 52 seconds West, a distance of 298.09 feet to a 1/2 inch ironrod found for corner;

North 79 degrees 37 minutes 24 seconds West, a distance of 388.02 feet to a 1/2 inch ironrod with a yellow cap stamped "TXHS" set for corner;

North 68 degrees 07 minutes 25 seconds West, a distance of 241.24 feet to a 5/8 inch ironrod found for corner, said point being in the Southeast line of aforementioned Shadydell Drive;

Thence North 49 degrees 05 minutes 44 seconds East along the Southeast line of said Shadydell Drive, a distance of 204.71 feet to a 5/8 inch iron rod found for corner, said point being in a curve to the left having a radius of 50.00 feet, a delta of 286 degrees 15 minutes 37 seconds and a chord bearing North 40 degrees 54 minutes 49 seconds West, a distance of 60.00 feet;

Thence along said curve to the left and Shadydell Drive, an arc length of 249.81 feet to a 5/8 inch iron rod found for corner;

Thence South 49 degrees 05 minutes 44 seconds West along the Northwest line of said Shadydell Drive, a distance of 412.80 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner, said point being in a curve to the left having a radius of 425.00 feet, a delta of 31 degrees 12 minutes 25 seconds, a chord bearing South 63 degrees 52 minutes 40 seconds West, a distance of 228.63 feet;

Thence in a Southwestern direction along the Northwest line of said Shadydell Drive and curve to the left, an arc distance of 231.48 feet to the Point of Beginning and containing a total of 1,238,758 square feet or 28.4380 acres of land.

**NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.**

**TRACT 3:**

Being a tract of land situated in the S.A. Hatcher Survey, Abstract No. 1792, in the City of Fort Worth, Tarrant County, Texas, being all of Lot 1, Block 2 of MARINE CREEK APARTMENTS, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 8820, Deed Records, Tarrant County, Texas, and being that same tract of land conveyed to Marine Creek Land Partners, L.P. by Deed recorded in Instrument No. D212240140, Official Public Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an "X" found for corner in the intersection of the North line of Shadydell Drive (a 60' right-of-way) and the East line of Huffines Boulevard (an 84' right-of-way), said point being in a curve to the left having a radius of 1992.00 feet, a delta of 05 degrees 38 minutes 38 seconds and a chord bearing North 24 degrees 51 minutes 49 seconds West, a distance of 196.14 feet;

Thence in a Northwestern direction along the East line of said Huffines Boulevard and curve to the left, an arc distance of 196.22 feet to an "X" found for corner;

Thence North 27 degrees 41 minutes 29 seconds West continuing along the East line of said Huffines Boulevard, a distance of 359.66 feet to an "X" found for corner in the intersection of the East line of said Huffines Boulevard and the South line of Shadydell Drive (a 60' right-of-way);

Thence North 62 degrees 18 minutes 52 seconds East along the South line of said Shadydell Drive, a distance of 50.00 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner, said point being in a curve to the right having a radius of 430.00 feet, a delta of 39 degrees 05 minutes 49 seconds and a chord bearing North 81 degrees 51 minutes 48 seconds East, a distance of 287.76 feet;

Thence in an Easterly direction along the South line of said Shadydell Drive and curve to the right, an arc distance of 293.42 feet to a 5/8 inch iron rod found for corner, said point being in a compound curve to the right having a radius of 485.00 feet, a delta of 30 degrees 28 minutes 27 seconds and a chord bearing North 85 degrees 43 minutes 27 seconds East, a distance of 254.93 feet;

Thence continuing in an Easterly direction along the South line of said Shadydell Drive and curve to the right, an arc distance of 257.96 feet to a 5/8 inch iron rod found for corner in the intersection of the South line of said Shadydell Drive and the West line of Shadydell Circle (a variable width right-of-way), said point being in a curve to the right having a radius of 425.00 feet, a delta of 89 degrees 03 minutes 04 seconds, a chord bearing South 24 degrees 04 minutes 09 seconds West, a distance of 596.04 feet;

Thence in a Southwesterly direction along the Western line of said Shadydell Circle, an arc distance of 660.55 feet to a 5/8 inch iron rod found for corner;

Thence South 68 degrees 47 minutes 56 seconds West continuing along the North line of said Shadydell Circle, a distance of 96.50 feet to the Point of Beginning and containing 232,838 square feet or 5.3452 acres of land.

**NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.**

**TRACT 4:**

Being a tract of land situated in the S.A. Hatcher Survey, Abstract No. 1792, in the City of Fort Worth, Tarrant County, Texas, being all of Lot 1, Block 1 of MARINE CREEK APARTMENTS, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 8820, Deed Records, Tarrant County, Texas, and being that same tract of land conveyed to Marine Creek Land Partners, L.P. by Deed recorded in Instrument No. D212240140, Official Public Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an "X" set for corner in the East line of Huffines Boulevard (an 84' right-of-way), said point being the Northwest corner of a tract of land conveyed to H&M Mackey, LLC by Deed recorded in Volume 15932, Page 274, Deed Records, Tarrant County, Texas, and also being in a curve to the left having a radius of 1992.00 feet, a delta of 08 degrees 12 minutes 02 seconds and a chord bearing North 16 degrees 12 minutes 56 seconds West, a distance of 284.87 feet;

Thence in a Northerly direction along the East line of said Huffines Boulevard and curve to the left, an arc distance of 285.11 feet to an "X" found for corner in the intersection of the East line of said Huffines Boulevard and the South line of Shadydell Circle (a variable width right-of-way);

Thence North 68 degrees 47 minutes 56 seconds East along the South line of said Shadydell Circle, a distance of 96.63 feet to a 5/8 inch iron rod found for corner, said point being in a curve to the right having a radius of 485.00 feet, a delta of 73 degrees 41 minutes 32 seconds and a chord bearing North 31 degrees 50 minutes 59 seconds East, a distance of 581.68 feet;

Thence in a Northeasterly direction along the Southeast line of said Shadydell Circle and curve to the right, an arc distance of 623.79 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner;

Thence North 85 degrees 39 minutes 55 seconds East, a distance of 2.75 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner in the West line of a tract of land conveyed to the City of Fort Worth by Deed recorded in Volume 7226, Page 721, Deed Records, Tarrant County, Texas;

Thence traversing along the exterior line of said City of Fort Worth tract as follows:

South 71 degrees 17 minutes 20 seconds East, a distance of 252.71 feet to a 1/2 inch iron rod with a yellow cap stamped "TXHS" set for corner;

**South 53 degrees 55 minutes 24 seconds East, a distance of 230.95 feet to a 1/2 inch ironrod with a yellow cap stamped "TXHS" set for corner;**

**South 33 degrees 45 minutes 40 seconds East, a distance of 121.55 feet to a railroad spike found for corner, said point being the North corner of Lot 1, Block 1 of CrosspointChurch Addition, an Addition to the City of Fort Worth, according to map recorded in Instrument No. D214243867, Deed Records, Tarrant County, Texas;**

**Thence South 59 degrees 13 minutes 24 seconds West along the North line of said Lot 1, Block 1 and passing through the common Northwest corner of said Lot 1, Block 1 and theNortheast corner of aforementioned H&M Mackey, LLC, a total distance of 947.19 feet to the Point of Beginning and containing 292,114 square feet or 6.7060 acres of land.**

**NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.**





**EXHIBIT "B"**  
**DEFINITIONS**

**"Achieved Increased Value"**, in connection with the determination of the Participation Fee to be paid upon a Payment Date following Stabilized Occupancy, shall mean (a) the Fair Market Value of the Project, less (b) the aggregate Capital Expenditures respecting the Project, including the total actual development costs of the Project, including all costs to acquire the Property pursuant to the Purchase and Sale Agreement, hard and soft costs to perform all horizontal and vertical development including construction of streets, utilities, lots, common areas, amenity center, homes, and other improvements, as well as interest expense on any Qualified Loan(s) (such development costs of the Project referred to herein as the "**Actual Development Costs**"), as well as the reasonable and customary transaction costs of the Sale, Exchange, or Condemnation. Actual Development Costs shall include soft costs paid to an affiliate of Owner, costs of capital, and any preferred return on capital contributions or similar preferred interest or return to Owner or any investor therein.

**"Capital Expenditure"** shall mean any reasonable replacement repair or improvement cost for any work relating to the Property, paid by Owner in cash.

**"Condemnation"** shall mean any action or proceeding brought for the purpose of any taking of the Property or any part thereof or interest therein by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

**"Exchange"** shall mean the transfer of all or any portion of the Property or any interest therein in exchange for other property in addition to or in lieu of cash (or a note or other evidence of indebtedness).

**"Fair Market Value"** shall mean the greater of (a) fair market value of the Property as agreed to by Owner and Participant (or pursuant to the Appraisal Procedure described below) or (b) the Sale Price of the Property in an arms' length transaction. In the event Owner and Participant are unable to agree upon Fair Market Value within fifteen (15) days after the Stabilized Occupancy of any Phase upon the Property, or the occurrence of any other event requiring such agreement, then Fair Market Value shall be determined by appraisers in accordance with the following procedures:

(a) The value to be determined by the appraisers hereinafter referred to shall be the fair market value of the Property, in fee simple as of the Appraisal Date (hereinafter defined) in question, unencumbered by any liens and including the value of all improvements on the Property, and the appraisal shall be made in accordance with the usual and normal appraisal methods in use at the time the appraisals hereinafter mentioned are made.

(b) Owner shall appoint in writing an appraiser to represent Owner, and Participant shall appoint in writing an appraiser to represent Participant, and each party shall notify the other of such appointment, not later than ten (10) days after the date of expiration of the fifteen (15) day period described above (such date of expiration being referred to as the "Appraisal Date"). Any appraiser so appointed hereunder (whether by a party hereto or by an appraiser so appointed, as hereinafter provided) shall have at least five (5) years' experience as a real estate appraiser in the county in which the Property is situated and shall be a member of the American Institute of Real Estate Appraisers or a similar organization of recognized national standing, or shall be on Participant's list of approved appraisers. If either party fails to notify the other of

the appointment of an appraiser (hereinafter referred to as the “Non-Appointing Party”) within such ten (10) day period, the other party (hereinafter referred to as the “Appointing Party”) may appoint a second appraiser provided that the Appointing Party delivers to the Non-Appointing Party notice of the appointment of a second appraiser before the Non-Appointing Party has delivered notice of the appointment of an appraiser to the Appointing Party.

(c) The two appraisers so appointed shall promptly meet and attempt to agree on a valuation. The determination of the value of the Property by the two appraisers shall be final and binding on both Owner and Participant. If the two appraisers fail to agree upon a valuation not later than forty-five (45) days after the Appraisal Date, they shall appoint a third appraiser not later than sixty (60) days after the Appraisal Date, but if they are unable to agree upon a third appraiser within such time, then they shall in lieu thereof each select the names of two willing persons qualified to be appraisers hereunder and from the four persons so named, one name shall be drawn by lot by a representative of Owner in the presence of a representative of Participant, and the person whose name is so drawn shall be the third appraiser. If either of the first two appraisers fails to select the names of two willing, qualified appraisers and to cooperate with the other appraiser so that a third appraiser can be selected by lot, as aforesaid, the third appraiser shall be selected by lot from the two appraisers which were selected by the other appraiser for the drawing.

(d) The third appraiser so selected shall immediately proceed to appraise the value for the Property, and the average valuation determined by all three appraisers shall be final and binding on both Owner and Participant as the value of the Property on the Appraisal Date in question. In the event, however, that the value of the Property determined by any one or more of the three appraisers varies by more than fifteen percent (15%) from the average valuation determined by all three appraisers, then the determination of such appraiser or appraisers (whose appraisal varied by more than fifteen percent (15%) shall be discarded for all purposes hereof and the average valuation determined by the remaining appraiser(s) shall be final and binding on both Owner and Participant. If all three appraisals vary by more than fifteen percent (15%) from the average of the three (3) appraisals, then the average shall be the Fair Market Value.

(e) The appraisers selected hereunder shall deliver a signed, detailed and complete written report on their appraisals, or the average of the three (3) appraisals, as the case may be, to Owner and Participant, which report shall be completed and delivered not later than ninety (90) days after the Appraisal Date. The fees of all appraisers shall be paid by Owner and shall not be deducted in determining the amount due Participant. Any vacancy in the office of the first appraiser shall be filled by Owner, any vacancy in the office of the second appraiser shall be filled by Participant. If either party fails to fill any vacancy within ten (10) days after such vacancy occurs, then such vacancy shall be filled by the other party, and any vacancy in the office of the third appraiser shall be filled by the first two (2) appraisers in the manner specified above for the selection of a third appraiser.

(f) If no final determination of the Fair Market Value of the Property has been made by the appraisers within ninety (90) days after the Appraisal Date in question, Owner or Participant may file suit in any court having jurisdiction to determine the matter by declaratory judgment or otherwise, and upon the assumption of jurisdiction by the court for determination of the matter, by entry of any preliminary or other order so reciting, the authority of the appraisers shall terminate, no determination by them having been made, and they shall not have authority thereafter to make any determination, but the determination shall then be made by that court and that suit.



**“Insurance Policies”** shall mean insurance policies covering the same types of risks, in the same amounts, and otherwise containing the same provisions, obtained and maintained, in a manner consistent with customary standards for the management of similar projects in the market area

**“Market Rate”** shall mean the Prime Rate (herein defined) plus two percent (2%) per annum. “Prime Rate” shall mean the Prime Rate of interest quoted from time to time in the Wall Street Journal or its successors, as publicly announced or published in Dallas, Texas.

**“Net Cash Flow from Operations”** means for any fiscal period, gross receipts paid to Owner in connection with the Property, including amounts previously set aside as reserves which the Owner and Participant determine are no longer necessary for such purpose, less cash payments disbursed for operating expenses, capital expenditures and loan payments.

**“Net Proceeds”**, in connection with the determination of the Participation Fee to be paid in the event of a Sale, Exchange, or Condemnation of the Property, shall mean (a) the total amount of consideration received or agreed to be received either directly or indirectly by Owner pursuant to an arms length transaction from the Sale, Exchange, or Condemnation of the Property or any part thereof, plus (b) the principal balance of any outstanding indebtedness of any nature to which any of the Property remains subject after such Sale, Exchange, or Condemnation (whether such amount is assumed by the purchaser, exchange or other party, or not) less (c) Actual Development Costs (as defined herein).

**“Property”** shall mean the real property described on **Exhibit “A”** attached hereto and incorporated herein, the improvements now or hereafter located thereon, any and all development rights and interests, any and all appurtenances, and all personal property which belongs to Owner now or hereafter located thereon or therein or used in connection therewith.

**“Qualified Loan”** shall mean any acquisition, development or construction loan and any other indebtedness of Owner, the proceeds of which were used to acquire, develop or construction the Project, which is secured by lien(s) against the Property or any part thereof.

**“Sale”** shall mean each sale, transfer, assignment, conveyance, or other disposition of, or the entering into of any contract for deed or similar agreement with respect to, all or any portion of the Property or any legal or equitable interest therein.

**EXHIBIT "C"**

Memorandum of Agreement

(in the form attached hereto)

M:\JMJ 20210111 OrchardSALEtoDLP\20211129 Sale to DLP\Seller conveyance docs\20220105 compilation\20211229a barry\Marine Creek Participation Agreement v1.docx

# EXHIBIT A-17

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
TC HALL, LLC**

**(Single-Member Texas Limited Liability Company)**

This Limited Liability Company Agreement of **TC HALL, LLC** (this "Agreement" or these "Regulations"), dated as of **March 10, 2022**, are adopted, executed and agreed to by the sole Member (as defined below).

1. **Formation.** **TC HALL, LLC**, a Texas limited liability company (the "Company") has been organized as a Texas limited liability company under the Texas Limited Liability Company Act, as amended from time to time (the "LLC Act") by filing of the Certificate of Formation for the Company in the office of the Secretary of State of Texas, on **July 16<sup>th</sup>, 2022**, file number **804648526**.

2. **Sole Member.** **MF CONTAINER, LLC, a Delaware Company**, shall be the sole member of the Company (the "Member").

3. **Contributions.** The Member has made an initial contribution to the capital of the Company in the amount of \$100.00. Without creating any rights in favor of any third party, the Member may, from time to time, make additional contributions of cash or property to the capital of the Company, but shall have no obligation to do so.

4. **Distributions.** The Member shall be entitled (a) to receive all distributions (including, without limitation, liquidating distributions) made by the Company, and (b) to enjoy all other rights, benefits and interests in the Company.

5. **Management. Management by Managers.** 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 Manager(s), who shall make all decisions and take all actions for the Company. No Member (other than a Manager or an Officer) has the right, power or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company. The Initial Manager(s) of the Company shall be: **MF CONTAINER, LLC**, a Delaware limited liability company.

Officers:

**SECTION 1. NUMBER; TITLES AND TERM OF OFFICE.** The officers of the Company shall be a President, one or more Vice-Presidents and a Secretary-Treasurer, and such other officers as the Manager(s) may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any two (2) or more offices may be held by the same person.

**LIMITED LIABILITY COMPANY AGREEMENT OF  
TC Hall, LLC- Page 1**

SECTION 2. SALARIES. The salaries or other compensation of the officers and agents of the Company shall be fixed from time to time by the Manager(s).

SECTION 3. REMOVAL. Any officer or agent or member of a committee elected or appointed by the Manager(s) may be removed by the Manager(s) whenever in its judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. VACANCIES. Any vacancy occurring in any office of the Company may be filled by the Manager(s).

SECTION 5. POWERS AND DUTIES OF THE CHIEF EXECUTIVE OFFICER. The President shall be the chief executive officer of the Company, unless the Manager(s) designates the Chairman of the Board as chief executive officer. Subject to the control of the Manager(s) and the executive committee (if any), the chief executive officer shall have general executive charge, management and control of the properties, business and operations of the Company with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company and may sign all certificates for shares of capital stock of the Company; and shall have such other powers and duties as designated in accordance with these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 6. POWERS AND DUTIES OF THE CHAIRMAN OF THE BOARD. If elected, the Chairman of the Board shall preside at all meetings of the shareholders and of the Manager(s); and the Chairman shall have such other powers and duties as designated in these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 7. POWERS AND DUTIES OF THE PRESIDENT. The President, unless the Manager(s) otherwise determines, shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company; and, unless the Manager(s) otherwise determines, he shall, in the absence of the Chairman of the Board or if there be no Chairman of the Board, preside at all meetings of the shareholders and (should he be a director) of the Manager(s); and the President shall have such other powers and duties as designated in accordance with these bylaws and as from time to time may be assigned to him by the Manager(s).

SECTION 8. VICE PRESIDENTS. In the absence of the Chairman of the Board (if any), or President, or in the event of their inability or refusal to act, a Vice President designated by the Manager(s) shall perform the duties of the Chairman of the Board (if any), or the President. In the absence of a designation by the Manager(s) of a Vice President to perform the duties of the Chairman of the Board (if any) or President, or in the event of their absence or inability or refusal to act, the Vice President who is present and

who is senior in terms of time as a Vice President of the Company shall so act. The Vice Presidents shall perform such other duties and have such other powers as the Manager(s) may from time to time prescribe.

SECTION 9. TREASURER. The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Company. He shall perform all acts incident to the position of Treasurer subject to the control of the chief executive officer and the Manager(s); and the Treasurer shall, if required by the Manager(s), give such bond for the faithful discharge of his duties in such form as the Manager(s) may require.

SECTION 10. ASSISTANT TREASURERS. Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the chief executive officer or the Manager(s). The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

SECTION 11. SECRETARY. The Secretary shall keep the minutes of all meetings of the Manager(s) and the minutes of all meetings of the shareholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Company affix the seal of the Company to all contracts of the Company and attest thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Company; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Manager(s) may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Company during business hours, and he shall in general perform all duties incident to the office of Secretary, subject to the control of the chief executive officer and the Manager(s).

SECTION 12. ASSISTANT SECRETARIES. Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the Chief Executive Officer or the Manager(s) or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

Officers. The initial officers of the Company shall be:

**Maximilien Barton – President, Secretary & Treasurer.**

6. Dissolution. The Company shall dissolve and its affairs shall be wound up at such time, if any, as the Member may elect.

7. Governing Law. THIS LIMITED LIABILITY COMPANY AGREEMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING ITS CONFLICT-OF-LAWS RULES).

**MEMBER(S):**

**MF CONTAINER, LLC**  
a Delaware limited liability company

By: 

**Maximilien Barton, President**

Being the sole Member of the Company

**MANAGER(S):**

**MF CONTAINER, LLC**  
a Delaware limited liability company

By: 

**Maximilien Barton, President**

Being the sole Manager(s) of the Company



**LIMITED LIABILITY COMPANY AGREEMENT OF**  
**TC Hall, LLC- Page 5**

APP000419

11/29/22, 9:22 AM

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

**TEXAS SECRETARY of STATE**  
**JOHN B. SCOTT**

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	804648526	<b>Entity Type:</b>	Domestic Limited Liability Company (LLC)
<b>Original Date of Filing:</b>	July 16, 2022	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>FEIN:</b>	
<b>Tax ID:</b>	32085467747		
<b>Duration:</b>	Perpetual		
<b>Name:</b>	TC Hall, LLC		
<b>Address:</b>	98 SPIT BROOK RD STE 104 NASHUA, NH 03062-5737 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>	<a href="#">INITIAL ADDRESS</a>
<b>Name</b>	<b>Address</b>					<b>Inactive Date</b>
Anish Karedia	22415 Mary Rogers Trl RICHMOND, TX 77469 USA					

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

## **Fwd: TC & Hall Update**

---

**From:** Tim Barton [tbarton@jnjdevelopment.com](mailto:tbarton@jnjdevelopment.com)  
**To:** Aria Pamenari [Aria.Pamenari@jnjdevelopment.com](mailto:Aria.Pamenari@jnjdevelopment.com)  
**Date:** Tue, Jul 19, 2022, 12:08 PM

TB

---

**From:** Max Barton <[MBarton@jnjdevelopment.com](mailto:MBarton@jnjdevelopment.com)>  
**Sent:** Tuesday, July 19, 2022, 12:06 PM  
**To:** Robert Edelman; Tim Barton  
**Subject:** RE: TC & Hall Update

Great. Do we get a copy of it?

Thank You,  
Maximilien Barton.  
JMJ Development.  
972-385-9934

**From:** [Robert Edelman](#)  
**Sent:** Tuesday, July 19, 2022 12:05 PM  
**To:** [Tim Barton](#); [Max Barton](#)  
**Subject:** FW: TC & Hall Update

Good news. The lender said TC & Hall appraisal came back at \$5,310,000 – just over purchase price.

Robert Edelman  
Stone Street Development  
Phone: (214) 794-3575



6/30/2022

Enoch Investments, LLC or an entity TBD  
Attn: Mitchell Howell; Joey Howell

Dear Gentlemen,

Louisiana National Bank is pleased to offer the initial terms to Enoch Investments, LLC. The terms of this initial approval are subject to change and are as follows:

BORROWER: Enoch Investments, LLC, TBD entity

PROPERTY: 0.515 Acre at SWC of Turtle Creek Blvd. and Hall Street, Dallas, Texas

AMOUNT: 75% Loan to Cost or appraised value, lesser amount applies. The maximum loan amount anticipated based on such criteria is \$4,100,000, which is based on \$5.470M in cost, comprised of the \$5.3M purchase price and \$170K in estimated finance fees and closing costs.

TERM OF LOAN: 12 months, with a one year extension option on terms specified by the Bank.

AMORTIZATION: 12 months

INTEREST RATE: 12 month interest only period- Prime plus .509%

FEES: 1.0% Origination Fee  
\$500 Doc Prep  
Additional 3<sup>rd</sup> party fees will apply (appraisal, title)

GUARANTORS: An insolido continuing guarantee from Enoch Investments, LLC and Tim Barton

EXIT FEE: A 2.5% fee\*\* will be charged in the event the borrower refinances the proposed credit facility with *another financial institution* during term period. There is no charge in the event the borrower sells the collateral or pays off the loan using cash. \*\*LNB will ask and seek a "right of first refusal" on any proposed construction loan and will waive the exit fee within the term period should the Bank decline such a request.



Conditions:

An updated appraisal to be obtained by Louisiana National Bank

An updated and merchantable title from a title company acceptable to Louisiana National Bank

Updated Articles, Tax ID number and Operating Agreement from the To Be Formed Borrowing Entity.

Accepted: \_\_\_\_\_


A handwritten signature in black ink, appearing to be 'M. McGee', written over a horizontal line.

7/1/22

It is a pleasure to extend this term letter to you and we look forward to continuing our banking relationship.

Sincerely,

Michael W. "Mike" McGee  
SVP, Chief Lending Officer

<b>Broadview Holdings</b> 13901 Midway Rd STE 102LB243 Dallas, TX 75244 (972) 385-9934	Texas Brand Bank Garland, TX 75042 88-2511/1119	No. 1260  Date 8/9/2022
<b>Pay To The Order Of</b> Commonwealth Title of Dallas, Inc		\$ **40,000.00
Forty Thousand and 00/100***		Dollars
Commonwealth Title of Dallas, Inc. 2651 North Harwood Street Suite 260 Dallas, TX 75201 (800) 627-5652		
<b>Memo:</b> Extension for 34707 & 3409 N Hall St		

⑈000001260⑈ ⑆ 1 1 1 9 2 5 1 1 3 1 1 0 2 4 6 1 1 ⑈


1260 Amount: \$40000.00 Date: 8/9/2022  
Pay to: Commonwealth Title of Dallas, Inc.

**Broadview Holdings**  
**Memo:** Extension for 34707 & 3409 N Hall St

1260 Amount: \$40000.00 Date: 8/9/2022  
Pay to: Commonwealth Title of Dallas, Inc.



**Broadview Holdings**  
**Memo:** Extension for 34707 & 3409 N Hall St

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK. HOLD AT ANGLE TO VIEW.

<b>Broadview Holdings</b> 13901 Midway Rd STE 102LB243 Dallas, TX 75244 (972) 385-9934	<b>Texas Branch Bank</b> Garland, TX 75042 88-2511/1119	<b>No. 1121</b>  Date 4/28/2022
2201220092 +a	911000257	
<b>Pay To The Order Of</b> Commonwealth Title of Dallas, Inc.		<b>\$ **100,000.00</b>
<b>One Hundred Thousand and 00/100***</b>		<b>Dollars</b>
Commonwealth Title of Dallas, Inc. 2651 North Harwood Street Suite 260 Dallas, TX 75201 (800) 627-5652		
<b>Memo:</b> Earnest Money Deposit for 3407 & 3409 N. Hall St.		
		
⑈00000⑆12⑆⑈ ⑆1925⑆13⑆10246⑆⑈		

AMT: 100,000.00 SEQ: 80200040  
 CK: DT: 05/10/22 ST: Paid

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

<b>Broadview Holdings</b> 13901 Midway Rd STE 102LB243 Dallas, TX 75244 (972) 383-9934	<i>2201220092</i> <i>jc</i>	<b>Texas Branch Bank</b> Garland, TX 75042 88-2511/1119	<b>No. 1159</b>  <b>Date 5/25/2022</b>
<b>Pay To The Order Of</b> Commonwealth Title of Dallas, Inc			<b>\$ **100,000.00</b>
<del>One Hundred Thousand and 00/100***</del>			<del>Dollars</del>
Commonwealth Title of Dallas, Inc. 2651 North Harwood Street Suite 260 Dallas, TX 75201 (800) 627-5652			
<b>Memo:</b> Earnest Money Deposit-3407 & 3409 N. Hall St			
⑈00000⑆⑆59⑈ ⑆⑆⑆⑆925⑆⑆3⑆⑆10246⑆⑆⑈			

AMT: 100,000.00 SEQ: 80101810  
 CK: DT: 05/31/22 ST: Paid



# Receipts and Disbursements Ledger

Printed at 10:21 AM, Nov 22, 2022

Buyer/Borrower: **Gillespie Villas, LLC, a Texas limited liability company**  
 Seller:  
 Lender: **Xiao-En Fang**  
 Closing Date: **8/24/2022** Open Date: **07/25/2022**  
 File Number: **2202692-VVJA**  
 Property Address: **3600 Gillespie St., Dallas TX 75219**  
 Closer:  
 Primary Bank: **Prosperity Bank - Valley View Comm#51**

**Prosperity Bank - Valley View Comm#51**

## Receipts

Trans ID:	Payor	Description:	Type of Funds	Deposit Date	Amount	
2202692-VVJA-1	Xiao-En Fang	Loan Amount	Wire	08/24/2022	550,000.00	C
					<b>Total</b>	
					<b>550,000.00</b>	
					<b>Total Receipts</b>	
					<b>550,000.00</b>	

## Disbursements

Check #:	Payee	Description:	Type of Funds	Check Date	Amount	
<b>13795</b>	<b>GRS Tax Service</b>					
	1112	Tax Certificate	Check	08/24/2022	95.00	C
					<b>Total</b>	
					<b>95.00</b>	
<b>13799</b>	<b>Silver Star Title, LLC dba Sendera Title</b>					
	1114	E-Recording Fee	Check	08/25/2022	6.40	C
	1204	Recording Fee Subordination Agreement	Check	08/25/2022	38.00	C
	1201	Recording Fees	Check	08/25/2022	98.00	C
					<b>Total</b>	
					<b>142.40</b>	
<b>13796</b>	<b>Silver Star Title, LLC dba Sendera Title</b>					
	1121	Not yet due/payable	Check	08/24/2022	5.00	C
	1120	Tax deletion	Check	08/24/2022	20.00	C
	1124	Environmental PL T-36	Check	08/24/2022	25.00	C
	1117	Courier/Mail/Messenger	Check	08/24/2022	32.00	C
	1122	MTP T19 Res. Endorsement	Check	08/24/2022	160.20	C
	1113	Escrow Fee	Check	08/24/2022	500.00	C
	1108	Title insurance	Check	08/24/2022	3,204.00	C
					<b>Total</b>	
					<b>3,946.20</b>	

Prosperity Bank - Valley View Comm#51

Disbursements						
Check #:	Payee	Description:	Type of Funds	Check Date	Amount	
13797	Silver Star Title, LLC dba Sendera Title					
	1111	State of Texas Policy Guaranty Fee	Check	08/24/2022	2.00	C
		<b>Total</b>			<b>2.00</b>	
Wire	Commonwealth Title of Dallas					
		Proceeds wired for purchase	Wire	08/24/2022	545,806.40	C
		<b>Total</b>			<b>545,806.40</b>	
13800	Gillespie Villas, LLC, a Texas limited l					
		Refund of Recording Overage	Check	08/25/2022	8.00	C
		<b>Total</b>			<b>8.00</b>	
		<b>Total Disbursements</b>			<b>550,000.00</b>	
<b>Scheduled Disbursements:</b>					<b>550,000.00</b>	
<b>Actual Disbursements:</b>					<b>550,000.00</b>	
<b>Pre-Disbursements Balance:</b>					<b>0.00</b>	
<b>Account Balance:</b>					<b>0.00</b>	

*Wired for TC Hall Purchase*



**Commonwealth Title of Dallas, Inc.**  
 2651 North Harwood Street, Suite 260, Dallas, TX 75201  
 Phone: (800)627-5652 | Fax: (214)754-9066

**Single Ledger Balance**  
 By Trust Accounting Date, With Adjustments

Ledger ID: 22011220092  
 Trust Account: [REDACTED]  
 Trust Accounting Date: All  
 Format / Sort Options: Sort by reference number

Ledger ID: 22011220092  
 Branch: CWD-11C - Commonwealth Title of Dallas, Inc.  
 Trust Account: [REDACTED] Buyer/Borrower: TC Hall, LLC, a Texas limited liability company  
 Seller: TURTLE CREEK TOWER, LLC, a Delaware limited liability company  
 Settlement Date: 08/23/22 Property: 3407 and 3409 North Hall Street, Dallas, TX 75219  
 Responsible Party: FNFGLOBAL\Stephanie.Johnson Ledger Comment:  
 Sales Price: \$5,300,000.00 Loan Amount: \$4,063,000.00

Ref/Ck Number	Trust Date	Payee / Payor Adjustments	Medium	Cleared Date	Amount
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**TRUST ACCOUNT TRANSACTIONS**

**INCOMING WIRES**

**POSTED**

999002318	08/24/22	Silver Star Title LLC	Wire		\$545,806.40
999002318-ADJ	08/25/22	Silver Star Title LLC	Wire	08/24/22	
		ADJ Miscellaneous: ProClear			
999002318-ADJ	08/25/22	Silver Star Title LLC	Wire	08/24/22	
		ADJ Miscellaneous: excess closing funds			
999002319	08/24/22	Louisiana National Bank	Wire		\$4,021,844.28
999002319-ADJ	08/24/22	Louisiana National Bank	Wire		
		ADJ Miscellaneous: WMA			
999002319-ADJ	08/25/22	Louisiana National Bank	Wire	08/24/22	
		ADJ Miscellaneous: ProClear			

**2 INCOMING WIRES: \$4,567,650.68**  
**4 Adjustments: \$0.00**  
**Total: \$4,567,650.68**

**RECEIPTS**

**POSTED**

111000318	05/06/22	Broadview Holdings	Check		\$100,000.00
111000318-ADJ	05/09/22	Broadview Holdings	Check		
		ADJ Miscellaneous: Added to Group Deposit			
111000318-ADJ	05/10/22	Broadview Holdings	Check	05/09/22	
		ADJ Miscellaneous: ProClear			
111000318-ADJ	07/26/22	Broadview Holdings	Check	05/09/22	
		ADJ Miscellaneous: System Generated			
111000322	05/26/22	Broadview Holdings	Check		\$100,000.00
111000322-ADJ	05/27/22	Broadview Holdings	Check		
		ADJ Miscellaneous: Added to Group Deposit			
111000322-ADJ	05/31/22	Broadview Holdings	Check	05/27/22	
		ADJ Miscellaneous: ProClear			
111000322-ADJ	07/26/22	Broadview Holdings	Check	05/27/22	
		ADJ Miscellaneous: System Generated			
111000336	07/26/22	Broadview Holdings	Check		\$40,000.00
111000336	07/26/22	Broadview Holdings	Check		
		ADJ Miscellaneous: System Generated			
111000336-ADJ	07/26/22	Broadview Holdings	Check		
		ADJ Miscellaneous: Added to Group Deposit			

**Single Ledger Balance**

22011220092 (continued)

Ref/Ck Number	Trust Date	Payee / Payor Adjustments	Medium	Cleared Date	Amount
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**TRUST ACCOUNT TRANSACTIONS (continued)**

**RECEIPTS (continued)**

**POSTED (continued)**

111000336-ADJ	07/27/22	Broadview Holdings ADJ Miscellaneous: ProClear	Check	07/26/22	
111000343	08/10/22	Broadview Holdings	Check		\$40,000.00
111000343-ADJ	08/10/22	Broadview Holdings ADJ Miscellaneous: Added to Group Deposit	Check		
111000343-ADJ	08/11/22	Broadview Holdings	Check	08/10/22	
111000343-ADJ	08/11/22	Broadview Holdings ADJ Miscellaneous: ProClear	Check	08/10/22	
111000343-ADJ	08/11/22	Broadview Holdings ADJ Miscellaneous: send to closing statement	Check	08/10/22	
111000343-ADJ	08/11/22	Broadview Holdings ADJ Miscellaneous: add memo	Check	08/10/22	
111000343-ADJ	08/11/22	Broadview Holdings ADJ Miscellaneous: System Generated	Check	08/10/22	

**5 RECEIPTS: \$280,000.00**  
**13 Adjustments: \$0.00**  
**Total: \$280,000.00**

**CHECKS**

**POSTED**

511002181	08/25/22	CSC	Check		\$90.00
511002181-ADJ	08/31/22	CSC ADJ Miscellaneous: ProClear	Check	08/30/22	
511002195	09/06/22	Capitol Services, Inc.	Check		\$581.42
511002195-ADJ	09/23/22	Capitol Services, Inc. ADJ Miscellaneous: ProClear	Check	09/22/22	
511002204	09/22/22	Broadview Holdings	Check		\$4,200.00
511002204-ADJ	09/30/22	Broadview Holdings ADJ Miscellaneous: ProClear	Check	09/29/22	
511002221	10/10/22	TURTLE CREEK TOWER, LLC, a Delaware limited liability company	Check		\$41.23
511002222	10/10/22	TC Hall, LLC, a Texas limited liability company	Check		\$397.30

**5 CHECKS: \$5,309.95**  
**3 Adjustments: \$0.00**  
**Total: \$5,309.95**

**OUTGOING WIRES**

**POSTED**

311007055	05/11/22	Turtle Creek Tower LLC	Wire		\$100,000.00
311007055-ADJ	05/11/22	Turtle Creek Tower LLC ADJ Miscellaneous: WMA	Wire		
311007055-ADJ	05/12/22	Turtle Creek Tower LLC ADJ Miscellaneous: Cleared for Bank Statement	Wire	05/11/22	
311007055-ADJ	07/27/22	Turtle Creek Tower LLC ADJ Miscellaneous: remove date per Mary Rosas, need to change app	Wire		
311007055-ADJ	07/27/22	Turtle Creek Tower LLC ADJ Miscellaneous: per Stephanie Johnson change apply to closing	Wire		
311007055-ADJ	07/28/22	Turtle Creek Tower LLC ADJ Miscellaneous: Cleared for Bank Statement	Wire	07/27/22	
311007157	05/31/22	TURTLE CREEK TOWER, LLC, a Delaware limited liability company	Wire		\$100,000.00
311007157-ADJ	05/31/22	TURTLE CREEK TOWER, LLC, a Delaware limited liability company ADJ Miscellaneous: WMA	Wire		
311007157-ADJ	06/01/22	TURTLE CREEK TOWER, LLC, a Delaware limited liability company ADJ Miscellaneous: Cleared for Bank Statement	Wire	05/31/22	
311007157-ADJ	07/27/22	TURTLE CREEK TOWER, LLC, a Delaware limited liability company ADJ Miscellaneous: remove date per Mary Rosas, need to change app	Wire		

## Single Ledger Balance

22011220092 (continued)

Ref/Ck Number	Trust Date	Payee / Payor Adjustments	Medium	Cleared Date	Amount
<b>TRUST ACCOUNT TRANSACTIONS (continued)</b>					
<b>OUTGOING WIRES (continued)</b>					
<b>POSTED (continued)</b>					
311007157-ADJ	07/27/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: per Stephanie Johnson apply to closing			
311007157-ADJ	07/28/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: Cleared for Bank Statement [REDACTED]		07/27/22	
311007545	07/28/22	TURTLE CREEK TOWER, LLC, a Delaware Wire			\$40,000.00
311007545-ADJ	07/28/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: WMA			
311007545-ADJ	07/29/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: ProClear		07/28/22	
311007629	08/11/22	TURTLE CREEK TOWER, LLC, a Delaware Wire			\$40,000.00
311007629-ADJ	08/11/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: WMA			
311007629-ADJ	08/12/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: ProClear		08/11/22	
311007703	08/25/22	Silverlake Capital, LLC	Wire		\$81,260.00
311007703-ADJ	08/25/22	Silverlake Capital, LLC ADJ Miscellaneous: WMA	Wire		
311007703-ADJ	08/26/22	Silverlake Capital, LLC ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007704	08/25/22	TURTLE CREEK TOWER, LLC, a Delaware Wire			\$1,174,306.13
311007704-ADJ	08/25/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: WMA			
311007704-ADJ	08/26/22	TURTLE CREEK TOWER, LLC, a Delaware Wire ADJ Miscellaneous: ProClear		08/25/22	
311007705	08/25/22	Sale Street Capital, LLC	Wire		\$2,960,000.00
311007705-ADJ	08/25/22	Sale Street Capital, LLC ADJ Miscellaneous: WMA	Wire		
311007705-ADJ	08/26/22	Sale Street Capital, LLC ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007706	08/25/22	Lawrence D. Robinson	Wire		\$375.00
311007706-ADJ	08/25/22	Lawrence D. Robinson ADJ Miscellaneous: WMA	Wire		
311007706-ADJ	08/26/22	Lawrence D. Robinson ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007707	08/25/22	RMWBH PC	Wire		\$65,000.00
311007707-ADJ	08/25/22	RMWBH PC ADJ Miscellaneous: WMA	Wire		
311007707-ADJ	08/26/22	RMWBH PC ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007708	08/25/22	The Marx Firm, LLC	Wire		\$15,382.00
311007708-ADJ	08/25/22	The Marx Firm, LLC ADJ Miscellaneous: WMA	Wire		
311007708-ADJ	08/26/22	The Marx Firm, LLC ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007709	08/25/22	JEH PC	Wire		\$109,000.00
311007709-ADJ	08/25/22	JEH PC ADJ Miscellaneous: WMA	Wire		
311007709-ADJ	08/26/22	JEH PC ADJ Miscellaneous: ProClear	Wire	08/25/22	
311007710	08/25/22	TC Hall, LLC, a Texas limited liability company	Wire		\$132,138.55
311007710-ADJ	08/25/22	TC Hall, LLC, a Texas limited liability company ADJ Miscellaneous: WMA	Wire		
311007710-ADJ	08/26/22	TC Hall, LLC, a Texas limited liability company ADJ Miscellaneous: ProClear	Wire	08/25/22	

**Single Ledger Balance**

22011220092 (continued)

Ref/Ck Number	Trust Date	Payee / Payor Adjustments	Medium	Cleared Date	Amount
<b>TRUST ACCOUNT TRANSACTIONS (continued)</b>					
<b>OUTGOING WIRES (continued)</b>					
				<b>12 OUTGOING WIRES:</b>	<b>\$4,817,461.68</b>
				<b>30 Adjustments:</b>	<b>\$0.00</b>
				<b>Total:</b>	<b>\$4,817,461.68</b>
<b>LEDGER TRANSFERS(+)</b>					
<i>POSTED</i>					
411003138	08/25/22	Transfer Contact	From: 22011220092-B		\$650,000.00
				<b>1 LEDGER TRANSFER(+):</b>	<b>\$650,000.00</b>
<b>LEDGER TRANSFERS(-)</b>					
<i>POSTED</i>					
411003141	08/25/22	Texas Title Insurance Guaranty Associatio	To: GTF22Q3		\$4.00
411003142	08/25/22	National TaxNet	To: NTN202208		\$51.00
411003143	08/25/22	Commonwealth Title of Dallas, Inc.	To: REV202208		\$24,686.00
411003143-ADJ	09/02/22	Commonwealth Title of Dallas, Inc	To: REV202208		
ADJ Miscellaneous: Disburse transferred funds					
411003278	09/06/22	Commonwealth Title of Dallas, Inc.	To: REV202209		\$138.05
411003278-ADJ	10/07/22	Commonwealth Title of Dallas, Inc.	To: REV202209		
ADJ Miscellaneous: Disburse transferred funds					
411003137	08/25/22	Transfer Contact	To: 22011220092-B		\$650,000.00
411003137	08/25/22	Transfer Contact	To: 22011220092-B		
ADJ Miscellaneous: adjusting to correct payor code					
				<b>6 LEDGER TRANSFERS(-):</b>	<b>\$674,879.05</b>
				<b>2 Adjustments:</b>	<b>\$0.00</b>
				<b>Total:</b>	<b>\$674,879.05</b>
<b>TRUST ACCOUNT ENDING BALANCE:</b>					<b>\$0.00</b>
<b>ENDING LEDGER BALANCE IN TRUST ACCOUNT:</b>					<b>\$0.00</b>
<b>COMBINED ENDING BALANCE :</b>					<b>\$0.00</b>



1508 Texas Avenue  
Lubbock, TX 79401

Account Number:  
Statement Date:  
Items Enclosed:

\*\*\*\*\*7891  
08/31/2022  
1  
Page 1 of 2



00006915 0033255 0001-0002

00006915 TV11365S090122145031 1 000000000 6915 3  
TC HALL LLC  
3600 GILLESPIE ST  
DALLAS TX 75219

**CUSTOMER SERVICE INFORMATION**

- 877-888-4782 (877-88-VISTA)
- P.O. Box 2100 | Lubbock, TX 79401
- vistabank.com

**REMAIN  
VIGILANT**

*Unfortunately, combatting fraud and cyber security risks are a regular part of our everyday lives. Visit our Fraud Resource Center at vistabank.com to stay current and implement the recommended steps to protect you and yours.*

**VIEW BUSINESS CHECKING**

**ACCOUNT NUMBER: \*\*\*\*\*7891**

**Balance Summary**

<b>Beginning Balance as of 08/24/22</b>	<b>\$0.00</b>
+ Deposits and Credits (1)	\$132,138.55
- Withdrawals and Debits (1)	\$100,000.00
- Account Maintenance Assessment for Statement Period	\$0.00
<b>Ending Balance as of 08/31/22</b>	<b>\$32,138.55</b>
Number of Days in Statement Period	7
Items Enclosed	1

**Transaction Detail**

Date	Description	Deposits	Withdrawals	Balance
Aug 25	FED WIRE IN #202208250071587 ORIG-COMMONWEALTH TITLE OF DAL	\$132,138.55		\$132,138.55
Aug 26	CASHED CHECK/WITHDRAWAL		-\$100,000.00	\$32,138.55









Account Number:  
Statement Date:

\*\*\*\*\*7891  
08/31/2022  
Page 2 of 2

CHECK IMAGES

ACCOUNT NUMBER: \*\*\*\*\*7891

WE HAVE CHARGED YOUR ACCOUNT FOR THE FOLLOWING REASONS: <b>Transfer # 8105</b>	Vista Bank www.vistabank.com	(5) Force Pay Debit (6) Closing Withdrawal (7) Wire Transfer Debit Payment Transfer Fee Cash Withdrawal
	80 7097891	10000000
APPROVED <i>[Signature]</i>	DATE 8/25/22	
NAME <i>Tim Hall III</i>	<i>Tim Hall III, Vice President</i>	
ADDRESS	<i>1000 ...</i>	
CITY, STATE, ZIP	<i>...</i>	

08/26/2022

5100,000.00

00006915 0033257 0002-0002





1508 Texas Avenue  
Lubbock, TX 79401

Account Number:  
Statement Date:  
Items Enclosed:

\*\*\*\*\*8103 Member  
08/31/2022 **FDIC**  
4  
Page 1 of 3



00006925 TV11365S090122145031 1 000000000 6925 4  
GILLESPIE VILLAS LLC  
13901 MIDWAY RD STE 102-243  
DALLAS TX 75244

00006925 0033288 0001-0003

**CUSTOMER SERVICE INFORMATION**

- 877-888-4782 (877-88-VISTA)
- P.O. Box 2100 | Lubbock, TX 79401
- vistabank.com

**REMAIN  
VIGILANT**

*Unfortunately, combatting fraud and cyber security risks are a regular part of our everyday lives. Visit our Fraud Resource Center at vistabank.com to stay current and implement the recommended steps to protect you and yours.*

**VIEW BUSINESS CHECKING**

**ACCOUNT NUMBER: \*\*\*\*\*8103**

**Balance Summary**

<b>Beginning Balance as of 07/31/22</b>	<b>\$70.00</b>
+ Deposits and Credits (3)	\$200,008.00
- Withdrawals and Debits (4)	\$100,015.00
- Account Maintenance Assessment for Statement Period	\$5.00
<b>Ending Balance as of 08/31/22</b>	<b>\$100,058.00</b>
Number of Days in Statement Period	31
Items Enclosed	4

**Transaction Detail**

Date	Description	Deposits	Withdrawals	Balance
Aug 22	FED WIRE IN #202208220088212 ORIG-CRAIG J STELTZ	\$100,000.00		\$100,070.00
Aug 23	FED WIRE OUT #202208230084810 FEE		-\$15.00	\$100,055.00
Aug 23	FED WIRE OUT #202208230084810 BENE-BROADVIEW HOLDINGS		-\$70,000.00	\$30,055.00
Aug 23	CHECK # 90		-\$10,300.25	\$19,754.75
Aug 23	CHECK # 90		-\$19,699.75	\$55.00
Aug 26	DEPOSIT	\$100,000.00		\$100,055.00
Aug 29	VISTA MOBILE DEPOSIT	\$8.00		\$100,063.00
Aug 31	MONTHLY SERVICE CHARGE		-\$5.00	\$100,058.00







Account Number: \*\*\*\*\*8103  
Statement Date: 08/31/2022  
Page 2 of 3

VIEW BUSINESS CHECKING

ACCOUNT NUMBER: \*\*\*\*\*8103

Checks Posted

\* Indicates a break in check sequence

Date	Check#	Amount	Date	Check#	Amount
Aug 23	90	\$10,300.25	Aug 23	90*	\$19,699.75

00006925 0033290 0002-0003





Account Number: \*\*\*\*\*8103  
 Statement Date: 08/31/2022  
 Page 3 of 3

CHECK IMAGES

ACCOUNT NUMBER: \*\*\*\*\*8103

00006925 0033291 0003-0003

Vista Bank www.vistabank.com	7098103	LIST ALL CHECKS INDIVIDUALLY	CHECK NO. 90	TOTAL AMOUNT \$100,000.00
Pay to the order of Gillespie Villas LLC 13901 Midway Road STE 102LB243 Farmers Branch, TX 75244 (972) 385-9934		\$ 100,000.00 10000000		
Date: 08/26/2022		MICR: @1113145754 36		

08/26/2022 \$100,000.00

Vista Mobile Deposit

7098103  
 Deposit amount: 8.00

⑆1113145754 7098103⑆ ⑆0000000800⑆

08/29/2022 \$8.00

Gillespie Villas LLC 13901 Midway Road STE 102LB243 Farmers Branch, TX 75244 (972) 385-9934	Vista Bank 5840 W. Northwest Highway Dallas, TX 75225 (214) 416-8300	No. 1002 Date: 8/22/2022
Pay to the order of Gillespie Villas LLC \$ **10,300.25		Dollars
Memo:		
MICR: @000010010 ⑆11131457547098103⑆		

08/23/2022 # 90 \$10,300.25

Gillespie Villas LLC 13901 Midway Road STE 102LB243 Farmers Branch, TX 75244 (972) 385-9934	Vista Bank 5840 W. Northwest Highway Dallas, TX 75225 (214) 416-8300	No. 1001 Date: 8/23/2022
Pay to the order of Gillespie Villas LLC \$ **19,699.75		Dollars
Memo:		
MICR: @000010010 ⑆11131457547098103⑆		

08/23/2022 # 90 \$19,699.75





1508 Texas Avenue  
Lubbock, TX 79401

Account Number:  
Statement Date:  
Items Enclosed:

\*\*\*\*\*8103  
09/30/2022  
1  
Page 1 of 2



00006234 0030582 0001-0002

00006234 TV11365S100322142322 1 000000000 6234 3  
GILLESPIE VILLAS LLC  
13901 MIDWAY RD STE 102-243  
DALLAS TX 75244

**CUSTOMER SERVICE INFORMATION**

- 877-888-4782 (877-88-VISTA)
- P.O. Box 2100 | Lubbock, TX 79401
- vistabank.com

**REMAIN  
VIGILANT**

*Unfortunately, combatting fraud and cyber security risks are a regular part of our everyday lives. Visit our Fraud Resource Center at [vistabank.com](http://vistabank.com) to stay current and implement the recommended steps to protect you and yours.*

**VIEW BUSINESS CHECKING**

**ACCOUNT NUMBER: \*\*\*\*\*8103**

**Balance Summary**

<b>Beginning Balance as of 08/31/22</b>	<b>\$100,058.00</b>
+ Deposits and Credits (0)	\$0.00
- Withdrawals and Debits (1)	\$100,000.00
- Account Maintenance Assessment for Statement Period	\$5.00
<b>Ending Balance as of 09/30/22</b>	<b>\$53.00</b>
Number of Days in Statement Period	30
Items Enclosed	1

**Transaction Detail**

Date	Description	Deposits	Withdrawals	Balance
Sep 16	CHECK # 1004		-\$100,000.00	\$58.00
Sep 30	MONTHLY SERVICE CHARGE		-\$5.00	\$53.00

**Checks Posted**

\* Indicates a break in check sequence

Date	Check#	Amount
Sep 16	1004	\$100,000.00








Account Number: \*\*\*\*\*8103  
Statement Date: 09/30/2022  
Page 2 of 2

CHECK IMAGES

ACCOUNT NUMBER: \*\*\*\*\*8103

Gillette Villas LLC 13901 Midway Road STE 102LB243 Farmers Branch, TX 75244 (972) 385-9934		Vista Bank 5840 W. Northwest Highway Dallas, TX 75248 Date: 9/14/2022		No. 1004
Pay to the order of Craig Steltz		\$ **100,000.00		Dollars
Memo: Return of Loan				
⑆00000 1004⑆ ⑆1111114575⑆7098 103⑆				
09/16/2022		# 1004		5100,000.00

00006234 0030584 0002-0002







CONFIDENTIALITY NOTICE: This email and the attachments are "privileged and confidential" and is strictly meant for the intended recipient(s). All others are requested to notify me and also to remove this email and the attachments from your computer

-----Original Message-----

From: Murugan Venkat  
Sent: Thursday, August 25, 2022 11:16 AM  
To: Johnson, Stephanie <Stephanie.Johnson@cltl.com>; Tim Barton <tbarton@jmjdevelopment.com>; RANDY P. MARX <randy@themarxfirm.com>  
Cc: Alan C. Marx <alan@themarxfirm.com>; Aguilar, Tonya <TonyaJAguilar@cltl.com>  
Subject: RE: Turtle Creek - Escrow Agreement (Broker and Seller)

Stephanie

Here below is the wire information:

- Bank Name Texas Brand Bank
- Routing# for the Bank 111925113
- Account # [REDACTED]
- Name on the Account Broadview Holdings
- Address for the Bank Account Holder 13901 Midway Road, STE 102LB243, Dallas, TX 752444

Thanks & regards, Murugan Venkat

CONFIDENTIALITY NOTICE: This email and the attachments are "privileged and confidential" and is strictly meant for the intended recipient(s). All others are requested to notify me and also to remove this email and the attachments from your computer

-----Original Message-----

From: Johnson, Stephanie <Stephanie.Johnson@cltl.com>  
Sent: Thursday, August 25, 2022 9:37 AM  
To: Tim Barton <tbarton@jmjdevelopment.com>; RANDY P. MARX <randy@themarxfirm.com>  
Cc: Murugan Venkat <MVenkat@jmjdevelopment.com>; Alan C. Marx <alan@themarxfirm.com>; Aguilar, Tonya <TonyaJAguilar@cltl.com>  
Subject: RE: Turtle Creek - Escrow Agreement (Broker and Seller)

Good morning,

Please provide wiring instructions for the funding overage iao \$132,138.55. Thank you.

Stephanie Johnson  
O: (214) 855-8407 | C: (214) 208-3342  
Stephanie.johnson@cltl.com

-----Original Message-----

From: Tim Barton <tbarton@jmjdevelopment.com>  
Sent: Wednesday, August 24, 2022 4:18 PM  
To: RANDY P. MARX <randy@themarxfirm.com>  
Cc: Johnson, Stephanie <[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_.Stephanie.Johnson-40cltl.com&d=DwIGaQ&c=euGZstcaTDIvimen8b7jXrwqOf-v5A\\_CdpgnVfiiMM&r=nbJhiOCFWbDfCAhPUURkZIQmVMVQGM\\_rUFpBYOGzsoM&m=UNT0786LycMSW9HhJtvNhm2cDs qLYoSlaclC\\_4qsuiM&s=qQMt8R4eS1mYw48mbeic0EZymN2ya4N5gCi8i1xt9WU&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A_.Stephanie.Johnson-40cltl.com&d=DwIGaQ&c=euGZstcaTDIvimen8b7jXrwqOf-v5A_CdpgnVfiiMM&r=nbJhiOCFWbDfCAhPUURkZIQmVMVQGM_rUFpBYOGzsoM&m=UNT0786LycMSW9HhJtvNhm2cDs qLYoSlaclC_4qsuiM&s=qQMt8R4eS1mYw48mbeic0EZymN2ya4N5gCi8i1xt9WU&e=>)>; Murugan Venkat <MVenkat@jmjdevelopment.com>; Alan C. Marx <alan@themarxfirm.com>  
Subject: Re: Turtle Creek - Escrow Agreement (Broker and Seller)

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK (HOLD AT AN ANGLE TO VIEW)

Broadview Holdings  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1131

Date: 5/6/2022

Pay To The Order Of James E. Langford

\$ \*\*3,500.00

Three Thousand Five Hundred and 00/100\*\*\*

Dollars

James E. Langford  
3001 Bookhout Street  
Dallas, TX 75201



Memo: 3/1/22 to 4/12/22 (Turtle Creek Hall)

⑈000001131⑈ ⑆1119251131⑆1024611⑈

APP000444A

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND SECURE DOCUMENT WATERMARK ON THE BACK. HOLD AT ANGLE TO VIEW.

Broadview Holdings  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Branch Bank  
Garland, TX 75042  
88-2511/1119

No. 1132

Date 5/6/2022

Pay To The Order Of James E. Langford

\$ \*\*6,150.00

Six Thousand One Hundred Fifty and 00/100\*\*\*

Dollars

James E. Langford  
3001 Bookhout Street  
Dallas, TX 75201

Memo: 3/1/22 to 4/12/22 (Turtle Creek Hall)



⑈000001132⑈ ⑆111925113⑆1024611⑈

APP000444B

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Max

Do you have bank for TC hall if so send wire info so funds can be sent back to it

If not Ven will use Broadview

Sent from my iPhone

> On Aug 24, 2022, at 4:15 PM, RANDY P. MARX <RANDY@themarxfirm.com> wrote:

>

> Tim. Ven.

>

> Please send wiring information's to the title company for her to use in returning the excess funds to you, yet today if possible or first thing in the morning. Thank you. Randy

>

> (NOTE: The above may have been dictated, but not read, as sent via iPhone).

>

> Randy P Marx, Esq.

> The Marx Firm

> 2999 Turtle Creek Blvd.

> Dallas, Texas 75219

> 214.360.9343 office

> 214.405.5120 cell

> randy@themarxfirm.com

>

>

>> On Aug 24, 2022, at 16:14, RANDY P. MARX <RANDY@themarxfirm.com> wrote:

>>

---

NOTICE: The information contained in this message is proprietary and/or confidential and may be privileged. If you are not the intended recipient of this communication, you are hereby notified to: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.

---

This message was secured by Zix(R).

**Domestic Incoming Wire Instructions**

**Receiving Bank**

Bank Name: Vista Bank  
Bank Routing/ABA #: 111314575  
City, State: Dallas, TX

*\$137,138.55  
Wire*

**Beneficiary**

Beneficiary Account Number: [REDACTED]  
Beneficiary Name: TC Hall LLC  
Address 1: 3600 Gillespie St  
Address 2: Dallas, TX 75219  
Additional Wire Info:

**International Incoming Wire Instructions**

**Receiving/Intermediary Bank \*\*US Dollars Only\*\***

Bank Name: TIB – The Independent Bankers Bank  
Bank Routing/ABA #: 111010170  
Address, City, State: 11701 Luna Rd Farmers Branch, TX 75234  
Swift Code: [REDACTED]

**Beneficiary Bank**

Beneficiary Bank Name: Vista Bank  
Beneficiary Bank Account Number/ABA: [REDACTED]/111314575  
City, State: Dallas, TX

**Beneficiary**

Beneficiary Account Number:  
Beneficiary Name:  
Address 1:  
Address 2:  
Additional Wire Info:

*\* amount and wiring  
instructions verified  
w/ Bella/Chasal at  
JMJ Development  
5/25/2022 at  
12:04pm by*

Thanks & regards, Murugan Venkat

*RUP  
at 972-355-9934*

# EXHIBIT A-18

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



John B. Scott  
Secretary of State

**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**TITAN INVESTMENTS, LLC**  
File Number: 804757546

The undersigned, as Secretary of State of Texas, hereby certifies that an Application for Registration for the above named Foreign Limited Liability Company (LLC) to transact business in this State has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the authority of the entity to transact business in this State from and after the effective date shown below for the purpose or purposes set forth in the application under the name of

**TITAN 2022 INVESTMENTS, LLC**

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/05/2022

Effective: 10/05/2022



A handwritten signature in black ink, appearing to read "John B. Scott".

John B. Scott  
Secretary of State

Phone: (512) 463-5555  
Prepared by: Stacey Ybarra

*Come visit us on the internet at <https://www.sos.texas.gov/>*


Fax: (512) 463-5709  
TID: 10308

Dial: 7-1-1 for Relay Services  
Document: 1184202700002

**APP000448**



# EXHIBIT A-19

<b>Form 401</b>		Filed in the Office of the <b>Secretary of State of Texas</b> Filing #: 803711606 05/19/2022 Document #: 1150231480028 Image Generated Electronically for Web Filing
Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709	<b>Statement of Change of Registered Office/Agent</b>	
<b>Filing Fee: See Instructions</b>		

**Entity Information**

The name of the entity is :

**LC Aledo TX, LLC**

The file number issued to the entity by the secretary of state is: **803711606**

The registered agent and registered office of the entity as currently shown on the records of the secretary of state are:

**Incorp Services**  
**815 Brazos St, Suite 500, Austin, TX, USA 78701**

**Change to Registered Agent/Registered Office**

The following changes are made to the registered agent and/or office information of the named entity:

Registered Agent Change

A. The new registered agent is an organization by the name of:

**One Agent Texas, LLC**

OR

B. The new registered agent is an individual resident of the state whose name is:

Registered Office Change

C. The business address of the registered agent and the registered office address is changed to:

**13636 GOLDMARK DR, DALLAS, TX, USA 75240**

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

Consent of Registered Agent

A. A copy of the consent of registered agent is attached.

B. The consent of the registered agent is maintained by the entity.

**Statement of Approval**

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: **May 19, 2022** **Tim Barton**

Signature of authorized person(s)

FILING OFFICE COPY


**TEXAS SECRETARY of STATE**  
**JOHN B. SCOTT**

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

**Filing Number:** 803711606 **Entity Type:** Domestic Limited Liability Company (LLC)  
**Original Date of Filing:** August 5, 2020 **Entity Status:** In existence  
**Formation Date:** N/A  
**Tax ID:** 32075329238 **FEIN:**  
**Duration:** Perpetual  
**Name:** LC Aledo TX, LLC  
**Address:** 13901 MIDWAY RD STE 102-243  
DALLAS, TX 75244-4359 USA

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>	<a href="#">INITIAL ADDRESS</a>
<b>Last Update</b> October 15, 2022	<b>Name</b> ONE PASS INVESTMENTS LLC	<b>Title</b> MANAGER	<b>Address</b> 13901 MIDWAY RD STE 102 DALLAS, TX 75244 USA			

Instructions:  
● To place an order for additional information about a filing press the 'Order' button.

<b>Form 401</b>  Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  <b>Filing Fee: See Instructions</b>	  <b>Statement of Change of Registered Office/Agent</b>	Filed in the Office of the <b>Secretary of State of Texas</b> <b>Filing #: 803711606 05/19/2022</b> <b>Document #: 1150231480028</b> <b>Image Generated Electronically</b> <b>for Web Filing</b>
--	--	---

**Entity Information**

The name of the entity is :  
**LC Aledo TX, LLC**  
 The file number issued to the entity by the secretary of state is: **803711606**  
 The registered agent and registered office of the entity as currently shown on the records of the secretary of state are:  
**Incorp Services**  
**815 Brazos St, Suite 500, Austin, TX, USA 78701**

**Change to Registered Agent/Registered Office**

The following changes are made to the registered agent and/or office information of the named entity:

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A. The new registered agent is an organization by the name of:  
**One Agent Texas, LLC**  
 OR  
 B. The new registered agent is an individual resident of the state whose name is:

Registered Office Change

C. The business address of the registered agent and the registered office address is changed to:  
**13636 GOLDMARK DR, DALLAS, TX, USA 75240**

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A. This document becomes effective when the document is filed by the secretary of state.  
 B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: **May 19, 2022** **Tim Barton**

Signature of authorized person(s)

FILING OFFICE COPY

096-319595-20

FILED  
TARRANT COUNTY  
10/22/2021 3:41 AM  
THOMAS A. WILDER  
DISTRICT CLERK

CAUSE NO. 096-319595-20

SOMERSET-LOST CREEK GOLF, LTD

§

IN THE DISTRICT COURT OF

Plaintiff,

§

v.

§

§

§

§

§

LC ALEDO TX, LLC,  
JMJ ACQUISITIONS, LLC, AND  
WALL010, LLC

§

§

§

§

§

Defendants / Counter-Plaintiffs,

§

96<sup>th</sup> JUDICIAL DISTRICT

§

v.

§

§

SOMERSET-LOST CREEK GOLF, LTD,

§

§

Counter-Defendant

§

§

AND

§

§

SOMERSET-LOST CREEK MANAGEMENT,  
LLC., BERYL ARTZ BYPASS TRUST,  
RHONDA ARTZ AS TRUSTEE OF THE  
BERYL ARTZ BYPASS TRUST, RHONDA  
ARTZ, AND S. GARY WERLEY (AS  
SUBSTITUTE TRUSTEE)

§

§

§

§

§

§

§

§

Third-Party Defendants.

§

§

TARRANT COUNTY, TEXAS

**SUPPLEMENT TO DEFENDANTS’ / COUNTER-PLAINTIFFS’ AMENDED MOTION TO COMPEL DISCOVERY RESPONSES; MOTION FOR CONTINUANCE; RESPONSE TO THIRD-PARTY DEFENDANTS’ AMENDED MOTION FOR SUMMARY JUDGMENT; AND RESPONSE TO PLAINTIFF’S, COUNTER-DEFENDANT’S AND THIRD-PARTY DEFENDANTS’ NO EVIDENCE MOTION FOR SUMMARY JUDGMENT**

1. NOW COMES, LC Aledo TX, LLC (“LC Aledo”); JMJ Acquisitions, LLC (“JMJ”) and Wall010, LLC (“Wall”) (collectively, “Counter-Plaintiffs” or “Defendants”) and files this SUPPLEMENT TO DEFENDANTS’ / COUNTER-PLAINTIFFS’ AMENDED MOTION TO

LOAN ORIGINATOR'S NAME:  
TIMOTHY BARTON  
NMLS ID#: N/A

LOAN ORIGINATION COMPANY'S NAME:  
WALL010 LLC  
NMLS INSTITUTION ID#: N/A

**PROMISSORY NOTE**

**\$300,000.00**

**JUNE 25, 2018**

FOR VALUE RECEIVED, on February 29, 2020 ("Maturity Date"), the undersigned and if more than one, each of them, jointly and severally (hereinafter referred to as "Borrower"), promises to pay to the order of WALL010 LLC, ("Bank") at its offices in DALLAS County, Texas at 1755 WITTINGTON PLACE, SUITE 340 DALLAS, TEXAS 75234, the principal amount of THREE HUNDRED THOUSAND AND 00/100THS (\$300,000.00) ("Total Principal Amount"), or such amount, that has been advanced to Borrower, together with interest on such portion of the Total Principal Amount which has been advanced to Borrower from the date advanced until paid at the rate of ONE AND 00/100THS PERCENT (1.000%) per annum calculated on the basis of the actual days elapsed but computed as if each year consisted of 365 days.

The principal of and all accrued but unpaid interest on this Note shall be due and payable as follows:

**THE PRINCIPAL AMOUNT IS DUE AND PAYABLE February 29, 2020 AND THE INTEREST IS DUE AND PAYABLE AT MATURITY;** and

**THIS LOAN IS PAYABLE IN FULL ON February 29, 2020. AT MATURITY, YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE PAYEE IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.**

The outstanding principal balance of this Note, together with all accrued but unpaid interest, shall be due and payable on the Maturity Date.

To the extent that any interest is not paid on or before the first day after it becomes due and payable, Bank may, at its option, add such accrued interest to the principal of this Note. Notwithstanding anything herein to the contrary, upon an Event of Default (as hereinafter defined) or at maturity, whether by acceleration or otherwise, all principal of this Note shall, at the option of Bank, bear interest at the Maximum Rate until paid.

The term "Maximum Rate," as used herein, shall mean at the particular time in question the maximum rate of interest which, under applicable law, may then be charged on this Note. If such maximum rate of interest changes after the date hereof and this Note provides for a fluctuating rate of interest, the Maximum Rate shall be automatically increased or decreased, as the case may be, without notice to Borrower from time to time as of the effective date of each change in such maximum rate. If applicable law ceases to provide for such a maximum rate of interest, the Maximum Rate shall be equal to eighteen percent (18%) per annum.

Borrower may prepay the principal of this Note as set forth above without premium or penalty. All regularly scheduled payments of the indebtedness evidenced by this Note and by any of the other Loan Documents shall be applied first to any accrued but unpaid interest then due and payable hereunder or thereunder and then to the principal amount then due and payable. All non-regularly scheduled payments shall be applied to such indebtedness in such order and manner as the holder of this Note may from time to time determine in its sole discretion. All payments and prepayments of principal of or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Bank indicated above, or such other place as the holder of this Note shall designate in writing to Borrower. If any payment of principal of or interest on this Note shall become due on a day which is not a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day and any such extension of time shall be included in computing interest in connection with such payment. As used herein, the term "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which national banking associations are authorized to be closed. The books and records of Bank shall be prima facie evidence of all outstanding principal of and accrued and unpaid interest on this Note.

**LOAN AGREEMENT AND/OR SECURITY DOCUMENTS**

This Note has been executed and delivered pursuant to that certain Loan Agreement and/or Security Documents of even date herewith by and between Borrower and Bank ("Loan Agreement"), and is secured by, inter alia, the following:

Deed of Trust, Security Agreement and Assignment of Rents and Leases of even date herewith from





Borrower in favor of **TIMOTHY BARTON, Trustee(s)** for the benefit of the Bank, covering certain real property situated in Tarrant County, Texas, as more particularly described therein;

This Note, the Loan Agreement and all other documents evidencing, securing, governing, guaranteeing and/or pertaining to this Note, including but not limited to those documents described above, are hereinafter collectively referred to as the "Loan Documents." The holder of this Note is entitled to the benefits and security provided in the Loan Documents.

Borrower agrees that no advances under this Note shall be used for personal, family or household purposes, and that all advances hereunder shall be used solely for business, commercial, investment, or other similar purposes.

Borrower agrees that upon the occurrence of any one or more of the following events of default ("Event of Default");

- (a) failure of Borrower to pay any installment of principal of or interest on this Note or on any other indebtedness of Borrower to Bank when due; or
- (b) the occurrence of any event of default specified in any of the other Loan Documents; or
- (c) the bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any of the property of, or the liquidation, termination, dissolution or death or legal incapacity of, any party liable for the payment of this Note, whether as maker, endorser, guarantor, surety or otherwise;

the holder of this Note may, at its option, without further notice or demand, (i) declare the outstanding principal balance of and accrued but unpaid interest on this Note at once due and payable, (ii) refuse to advance any additional amounts under this Note, (iii) foreclose all liens securing payment hereof, (iv) pursue any and all other rights, remedies and recourses available to the holder hereof, including but not limited to any such rights, remedies or recourses under the Loan Documents, at law or in equity, or (v) pursue any combination of the foregoing.

The failure to exercise the option to accelerate the maturity of this Note or any other right, remedy or recourse available to the holder hereof upon the occurrence of an Event of Default hereunder shall not constitute a waiver of the right of the holder of this Note to exercise the same at that time or at any subsequent time with respect to such Event of Default or any other Event of Default. The rights, remedies and recourses of the holder hereof, as provided in this Note and in any of the other Loan Documents, shall be cumulative and concurrent and may be pursued separately, successively or together as often as occasion therefore shall arise, at the sole discretion of the holder hereof. The acceptance by the holder hereof of any payment under this Note which is less than the payment in full of all amounts due and payable at the time of such payment shall not (i) constitute a waiver of or impair, reduce, release or extinguish any right, remedy or recourse of the holder hereof, or nullify any prior exercise of any such right, remedy or recourse, or (ii) impair, reduce, release or extinguish the obligations of any party liable under any of the Loan Documents as originally provided herein or therein.

This Note and all of the other Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable usury laws. If any provision hereof or of any of the other Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby and shall be enforced to the greatest extent permitted by law. It is expressly stipulated and agreed to be the intent of the holder hereof to at all times comply with the usury and other applicable laws now or hereafter governing the interest payable on the indebtedness evidenced by this Note. If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the indebtedness evidenced by this Note, or if Bank's exercise of the option to accelerate the maturity of this Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by law, then it is the express intent of Borrower and Bank that all excess amounts theretofore collected by Bank be credited on the principal balance of this Note (or, if this Note and all other indebtedness arising under or pursuant to the other Loan Documents have been paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid, or agreed to be paid, by Borrower for the use, forbearance, detention, taking, charging, receiving or reserving of the indebtedness of Borrower to Bank under this Note or arising under or pursuant to the other Loan Documents shall, to the maximum extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as such indebtedness is outstanding. To the extent federal law permits Bank to contract for, charge or receive a greater amount of interest, Bank will rely on federal law instead of TEX. REV. CIV. STAT. ANN. art. 5069-1.04, as amended, for the purpose of determining the Maximum Rate. Additionally, to the maximum extent permitted by applicable law now or hereafter in effect, Bank may, at its option and from time to time, implement any other method of computing the Maximum Rate under such Article 5069-1.04, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

To the extent permitted by applicable law, lender reserves a right of setoff in all borrower's accounts with lender (whether checking, savings, or some other account). This includes all accounts borrower holds jointly with someone else and all accounts borrower may open in the future. However, this does not include any IRA or

KEOGH accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at lender's option, to administratively freeze all such accounts to allow lender to protect lender's charge and setoff rights provided in this paragraph.

In no event shall TEX. REV. CIV. STAT. ANN. art. 5069 Ch. 15 (which regulates certain revolving loan accounts and revolving tri-party accounts) apply to this Note. To the extent that TEX. REV. CIV. STAT. ANN. art. 5069-1.04, as amended, is applicable to this Note, the "indicated rate ceiling" specified in section 1.04 is the applicable ceiling; provided that, if any applicable law permits greater interest, the law permitting the greatest interest shall apply.


If this Note is placed in the hands of an attorney for collection, or is collected in whole or in part by suit or through probate, bankruptcy or other legal proceedings of any kind, Borrower agrees to pay, in addition to all other sums payable hereunder, all costs and expenses of collection, including but not limited to reasonable attorneys' fees.

Borrower and any and all endorsers and guarantors of this Note severally waive presentment for payment, notice of nonpayment, protest, demand, notice of protest, notice of intent to accelerate, notice of acceleration and dishonor, diligence in enforcement and indulgences of every kind and without further notice hereby agree to renewals, extensions, exchanges or releases of collateral, taking of additional collateral, indulgences or partial payments, either before or after maturity.

**THIS NOTE HAS BEEN EXECUTED UNDER, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, EXCEPT AS SUCH LAWS ARE PREEMPTED BY APPLICABLE FEDERAL LAWS.**

**BORROWER:**

Somerset-Lost Creek Golf, Ltd  
A Texas Limited Partnership



Christina Artz  
Title: Partner, Member, and Manager



4. JMJ entered into a contract to purchase real property ("Purchase Contract") consisting of 145.4999 acres located in Aledo, Tarrant County, Texas ("Property") then owned by Somerset which consists of a former golf course in July of 2017.

5. In February 2019 during the term of the Purchase Contract, Wall (**a distinct entity from JMJ**), agreed to loan to Somerset \$300,000 upon which Somerset issued a Promissory Note to Wall ("Wall Note", or simply the "Note") in the principal amount of \$300,000 at 1.0% interest (collectively, "Debt") which was due and payable on February 29, 2020 including all accrued interest. The Note was secured by a Deed of Trust, Security Agreement and Assignment of Rents and Leases ("Wall Deed of Trust", or simply the "Deed of Trust") executed on April 4, 2019 by Somerset on the Property and recorded in the real property records of Tarrant County under document number D219077623 on April 15, 2019 (collectively, the Wall Note and Wall Deed of Trust, and any and all other instruments received from or executed by the Borrower, are referred to as the "Wall Loan Agreement").

6. This Debt was issued by Wall, and those funds advanced by Wall, with the express understanding that in the event JMJ (or its assigns) did not close on the Purchase Contract then the Note would be paid back by Borrower on the maturity date agreed to therein and until such time the Deed of Trust would constitute a first lien on the Property.

7. The maturity date has passed and except for the amount credited to the Wall Note in the amount of \$65,000 upon termination of the Purchase Contract, no payment has been made towards any principal or accrued interest of 1% per year and the Note is in default and a deficiency exists. Furthermore, a notice of default was sent to her giving her the opportunity to cure the default and pay the amounts owed as stated in such notice. I personally left her a voicemail at approximately 11 am on June 12, 2020 regarding the notice of default that had been sent.

8. A default under the Wall Note was also a default under the terms of the Wall Deed of Trust in addition other defaults under such deed of trust.

9. There was never any intent or discussion that the Note would be forgiven or terminated (along with the Wall Deed of Trust) if the Purchase Contract was terminated or not closed. In fact, the parties expressly agreed the Wall Note and Deed of Trust survived the termination of the Purchase Contract.

10. I was unaware at the time of any issuance of a preliminary title commitment and did not receive such commitment including as allegedly issued to JMJ who was not the lender under the Note, that referenced both a prior lien in favor of Textron Financial or a prior lien in favor of the Artz Trust, which upon information and belief is wholly owned and administered by Artz, the principal of Somerset. It was anticipated and agreed as a part of the Purchase Contract, and certainly a condition to the closing of such, that any and all prior liens of any sort or nature would have to be cleared by Somerset as the seller especially considering the title company under such commitment required such liens, which would appear on schedule C of the commitment, to be cleared and released. Artz on behalf of the Borrower represented to me on a number of occasions that they owned the Property outright and that there were no validly outstanding liens.

11. JMJ was never issued a title policy in connection with its failed attempt to purchase the Property. Wall, as a lender, did not, to my knowledge, ever receive a preliminary title commitment issued to it in connection with the Wall Loan Agreement and thus the existence of any priority liens were never disclosed to Wall including but not limited to

\_\_\_\_\_ (“Artz Deed of Trust”). Wall, as a lender, did not request a title commitment nor obtain an actual title policy in connection with the Wall Loan Agreement.

12. The Wall Deed of Trust does not include an express reference to any such prior liens. And, in connection with the Wall Debt, and prior to the issuance of the Wall Debt, it was expressly represented to Wall by Somerset that they owned the Property outright and that there were no validly outstanding lien, and any such prior liens of any sort or nature would have to be cleared by Somerset as the borrower. Nonetheless and upon subsequent review, the Wall Deed of Trust excepted any permitted encumbrances which were those appearing on schedule B of a title commitment which are the permitted exceptions, however, the Artz Deed of Trust is required to be cleared under schedule C and thus is not a permitted exception or lien under the Wall Deed of Trust.

13. Somerset, as borrower, certainly did not then disclose to Wall, that it was borrower's intent **to never make a single payment toward the Wall Debt**, to fraudulently represent that there were no liens, not to disclose any prior liens to Wall, as lender, and or to not clear any prior liens (despite its representation that there were none), to default under the Wall Note, and after any foreclosure sale then naturally following such default, simply then seek to foreclose upon the previously nondisclosed, prior (and possibly fictitious) lien held by the Artz or subsequently (the foregoing, and related acts in furtherance thereof, the "Artz Scheme to Defraud"); which it now appears was the case.

14. I was informed that the borrower would use the funds from the loan evidenced by the Wall Note and Wall Deed of Trust to pay off all debt and amounts owed by borrower.

15. In sum, the Debt was issued by Wall, and those funds advanced by Wall, with the express agreement that the Deed of Trust would constitute a first lien on the Property.

16. Subsequently, JMJ and Somerset agreed to terminate the Purchase Contract in June of 2019. Irrespective of the termination of the Purchase Contract, the Wall Note and Deed of Trust survived.

17. On May 29, 2020, after Somerset failed to pay the Debt when due, Wall, through separate counsel, sent a notice of default and demand letter to Somerset (including to Artz as President, Member, and Manger of Somerset Management as the general partner of Somerset) ("Wall Demand Letter(s)") which demanded payment of all remaining Debt by June 12, 2020 ("Wall Demand Date").

18. Only after Wall made numerous attempts to contact Artz on behalf of Somerset by email and phone to resolve the Debt, did Artz finally respond by phone stating that she had turned the matter over to counsel (who was not identified to Wall) who would follow up with Wall. However, Wall received no further communication.

19. Somerset still made no effort to contact Wall or make any effort thereafter. As a result, the Property was foreclosed on at the August 4, 2020 foreclosure sale ("August Foreclosure") by the substitute trustee on behalf of LC Aledo to whom Wall had conveyed the Wall Note and Deed of Trust.

20. On September 1, 2020, Somerset through its counsel, sent a "Demand for Rescission of August 4th Sale and Damages Wrongful Foreclosure" letter to Somerset including allegations that Somerset had informed Wall that it had been willing to pay the note which was not true and that it had never received the foreclosure notice. Apparently, Artz failed to forward her or Somerset's mail or change their addresses with the post office.

21. On September 9, 2020 Somerset filed its Plaintiffs Original Petition ("Plaintiffs Petition") seeking to declare the August Foreclosure void and in the alternative Plaintiff

requested monetary damages and recorded a Lis Pendens against the Property on September 11, 2020.

22. During September and without any notice or knowledge of any of the Defendants or the court, Plaintiff in concert with the Counter-Defendants conspired to take back the Property and initiated a sham foreclosure against the Property. Apparently, Artz as the Trustee for the Artz Trust had made a loan to Somerset ( of which she was also President and either a member of or a member in the general partner) in the amount of \$500,000.00 ("Artz Debt") which she agreed to on behalf of both the borrower and lender and which she executed and recorded a deed of trust on behalf of both the grantor for the benefit of the Artz Trust of which she is the Trustee on October 12, 2011 ("Artz Deed of Trust"). Upon information and belief, and with the need for additional discovery, this was essentially as sham transaction that was used by the Counter-Defendants to defraud the LC Aledo of the Property. At no time did any of the Counter-Defendants disclose the existence of the Artz Deed of Trust or the debt of Somerset to the Artz Trust to any of the Defendants despite Somerset making numerous representations and warranties to Wall under the Wall Deed of Trust including that there were no other liens or debts on the Property and that it had authority to grant such security interest although the Artz Deed of Trust prohibited the granting of such a lien to Wall.<sup>1</sup> On information and belief, Somerset had no intention of paying the debt to the Artz Trust- a debt which existed for about 9 years. Instead, they just used the sham foreclosure to wipe out the alleged debt and move the Property.

23. It was only by accident that Defendants became aware of the Somerset foreclosure on January 12, 2021, for the first time when their counsel was running a search in the property records in preparation for the hearing to vacate the Default Judgment. Despite having email addresses of the Defendants and their transaction and litigation attorneys along with all of their physical addresses and phone numbers, Counter-Defendants made no effort to contact Defendants related to the Artz Foreclosure or its supposed acquired ownership of the Property. Instead Artz as the Trustee of the Artz Trust appointed Werley as the substitute trustee on September 15, 2020 (6 days after filing the Plaintiffs Petition) and had him supposedly send notice of such appointment and notice of foreclosure to be held on October 6, 2020 from herself as the Trustee of the Artz Trust to herself as the president and/or manager of Somerset on or about September 15, 2020 to the Lost Creek Address - an address she knew was on the Property and no longer occupied by Somerset or anyone else as she had vacated the building and locked it up and left it in such condition that it could not be occupied. Thus, the Counter-Defendants ensured that Defendants would have no notice of any pending or actual foreclosure of the Property and that the Artz Trust would be able to perpetrate a sham foreclosure and essentially steal the Property back.

24. The Defendants allegedly conducted the foreclosure sale under the Artz Deed of Trust on October 6, 2020 and recorded a Substitute Trustee's Deed to convey the property to the Artz Trust on the same date ("October Foreclosure"). Then only eight days later Plaintiff filed a proposed order for Default Judgment on their Plaintiffs Petition which was signed by the Court on November 24, 2020 as further described in the Defendants' Motion to Set Aside Default Judgment and Answer although setting aside the August Foreclosure was a moot issue.

25. Somerset breached the Wall Loan Agreement including the Wall Note and Wall Deed of Trust by failing to pay the Debt when due as demanded in the Wall Demand Letter.

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<sup>1</sup> See sections 2.1 (a), (b), (c), (e), (p) (s), (y), and (z) of the Wall Deed of Trust. The Wall Deed of Trust states that it is subject to "Permitted Encumbrances" but fails to disclose any such encumbrances or attach "Exhibit B" which would supposedly list them including easements, deed restrictions, and similar encumbrances.

26. Somerset breached the Wall Note by failing to pay the Debt subject to any credits, payments, or offset when due and as demanded in the Wall Demand Letter.

27. Somerset made certain representations and warranties and had certain obligations under the Wall Deed of Trust which were false or otherwise breached including but not limited to its failure to disclose the existence of the debt on the Property to the Artz Trust along with the Artz Deed of Trust which was an existing lien and debt of Somerset, its lack of authority to grant the Wall Deed of Trust given the prohibition in the Artz Deed of Trust, failure to cause "all debts and liabilities of any character" to be paid, and its obligation to "forever defend the title to the [Property] against the claims of all persons making any claims to the same or any part thereof."

28. Artz including on behalf of herself and Somerset and as Trustee of the Artz Trust committed fraud in a real estate transaction under section 27.01 of the Texas Business Organizations Conde when she made false statements related to the Property and/or failed to disclose material items as described herein related to the existence of the Artz Debt and Artz Deed of Trust which were relied upon by Wall010 when it entered into the Wall Loan including the Wall Deed of Trust.

29. Furthermore, Artz acting on behalf of Somerset had no intention of paying the Artz Debt owed by Somerset to the Artz Trust and instead intended to use the existence of the Artz Debt and Artz Deed of Trust to avoid the obligations under the Wall Deed of Trust and insulate itself against paying back the Wall Debt by using the sham foreclosure to wipe out the Wall Deed of Trust and get the Property back upon foreclosure by Wall. Additionally, Artz is in reality the alter ego of Somerset and/or the Artz Trust and essentially conducted a transaction between herself to commit the fraudulent foreclosure.

30. Plaintiff and Artz represented to Wall that there was no debt or liens on the Property despite the existence of the Artz Debt and Artz Deed of Trust at the time of entering into the Wall Loan which they knew was false with the intention that Wall010 would enter into the Wall Loan. As the President of Wall I relied on such statements in making the loan and otherwise if I had known that Wall was not going to get a first lien, I would not have made the loan on behalf of Wall. Furthermore, they fraudulently conducted the October Foreclosure to acquire the Property.

31. In the alternative, Plaintiff and Artz failed to disclose the existence of the Artz Debt or the Artz Deed of Trust at the time of entering into the Wall Loan knowing that Wall would likely not make the Wall Loan if it knew of the existence of the Artz Debt or Artz Deed of Trust. Furthermore, they failed to notify Wall of their intent to foreclose on the Artz Deed of Trust and intentionally ensured that Wall would not have notice.

32. In the alternative, Plaintiff and Artz failed to disclose the existence of the Artz Debt or the Artz Deed of Trust at to induce Wall into Wall Loan.

33. In the alternative to the above fraud related claims regarding the existence of the Artz Debt and Artz Deed of Trust, Plaintiff and Artz negligently misrepresented that no debt or liens existed on the Property at the time of the Wall Note.

34. Plaintiff conducted a wrongful foreclosure at the October Foreclosure by not giving proper notice to Wall (an essentially ensuring that Wall did not have notice) and conducting a foreclosure of a debt between themselves and LC Aledo requests that the October Foreclosure be declared void along with the Substitute Trustee executed on October 6, 2020.

35. On or about August 3, 2020, Wall010, LLC assigned the Wall Loan including Wall Note and Wall Deed of Trust to LC Aledo, LLC subject to a written assignment agreement.

36. In the alternative to a Wrongful Foreclosure, LC Alleges LC Aledo obtained good and marketable undivided, fee simple title to the Property ( as further described in Exhibit "A" attached hereto) through the August Foreclosure to which it was legally in possession of at the time of the October Foreclosure and to which it is still in possession given lack of any notice from the Artz Trust of any claim to ownership resulting from the October Foreclosure. However, the Artz Deed of Trust was a sham transaction and not valid and the resulting October Foreclosure was an unlawful foreclosure based on the events described herein. As such, fee simple title should be granted to LC Aledo.

37. In the event the Court rules to void the October Foreclosure or otherwise grant LC Aledo's cause of action of Trespass to Try Title, LC Aledo seeks to quiet title regarding the existence of the cloud on title created by the Artz Deed of Trust which is invalid, void, and/or unenforceable.

38. The Counter-Defendants, including Werley as the substitute trustee who also has a duty to act impartially related to a foreclosure sale and to obtain the best price, conspired to commit the sham foreclosure which was fraudulent in order to deprive LC Aledo of the Property. Furthermore, the Counter-Defendants (excluding Werley) conspired to create the sham Artz Deed of Trust transaction to act as a block against any efforts of future lenders including Wall to pursue the debts owed to them by enforcing valid liens against the Property including the Wall Deed of Trust.

39. The court should pierce the veil of Somerset, Somerset Management, and/or the Artz Trust to hold Artz personally accountable for the fraud and other bad acts committed against the CounterPlaintiffs as described herein under which she personally benefited, pursuant to Section 21.223 of the Texas Business Organizations Code states. Alternatively, as related to the Artz Trust, CounterPlaintiffs request that the Court determine that Artz, individually, is the alter ego of the Artz Trust.

[Signature Page to Follow]



Affiant sayeth further not.

**AFFIANT:**

  
\_\_\_\_\_  
Timothy L. Barton

**STATE OF TEXAS**

**COUNTY OF DALLAS**

000 000 000

SWORN TO AND SUBSCRIBED before me on the 21 day of October, 2021, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas



# EXHIBIT A-20

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## FedPayments Manager<sup>SM</sup> -- Funds

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Delivered to FPM: 01/11/2022 17:50:10 Test/Prod: Prod  
IMAD: 20220111 B1QGC08C 024191 01111750  
QMAD: 20220111 QMGFNP75 002005 01111750

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### BASIC INFORMATION

Sender ABA {3100}: 021000021 JPMORGAN CHASE  
Receiver ABA {3400}: 111925113 TEXAS BRAND BK  
Amount {2000}: 1,100,000.00  
Type/Subtype Code {1510}: 1000 - Transfer of Funds  
Business Function {3600}: CTP - Customer Transfer Plus  
Sender Reference {3320}: 3439442011ES  
Reference for Beneficiary {4320}: DCD OF 22/01/11

### ORIGINATOR INFORMATION

Originator {5000}  
ID Code: D - DDA Account Number  
Identifier: 789669592  
Name: MANSIONS APARTMENT HOMES AT MARINE  
Address: CREEK LLC  
1755 WITTINGTON PL STE 340  
DALLAS TX 75234-1930 US

### BENEFICIARY INFORMATION

Beneficiary {4200}  
ID Code: D - DDA Account Number  
Identifier: 1024611  
Name: BROADVIEW HOLDINGS

### CHARGES & EXCHANGE RATE INFORMATION

Instructed Amount {3710}  
Currency Code: USD  
Amount: 1100000,00

### PAYMENT NOTIFICATION

Payment Notification {3620}  
Indicator: 4  
Contact Name: 66DD8D1C-7E11-42AF-9855-BB1E93043A0E

*INCOMING  
WNYC*

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**FedPayments Manager<sup>SM</sup> -- Funds**

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Delivered to FPM: 01/20/2022 16:31:27 Test/Prod: Prod  
IMAD: 20220120 B1QGC08C 030353 01201631  
OMAD: 20220120 QMGFNP65 001993 01201631

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**BASIC INFORMATION**

Sender ABA {3100}: 021000021 JPMORGAN CHASE  
Receiver ABA {3400}: 111925113 TEXAS BRAND BK  
Amount {2000}: 500,000.00  
Type/Subtype Code {1510}: 1000 - Transfer of Funds  
Business Function {3600}: CTP - Customer Transfer Plus  
Sender Reference {3320}: 3451322020ES  
Reference for Beneficiary {4320}: BMG OF 22/01/20

**ORIGINATOR INFORMATION**

Originator {5000}  
ID Code: D - DDA Account Number  
Identifier: 789669592  
Name: MANSIONS APARTMENT HOMES AT MARINE  
Address: CREEK LLC  
1755 WITTINGTON PL STE 340  
DALLAS TX 75234-1930 US

**BENEFICIARY INFORMATION**

Beneficiary {4200}  
ID Code: D - DDA Account Number  
Identifier: 1024637  
Name: JMJ VC MANAGEMENT  
Address: 13901 MIDWAY RD SUITE 102-243  
DALLAS TX 75244 US

**CHARGES & EXCHANGE RATE INFORMATION**

Instructed Amount {3710}  
Currency Code: USD  
Amount: 500000,00

**PAYMENT NOTIFICATION**

Payment Notification {3620}  
Indicator: 4  
Contact Name: 33872DAB-7E13-42B8-9202-82EA490CB49C

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## FedPayments Manager<sup>SM</sup> -- Funds

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Delivered to FPM: 01/21/2022 17:00:57 Test/Prod: Prod  
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OMAD: 20220121 QMGFNP69 002249 01211700

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### BASIC INFORMATION

Sender ABA {3100}: 021000021 JPMORGAN CHASE  
Receiver ABA {3400}: 111925113 TEXAS BRAND BK  
Amount {2000}: 500,000.00  
Type/Subtype Code {1510}: 1000 - Transfer of Funds  
Business Function {3600}: CTP - Customer Transfer Plus  
Sender Reference {3320}: 3513682021ES  
Reference for Beneficiary {4320}: BMG OF 22/01/21

### ORIGINATOR INFORMATION

Originator {5000}  
ID Code: D - DDA Account Number  
Identifier: 790212267  
Name: ORCHARD FARMS VILLAGE, LLC  
Address: 13901 MIDWAY RD STE 102-243  
DALLAS TX 75244-4388 US

### BENEFICIARY INFORMATION

Beneficiary {4200}  
ID Code: D - DDA Account Number  
Identifier: 1024637  
Name: JMJ VC MANAGEMENT  
Address: 13901 MIDWAY RD SUITE 102-243  
DALLAS TX 75244 US

### CHARGES & EXCHANGE RATE INFORMATION

Instructed Amount {3710}  
Currency Code: USD  
Amount: 500000,00

### PAYMENT NOTIFICATION

Payment Notification {3620}  
Indicator: 4  
Contact Name: 681A1C7A-7E13-42B9-B2F7-C7CEFCB69C5A

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## FedPayments Manager<sup>SM</sup> -- Funds

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Delivered to FPM: 01/31/2022 17:51:10 Test/Prod: Prod  
IMAD: 20220131 B1QGC05C 043733 01311751  
OMAD: 20220131 QMGFNP62 002925 01311751

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### BASIC INFORMATION

Sender ABA (3100): 021000021 JPMORGAN CHASE  
Receiver ABA (3400): 111925113 TEXAS BRAND BK  
Amount (2000): 1,000,000.00  
Type/Subtype Code (1510): 1000 - Transfer of Funds  
Business Function (3600): CTP - Customer Transfer Plus  
Sender Reference (3320): 3664292031ES  
Reference for Beneficiary (4320): DCD OF 22/01/31

### ORIGINATOR INFORMATION

Originator (5000)  
ID Code: D - DDA Account Number  
Identifier: 790212267  
Name: ORCHARD FARMS VILLAGE, LLC  
Address: 13901 MIDWAY RD STE 102-243  
DALLAS TX 75244-4388 US

### BENEFICIARY INFORMATION

Beneficiary (4200)  
ID Code: D - DDA Account Number  
Identifier: 1024637  
Name: JMJ VC MANAGEMENT

### CHARGES & EXCHANGE RATE INFORMATION

Instructed Amount (3710)  
Currency Code: USD  
Amount: 1000000,00

### PAYMENT NOTIFICATION

Payment Notification (3620)  
Indicator: 4  
Contact Name: 6CDE82DA-7E15-42C3-99A1-57AC35D1E901

---

## FedPayments Manager<sup>SM</sup> -- Funds

---

Delivered to FPM: 05/10/2022 14:43:23 Test/Prod: Prod  
IMAD: 20220510 B1QGC08C 023480 05101443  
OMAD: 20220510 QMGFNP73 001615 05101443

---

### BASIC INFORMATION

Sender ABA {3100}: 021000021 JPMORGAN CHASE  
Receiver ABA {3400}: 111925113 TEXAS BRAND BK  
Amount {2000}: 2,000,000.00  
Type/Subtype Code {1510}: 1000 - Transfer of Funds  
Business Function {3600}: CTP - Customer Transfer Plus  
Sender Reference {3320}: 3353112130ES  
Reference for Beneficiary {4320}: DCD OF 22/05/10

### ORIGINATOR INFORMATION

Originator {5000}  
ID Code: D - DDA Account Number  
Identifier: 787577698  
Name: AVG WEST, LLC  
Address: 13901 MIDWAY RD STE 102-243  
DALLAS TX 75244-4388 US

### BENEFICIARY INFORMATION

Beneficiary {4200}  
ID Code: D - DDA Account Number  
Identifier: 1024611  
Name: BROADVIEW HOLDINGS

### CHARGES & EXCHANGE RATE INFORMATION

Instructed Amount {3710}  
Currency Code: USD  
Amount: 2000000,00

### PAYMENT NOTIFICATION

Payment Notification {3620}  
Indicator: 4  
Contact Name: 4E5C22D6-7E29-4326-9063-14A4F12A97A0

---

## FedPayments Manager<sup>SM</sup> -- Funds

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Delivered to FPM: 09/08/2022 14:47:52 Test/Prod: Prod  
IMAD: 20220908 I1B7032R 013864 09081447  
OMAD: 20220908 QMGFNP74 001480 09081447

---

### BASIC INFORMATION

Sender ABA {3100}: 121000248 WELLS FARGO SF  
Receiver ABA {3400}: 111925113 TEXAS BRAND BK  
Amount {2000}: 800,000.00  
Type/Subtype Code {1510}: 1000 - Transfer of Funds  
Business Function {3600}: CTP - Customer Transfer Plus  
Sender Reference {3320}: 2022090800137749  
Reference for Beneficiary {4320}: 121342

### ORIGINATOR INFORMATION

Originator {5000}  
ID Code: D - DDA Account Number  
Identifier: 000006096117517  
Name: REPUBLIC TITLE OF TEXAS, INC  
Address: 1002-ESCROW ACCOUNT  
2701 W PLANO PKWY STE 100  
PLANO TX US 75075-8212

### Originator to Beneficiary Information {6000}

Text: INVOICE #7002  
112-120 & 126 VILLITA ST  
1002-353986A RTT ME

### BENEFICIARY INFORMATION

Beneficiary {4200}  
ID Code: D - DDA Account Number  
Identifier: 1024611  
Name: BROADVIEW HOLDINGS

### CHARGES & EXCHANGE RATE INFORMATION

Charges {3700}  
Details of Charges: S - Charges shared between the originator and beneficiary  
USD 0,00

### PAYMENT NOTIFICATION

Payment Notification {3620}  
Indicator: 3  
Contact Name: 54744F0F-7064-4CFF-A2BF-446694D19854



# EXHIBIT A-21

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

Broadview Holdings  
13901 Midway Rd STE 102LB243  
Dallas, TX 75244  
(972) 385-9934

Texas Brand Bank  
Garland, TX 75042  
88-2511/1119

No. 1363

Date 9/29/2022

Pay To The Holland & Knight

\$ \*\*50,000.00

Fifty Thousand and 00/100\*\*\*

Dollars

Holland & Knight  
One Arts Plaza, 1722 Routh St., STE 1500  
Dallas, TX 75201  
(214) 969-1700

Memo:



⑈000001363⑈ ⑆111925113⑆102461⑆⑈

# EXHIBIT A-22

**3407 and 3409 Hall Street**  
**Draft List of Payments (Jan-Sep2022)**

*Gilsp* *Gilsp*

Date	Type	Memo	Class	Memo	Accounts	Amount
05/12/2022	Check	Flowers Title Company	Hall Street	Wire Transfer To Flowers Title Companies Llc Dbaeast	TxBrand - Broadview Hold *4611	1,040,034.32
04/28/2022	Check	Turtle Creek Tower	Hall Street	Earnest Money Deposit	TxBrand - Broadview Hold *4611	100,000.00
05/25/2022	Check	Turtle Creek Tower	Hall Street	Addn Earnest Money Deposit	TxBrand - Broadview Hold *4611	100,000.00
08/09/2022	Check	Turtle Creek Tower	Hall Street	Extension Money	TxBrand - Broadview Hold *4611	40,000.00
07/25/2022	Check	Turtle Creek Tower	Hall Street	Extension Money	TxBrand - Broadview Hold *4611	40,000.00
01/24/2022	Check	East Texas Title Co	Hall Street	East Texas Title Companies	TxBrand - Broadview Hold *4611	15,000.00
08/02/2022	Check	Stone Street Dev	Hall Street	Ck # 1242	TxBrand - Broadview Hold *4611	15,000.00
09/12/2022	Check	Stone Street Dev	Hall Street	Ck # 1334	TxBrand - Broadview Hold *4611	15,000.00
02/23/2022	Check	Noah Burns	Hall Street	Noah Burns <i>Purch fee</i>	TxBrand - JMJ VC Mgt LLC *4637	10,000.00
05/10/2022	Check	James Langford	Hall Street	Ck # 1132 <i>Att. fee</i>	TxBrand - Broadview Hold *4611	6,150.00
09/09/2022	Check	James Langford	Hall Street	Ck # 1326	TxBrand - Broadview Hold *4611	4,750.00
08/01/2022	Check	James Langford	Hall Street	Ck # 1180	TxBrand - Broadview Hold *4611	3,850.00
06/14/2022	Check	James Langford	Hall Street	Ck # 1179	TxBrand - Broadview Hold *4611	2,500.00
05/20/2022	Check	Inspire Insurance	Hall Street	In *Inspire Insurance	Barclay CC-JMJ Dev *6668	2,346.02
08/22/2022	Check	James Langford	Hall Street	Ck # 1279	TxBrand - Broadview Hold *4611	1,750.00
08/29/2022	Check	Robert Wilhite	Hall Street	Ck # 1295 <i>Cons/tno</i>	TxBrand - Broadview Hold *4611	1,500.00
07/12/2022	Check	First Insurance	Hall Street	In *Inspire Insurance 512-8284200 Tx	Citi CC-JMJ Dev *2844	905.39
07/29/2022	Check	First Insurance	Hall Street	First Insurance Fundin	Barclay CC-JMJ Dev *6668	879.02
08/26/2022	Check	First Insurance	Hall Street	First Insurance Fundin	Citi CC-JMJ Dev *2844	879.02
08/03/2022	Check	AppraisalWorks LLC	Hall Street	Aloha Capital 303-245-0291 CoMa	Citi CC-JMJ Dev *2844	792.63
05/01/2022	Check	Delaware County	Hall Street	Texas Secretary Of Sta	Chase CC-JMJ Dev *5997	300.00
09/08/2022	Check	US Trustee	Hall Street	Ck # 1299	TxBrand - Broadview Hold *4611	250.00
06/06/2022	Check	Byron Rowlett	Hall Street	On-Us Check	TxBrand - Broadview Hold *4611	28.00
					<b>Total</b>	<b>1,401,914.40</b>

*Paid 85 Jorg  
C/Org*

*Gilsp*



**Commonwealth Title of Dallas, Inc.**  
 2651 North Harwood Street, Suite 260  
 Dallas, TX 75201  
 Phone: (214)855-8400 or (800)627-5652

**Settlement Statement**

**Date:** August 24, 2022  
**Order Number:** 22011220092-B  
**Escrow Officer:** Stephanie Johnson  
**Borrower:** Enoch Investments, LLC, a Delaware limited liability company  
**Lender:** TURTLE CREEK TOWER, LLC, a Delaware limited liability company  
 9100 Southwest Freeway, Suite 201  
 Houston, TX 77074  
**Property:** 3407 and 3409 North Hall Street  
 Dallas, TX 75219  
 Dallas County

*Loan Agst  
 Calksi*

	Borrower	
	Debit	Credit
<b>Total Consideration</b>		
Enoch Loan Advance		650,000.00
<b>Miscellaneous Charges</b>		
Enoch Equity Credit to File No. 22011220092 to Transfer Contact	650,000.00	
<b>Subtotals</b>	650,000.00	650,000.00
<b>Balance Due FROM Borrower</b>		<b>0.00</b>
<b>Totals</b>	650,000.00	650,000.00

*Te Hall*

See signature page to follow



**Commonwealth Title of Dallas, Inc.**  
 2651 North Harwood Street, Suite 260  
 Dallas, TX 75201  
 Phone: (214)855-8400 or (800)627-5652

*File*

**Buyer's Settlement Statement**

**Date:** August 24, 2022  
**Order Number:** 22011220092  
**Escrow Officer:** Stephanie Johnson  
**Buyer:** *(2) (A)* TC Hall, LLC, a Texas limited liability company  
 3600 Gillespie  
 Dallas, TX 75219  
**Seller:** TURTLE CREEK TOWER, LLC, a Delaware limited liability company  
 9100 Southwest Freeway, Suite 201  
 Houston, TX 77074  
**Lender:** Louisiana National Bank *(1)*  
 2001 North Trenton Street  
 Ruston, LA 71270  
**Property:** 3407 and 3409 North Hall Street *(2) (B)*  
 Dallas, TX 75219  
 Dallas County

	Buyer	
	Debit	Credit
<b>Total Consideration</b>		
Purchase Price	5,300,000.00	
Principal Amount of New Loan		4,063,000.00
Initial Earnest Money Deposit		100,000.00
Additional Earnest Money Deposit		100,000.00
Extension Deposit		40,000.00
Extension Deposit		40,000.00
Equity Credit from File No. 22011220092-B		650,000.00
<b>Prorations/Adjustments</b>		
2022 Real Property Taxes (based on 2021 amounts) 236 days @ 153.567233 per day at \$56,052.04 01/01/22-08/24/22		36,241.87
<b>Loan Fees and Charges \$41,155.72</b>		
Origination Fee	40,630.00	
Flood Determination Fee (Initial Determination)	11.00	
Flood Determination (LOL)	11.00	
Credit Report Fee	3.72	
Doc Prep	500.00	
<b>Title Insurance to Commonwealth Title of Dallas, Inc. \$102.00</b>		
Loan Policy Premium	100.00	
Coverage: \$4,063,000.00 Version: Loan Policy of Title Insurance (T-2) - 2014		

*OK  
Gillespie*

Buyer's Settlement Statement

	Buyer	
	Debit	Credit
<b>Title Insurance to Commonwealth Title of Dallas, Inc. (continued)</b>		
State of Texas Policy Guaranty Fee - Loan Policy	2.00	
<b>Settlement Charges to Commonwealth Title of Dallas, Inc. \$310.00</b>		
Escrow Fee (split 50/50)	300.00	
Courier/ Overnight Delivery Fee (split 50/50)	10.00	
<b>Recording Charges to Commonwealth Title of Dallas, Inc.</b>		
Estimated Recording Charges	500.00	
<b>Miscellaneous Charges</b>		
Buyer/borrower legal fees to The Marx Firm, LLC	15,382.00	- <i>Lept</i>
Fee to Silverlake Capital, LLC	<del>81,260.00</del>	
Appraisal Reimbursement to Broadview Holdings	4,200.00	- <i>drbl</i>
<b>Subtotals</b>	5,442,909.72	5,029,241.87
<b>Balance Due FROM Buyer</b>		<b>413,667.85</b>
<b>Totals</b>	5,442,909.72	5,442,909.72

*Loan Key Sec*

See signature page to follow





# EXHIBIT A-23

**From:** [Charlene Koonce](#)  
**To:** [Edney, Michael](#); [Cort Thomas](#)  
**Cc:** [Richard Rooper](#); [Huffman, Ted](#); [Tim Wells](#)  
**Subject:** RE: Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X  
**Date:** Friday, November 11, 2022 3:40:00 PM  
**Attachments:** [image001.png](#)

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Mike – Thank you for your letter providing Mr. Barton’s recommendation regarding how the Receiver should proceed to perform the mandate of the Receivership Order and recommending that he sell the Forney and DeSoto properties. We will carefully consider your recommendation but want to be clear about several inaccuracies in your letter and provide additional perspective that your proposal ignores.

First, as you know, the Receiver’s possession and control over all Receivership Assets is required by the Receivership Order. He cannot pick and choose which properties to potentially exclude for Mr. Barton’s continued control or development.

Second, many of the properties owned by Receivership Entities have existing and urgent financial obligations tied to them. For instance, property and liability insurance coverage, long past due utility payments, and payroll obligations owed on the Amerigold extended stay property. To date, the Receiver has recovered \$25,000 in cash that can be used for these continuing and substantial obligations. All other cash, which is limited, is encumbered or necessary for the continued operation of several other properties. (The dearth of cash also explains why the Receivership Entities had apparently not been paying virtually any of their debts as they become due). Thus, even if the Receiver agreed with your proposal to sell the two properties you identified, those sales would take time and he would be required to liquidate additional assets to pay for the administration of the estate.

Third, like every other receivership property, the two which are the subject of your proposal carry more than one lien or encumbrance. As to Bellwether Ridge in Desoto, the latest information we have is that \$17,957,371 is still owed on the HUD loan, and at least \$3.8 million is owed to Pillar Income Asset Management for a second loan on the property. As to the Parc at Windmill Farms in Forney, the latest information we have is that \$35,490,553 is still owed on that property’s HUD loan and at least \$7.3 million is owed to Pillar Income Asset Management. Even if we assume that the appraisal you cite (which we understand was prepared by an entity and/or individual that is closely connected to Mr. Barton) is accurate and not inflated, the best-case sale scenario on Desoto prior to closing costs and any commissions and legal fees would be \$4,942,629–\$6,242,629, while Forney would be \$10,509,447–\$13,209,447. In other words, even under Mr. Barton’s assumptions, successful sales of these two properties alone will still be considerably less than \$27 million.

Fourth, and perhaps most importantly at this point, there is no guarantee that the sale of these properties will result in any value to the Receivership Estate. As Mr. Barton is well aware, Pillar (the second lender on the properties) contends that prior to entry of the Receivership Order it exercised a right of conversion, which operates to extinguish (in whole) *any* interest in those properties held or claimed by the Receivership Entities. While the Receiver plans on vehemently contesting that purported conversion, the outcome is far from certain, and again, will require time and expense.

Fifth, as you note, the process of returning investor funds will be complex and therefore time-consuming and expensive. Thus, as noted above regarding the continuing cost of administering the estate for properties that require management and have accruing expenses, the estate will incur additional and extensive expenses related to other aspects of administration. Indeed, just selling the properties you identify will require additional cash outlays to comply with the statutory sales process that would govern the sale. At this very early juncture we have no estimate of what those costs may be and are unwilling to commit to or limit the receiver's efforts to an uncertain recovery on properties in which the estate may or may not hold any interest as providing sufficient funds to fully reimburse all investors, pay all creditors holding claims on those properties, and pay for the accrued and expected costs of administering the estate.

Finally, without waiver of the *many* other arguments, facts, and authorities that necessitate liquidating some assets in this case as soon as possible, we also direct you to the extremely broad discretion afforded judges supervising equitable receiverships. See *SEC v. Hardy*, 803 F.2d 1036,1037–38 (9<sup>th</sup> Cir. 1986). Due in part to the considerations listed above, your assertion that a receiver may not liquidate assets held by the estate prior to entry of a judgment is simply incorrect. On the contrary, in instances where the ongoing administration of the estate will drain assets otherwise available for distribution to defrauded investors, liquidation prior to entry of a judgment is *expressly* permissible. See *S.E.C. v. TLC Investments & Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Cal. 2001) (“[L]iquidation at this time, prior to entry of judgment, is appropriate because the evidence presented to the Court demonstrated that the TLC entities' liabilities were greater than their assets and because ongoing management alone will drain money out of the estate, money that otherwise could be returned to investors.”). Additionally, but not inconsequently, the Fifth Circuit does not adhere to other circuits' (particularly the Second Circuit's) preference for use of bankruptcy procedures over receiverships. Thus, your citations to Second Circuit cases in which “reservations” are expressed about liquidation in the context of receiverships are unpersuasive and inapplicable here. See *for example*, the dozens if not hundreds of opinions arising from the Stanford Receiver's liquidation efforts, much of which occurred for several years before any final judgment was entered against Allan Stanford.

We are in agreement that the Receiver is required to marshal and preserve Receivership Assets. To the extent he must sell some properties to preserve others, he will do so in the most expeditious manner possible and will in all instances seek to maximize the value of all properties. We appreciate Mr. Barton's efforts to assist the Receiver and look forward to receiving the many documents and additional information that has been requested of him in that regard.



**CHARLENE KOONCE**  
214.367.7503  
BROWNFOXLAW.COM

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**From:** Edney, Michael <MEdney@huntonak.com>  
**Sent:** Wednesday, November 9, 2022 5:27 PM  
**To:** Cort Thomas <cort@brownfoxlaw.com>

APP000483

**Cc:** Charlene Koonce <charlene@brownfoxlaw.com>; Richard Rooper <Richard.Roper@hklaw.com>;  
Huffman, Ted <THuffman@hunton.com>

**Subject:** Securities and Exchange Commission v. Barton et al., No. 3:22-cv-2118-X

Dear Mr. Thomas,

Attached please find a letter and an accompanying exhibit regarding the above entitled matter. Please feel free to contact me with any questions.

My very best regards,

Mike

Michael J. Edney  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
(202) 778-2204

HUNTON  
ANDREWS KURTH

HUNTON ANDREWS KURTH LLP  
2200 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201

MICHAEL EDNEY  
DIRECT DIAL: 202 • 778 • 2204  
EMAIL: medney@HuntonAK.com

November 7, 2022

FILE NO: 126068.0000001

**Via Electronic Mail**

Cort C. Thomas, Esq.  
Brown Fox PLLC  
8111 Preston Road, Suite 300  
Dallas, Texas 75225  
Email: cort@brownfoxlaw.com

Re: *Securities and Exchange Commission v. Barton, et al.*, No. 3:22-cv-2118-X

Dear Mr. Thomas:

We write today about a way forward to generate the \$26 million allegedly owed to the lenders that is the subject of the above-entitled action. As we repeatedly have underscored, the receiver has taken possession of significant commercial real estate assets well in excess of \$26 million. At the same time, Mr. Barton has not been convicted of any crime or adjudged liable for any violation of the securities laws. There is no legal authority for an order permitting a receiver, prior to a judgment in the underlying proceeding against the target of the receiver, to liquidate the target's assets in an effort to prepare for punishing him. At the very most, the receiver may secure such assets that will compensate those allegedly affected by the claimed violation of the securities laws.

We have briefed you on the ongoing, critical-path efforts in development projects that have received funds from loans to Wall entities. While, in many cases, these projects have been delayed by government approval processes and the pandemic, they stand poised to deliver tens of millions of dollars in value that will pay back lenders and benefit the equity owners of the projects. We will oppose premature, forced liquidation of these projects for salvage value before the development process is complete. Such actions are inconsistent with the pre-judgment authorities of any receiver in a securities case and the property rights of private citizens against whom no charge of wrongdoing has been proven. See *SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987) (“equity receiverships should not be used to effect the liquidation of defendants in actions brought under the securities laws”); *SEC v. San Francisco Reg'l Ctr. LLC*, No. 17-CV-00223-RS, 2018 WL 11436314, at \*4 (N.D. Cal. Aug. 15, 2018) (“the ordinary rule is that a receiver should *not* be authorized to liquidate assets”).

APP000485

Premature liquidation of ongoing real estate development projects is all the more improper because, if managed properly, those projects will produce more than \$26 million in liquidity. Herein we propose a plan to create more than that amount, which represents the outer limit of any legitimate receiver interest. Specifically, Mr. Barton would be prepared to consent, after review of terms and under appropriate circumstances, to the sale of two properties owned by Enoch Investments LLC. The properties—in Forney and DeSoto—are fully built apartment complexes whose construction was financed by the Department of Housing and Urban Development. As these projects were completed before any Wall entity was ever established, they are not the subject of lender funds. They are, however, mature and, thus, their liquidation would not significantly destroy their value.

Attached please find an independent valuation by the manager of Silverlake Capital LLC, a mortgage broker, for two the properties held by Enoch: apartment complexes at Forney (Parc @ Windmill Farms) and DeSoto (Bellwether Ridge), Texas. We have buyers prepared to purchase the properties at or near the valuations therein, creating, we project, well in excess of \$27 million. Mr. Barton would consent to the sale of those two properties and to placing \$27 million of the proceeds into a special fund for the repayment of lenders subject to this matter, as further described below. The balance of the net proceeds should be returned to Enoch Investments LLC. The \$27 million fund should be more than enough to cover the alleged liabilities to the lenders subject to this matter and the fees associated with a short receivership.

Mr. Barton is also open to consenting to the sale of a third mature property (located at Ingleside, Texas) held by Enoch Investments LLC. While unnecessary to address the outer limits of the receiver's mandate, the time is potentially right to sell these properties as an economic matter, and the receiver's existence limits our ability to do so directly.

Once the proposed valuations are verified and the sale process of those properties is initiated, the receiver should immediately return control of all other Barton-related entities and assets to Mr. Barton. That would include control of Mr. Barton's records, electronic files, offices, and residence. Again, there is only one legitimate purpose for the receiver's continued existence: Ensuring funds are available to repay the lenders subject to this action. The proposed course of action will so ensure and should end the need for further action by the receiver.

We note that securing \$26 million in funds is only part of the problem. Identifying the real lenders and obtaining their agreement to have funds returned *in a manner consistent with U.S. law* will require considerable effort. Mr. Barton assembled a team in 2019 to attempt payments to the lenders subject to this action. That team insisted that the funds be returned to the accounts that funded the loans in the first instance and that, where appropriate, U.S. taxes be withheld from certain interest payments as required by U.S. law. Michael Fu interfered with this process every step of the way by insisting that funds be repaid to accounts of his choosing and that U.S. taxes not be withheld from any repayments. Mr. Fu also interfered with efforts to contact the true lenders. One explanation for his obstruction became apparent as Barton team inquiries and civil litigation uncovered lenders that, in many cases (accounting for more than 70 percent of the loaned funds), were simply cut-outs to obscure that funding was provided by Haibo Jiang, a Chinese Communist Party officer.

Any fund to reimburse lenders must account for these significant federal anti-money laundering and tax law issues that were an obstacle to repayment in 2019. We look forward to sharing additional information regarding these concerns at the appropriate time.

Please note that there is no legitimate reason or authority to liquidate assets owned by Mr. Barton's entities. The Receivership Order is clear that there are only two purposes of the receivership: "marshaling and preserving all assets of the Receivership Entities." See Receivership Order [ECF No. 29] at 2. The courts have repeatedly held that equity receiverships should not be used to liquidate defendants in actions brought under the securities laws. See *SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987) (expressing being "disturbed" by attempted use of receivership to liquidate defendant entities); *SEC v. High Park Inv. Grp., Inc.*, No. SACV051090CJMLGX, 2006 WL 8464226, at \*4 (C.D. Cal. June 19, 2006) (holding that a district court's "broad discretion in determining the appropriate relief in an equity receivership" did not create rare case in which a receiver could liquidate); *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (reiterating "strong reservations as to the propriety of allowing a receiver to liquidate [an estate]."). This is particularly so here, where a plan has been presented to secure and preserve more than enough assets to address the subject matter of the above entitled action.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Edney".

Michael Edney

cc: Richard Roper, Esq.  
Charlene Koonce, Esq.