

# Royal Orchid KB, L.L.C.

A Marshall Islands Limited Liability Company

## AMENDED AND RESTATED OPERATING AGREEMENT

1. **Defined Terms.** The following capitalized terms shall have the respective meanings specified in this Section 1. Capitalized terms not defined in this Agreement shall have the meanings specified in the Act.
  - 1.1. **“Act”** means the Marshall Islands Limited Liability Company Act.
  - 1.2. **“Affiliate”** means with respect to any person or entity:
    - 1.2.1. Any person or entity directly or indirectly controlling, controlled by, or under common control with such person;
    - 1.2.2. Any person or entity owning or controlling 10% or more of the outstanding voting securities or beneficial interests of such person or entity;
    - 1.2.3. Any officer, director, general partner, trustee, or anyone acting in a substantially similar capacity as to such person or entity;
    - 1.2.4. Any person or entity who is an officer, director, general partner, trustee, or holder of 10% or more of the voting securities or beneficial interests of any of the foregoing.
  - 1.3. **“Agreement”** means this Operating Agreement, as amended from time to time including each exhibit attached hereto.
  - 1.4. **“Articles”** shall mean the Certificate of Formation of the Company as filed with any office of Marshall Islands Maritime and Corporate Administrators, Inc, the same may be amended from time to time.
  - 1.5. **“Assignee”** means the Person who has acquired an Economic Interest in the Company but is not a Member thereof.
  - 1.6. **“Capital Account”** shall mean the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:
    - 1.6.1. An Interest Holder's Capital Account shall be credited with the amount of money and the fair market value of any property contributed to the Company (net of liabilities secured by such property that the Company either assumes or to which such property is subject) the amount of any Company unsecured liabilities assumed by the Interest Holder, and the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially associated to the Interest Holder; and
    - 1.6.2. An Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder (net of liabilities secured by such distributed property that the Interest Holder either assumes or to which such property is subject), the amount of any unsecured liabilities of the Interest Holder assumed by the Company.
    - 1.6.3. If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704 1(b)(2)(iv) or any successor regulatory or statutory provision, and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.
  - 1.7. **“Capital Contribution”** means the total cash investment and contributions to the capital of the Company by the Members pursuant to this Agreement.
  - 1.8. **“Code”** means the United States Internal Revenue Code of 1986, as amended, under which the taxing jurisdiction of this Company lies so long as the Members of this Company are United States Citizens.
  - 1.9. **“Company”** means the limited liability company formed in accordance with this Agreement.
  - 1.10. **“Contribution”** means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a Member contributes to a Limited Liability Company as capital in that Member's capacity as a Member pursuant to an agreement between the Members, including an agreement as to value.

- 1.11. **"Distributable Cash"** shall mean the excess of cash received by the Company from operations over;
- 1.11.1. Operational cash disbursements, and
- 1.11.2. A reasonable allowance for reserves, contingencies and anticipated obligations.
- 1.12. **"Distributions"** shall mean any cash (or property to the extent applicable) distributed to the Members or Assignees arising from their Interests in the Company.
- 1.13. **"Economic Interest"** means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive Distributions from, the Company, but does not include any other rights of a Member including, without limitation, the right to vote or to participate in management, or any right to information concerning the business and affairs of the Company.
- 1.14. **"Interest Holder"** means any Person who holds an Economic Interest, whether as a Member or as an Assignee of a Member.
- 1.15. **"Majority in Interest"** shall mean and refer to the vote of Members holding a majority of the "Membership Interests" issued and outstanding as of the time of event for which a vote or action is to be taken.
- 1.16. **"Manager"** means the person or entity appointed by the Members from time to time to manage the daily affairs of the Company. If more than one Manager is appointed by the Members, any reference in this Operating Agreement to "Manager" shall instead refer to an act or determination made by a majority of the appointed Managers.
- 1.17. **"Member"** means any person or entity admitted to the Company as a Member or Substituted Member and who has not ceased to be a Member.
- 1.18. **"Membership Interest"** means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the Company.
- 1.19. **"Membership Interest Units"** means units of interest in the capital of the Company, evidenced by a written certificate ("Membership Interest Certificate") issued to a Member to reflect that Member's contribution to the capital of the Company, whether by way of money, property, services, or an obligation to provide same. The number of Membership Interest Units issued to a Member divided by the total number of Membership Units issued by the Company to all existing Members equals that Member's Percentage Interest in the Company. The number of Membership Units held by a Member in proportion to the Membership Units held by all Members determines that Member's proportionate right to income and distributions from the Company unless otherwise specifically stated in this Operating Agreement.
- 1.20. **"Percentage Interest"** means, with respect to any Member, that percentage which such Member's Membership Interest Units constitutes of the aggregate of all Membership Interest Units outstanding at the time the Percentage is determined.
- 1.21. **"Person"** means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.
- 1.22. **"Net Profit" and "Net Loss."** means for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with IRC Section 703(a), with the following adjustments:
- 1.22.1. All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to IRC Section 703(a)(1) shall be included in computing taxable income or loss; and
- 1.22.2. Any tax exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and
- 1.22.3. any expenditures of the Company described in IRC Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1 (b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and
- 1.22.4. gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the book value as adjusted under Regulation Section 1.704 1 (b) ("adjusted book value") of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and
- 1.22.5. in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset.

- 1.23. **“Regulation”** means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.
- 1.24. **“Substituted Member”** shall mean an Assignee that becomes a Member in the place of an assignor Member.
- 1.25. **“Transfer”** means, when used as a noun, any sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, to sell hypothecate, pledge, assign, or otherwise transfer with the exception of a transfer or assignment of a Membership Interest by a Member to that Member’s revocable trust of which that Member is a Trustee or Co-Trustee together with his or her spouse or a transfer or assignment of a Membership Interest by a Member to that Member’s spouse.
- 1.26. **“Voluntary Withdrawal”** means a Member's disassociation from the Company by means other than a Transfer or an Involuntary Withdrawal.
- 1.27. **“Writing / Written”** means a transcription of letters and words by letter, by fax or by email.
2. **Formation and Name; Purpose; Term; Office; Resident Agent and Initial Member(s).**
- 2.1. **Organization.** The parties hereby organize a limited liability company pursuant to the Act and the provisions of this Agreement. The Company has caused Articles of Organization/Certificate of Formation to be prepared, executed, and filed.
- 2.2. **Name of the Company.** The name of the Company shall be **“Royal Orchid KB, L.L.C.”** The Company may do business under that name and under any other name or names that the Members holding a Majority in Interest select. If the Company does business under a name other than that set forth in its Certificate of Formation, the Company shall file and publish a fictitious business name statement as required by law.
- 2.3. **Purpose.**
- 2.3.1. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may now or hereafter be organized under the Marshall Islands Limited Liability Company Act." The Company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking. The Company shall possess and may exercise all the powers and privileges granted under Marshall Islands Law or by any other law or by this Operating Agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the Company.
- 2.3.2. In addition the Company is authorized to own, operate, manage, charter, build or rebuild, construct, finish, equip, fit out, refuel, lubricate, service, repair, overhaul, renovate, recondition, refinish, clean, paint, berth, dock, store, maintain and generally keep in operating condition, buy, sell, display, import, export, lease as lessor or lessee and generally deal in and with any lawful capacity, any and all kinds of boats, ships, yachts, watercraft, vessels of all types, marine and marine equipment and in connection therewith and independent thereof, to buy, sell, mortgage, maintain, lease as lessor or lessee, license the use of and generally deal in and with, whether as principal, agent, or otherwise, any and all kinds of boats, ships, yachts, watercraft, vessels of all types, marine and marine equipment, fuels, lubricants, equipment, supplies, accessories, berthing, docking, wharf and working areas, sites, basins, boat and shipping yards, and to do everything necessary, useful and convenient in furtherance of the objects of the Company, and to engage in any lawful act or activity for which limited liability companies may be formed under the Act. Except as expressly provided, the foregoing statement is not intended to limit or restrict in any manner the exercise of all powers conferred upon the Limited Liability Company by the Act.
- 2.4. **Term.** The Company’s existence shall be perpetual, unless dissolved as provided by this Agreement or the Act.
- 2.5. **Principal Place of Business.** The Company's Principal Place of Business shall be located at **Marshall Islands is Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960** or at any other place in the Marshall Islands that the **Manager** may determine.
- 2.6. **Resident Agent.** The name and address of the Company's resident agent in the Marshall Islands is **The Trust Company of the Marshall Islands, Inc.** whose address is **Marshall Islands is Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.**
- 2.7. **Members.** The name, present mailing address, Contribution, Percentage, and Membership Interest Units of each Member are set forth on **Schedule A.**

3. **Capital; Capital Contributions; Capital Accounts.**

3.1. **Capital Contributions.**

3.1.1. **Initial Contribution.** Each Member shall make an initial contribution to the capital of the Company, or directly to a third party for the Company's benefit, in the amount set forth on **Schedule A** which amount shall be contributed upon execution of this Agreement.

3.1.2. **Subsequent Contributions.** Each Member shall from time to time make additional cash contributions to the capital of the Company in such amounts as the Manager shall determine are appropriate in the exercise of their good faith and reasonable discretion and as he shall deem necessary to accomplish the Company's purposes and to pay when due the obligations and expenses of the Company. The amount of any such additional capital contributions shall be borne equally by each Member. **The Company may not assign the Members' obligation to make additional capital contributions to any creditor or other third party.**

3.1.2.1. **Failure to Make Additional Capital Contribution.** Any Member that fails to contribute its entire pro-rata share of any additional capital contribution by the time such additional capital contribution is required to be made (the amount of such failure to contribute, a "Contribution Shortfall"), and does not cure such failure within five (5) business days after receipt by such Member of written notice from the L.L.C. of such failure, shall be a "Defaulting Member" and the following provisions of this Section 3.1.2.1 shall apply:

3.1.2.1.1. The Company shall cause a written notice (a "Contribution Shortfall Notice") to be sent to each of the Members that contributed their respective pro-rata shares, in full, of such additional capital contribution (each, a "Non-Defaulting Member"), identifying each Defaulting Member that has failed to make its pro-rata share of the additional capital contribution in full and specifying the amount of that Defaulting Member's Contribution Shortfall and the amount of each Non-Defaulting Member's allocable share (as hereinafter defined) of such Contribution Shortfall. For purposes of this Section 3.1.2.1, each Non-Defaulting Member's "allocable share of a Contribution Shortfall" shall be an amount that is determined by multiplying the Contribution Shortfall by the percentage that results from dividing such Non-Defaulting Member's Percentage Interest as of the date of the Capital Notice by the aggregate Percentage Interests of all of the Non-Defaulting Members as of that date. Upon receipt of a Contribution Shortfall Notice, each Non-Defaulting Member shall have the option (but not the obligation) of making a further capital contribution in an amount equal to all or any part of its pro rate share of the defaulting Member's Contribution Shortfall a "Make-Up Contribution"). Any Non-Defaulting Member that elects to exercise this option shall do so by sending to the Company a written notice of such election, specifying the amount of the Make-Up Contribution such Non-Defaulting Member has elected to make to the Company, within thirty (30) days after the date of the Contribution Shortfall Notice, and such Make-Up Contribution shall be funded within fifteen (15) days after the expiration of such 30-day period.

- 3.1.2.1.2. If the aggregate amount of the Make-Up Contributions that the Non-Defaulting Members have elected to contribute pursuant to this Section 3.1.2.1 is less than the amount of the Contribution Shortfall, at the election of the Manager, each Non-Defaulting Member that did elect to make its full pro-rata portion of such Make-Up Contributions shall be given the option of increasing its Make-Up Contribution in an effort to make up the remaining Contribution Shortfall, on a basis that is deemed by the Manager to be equitable, taking into account such criteria as the Manager deems to be appropriate.
- 3.1.2.1.3. At such time as the period for making any Make-Up Contributions has expired, the respective Capital Accounts and Percentage Interests of the Non- Defaulting Members, including those who have made any such Make-Up Contributions, and the Percentage Interests of the Defaulting Members, shall be adjusted such that after giving effect to the Additional Capital Contributions and any Make Up Contributions that have been made and the Contribution Shortfalls of the Defaulting Members, a Member's Percentage Interest shall be equal to the percentage that results from dividing the aggregate amount of such Member's Capital Account (after giving effect to any Additional Capital Contributions and Make Up Contributions made by such Member), by the sum of the amounts in the Capital Accounts of all of the Members (after giving effect to the Additional Capital Contributions, if any, made by them). Upon any adjustment to the respective Percentage Interests of any of the Members pursuant to this Section 3.1.2.1, the Company shall cause Schedule A hereto (Membership Interests) to be amended accordingly.
- 3.1.2.1.4. Notwithstanding the provisions of subsections 3.1.2.1.1 - 3.1.2.1.3 above, in the event any Member has a Contribution Shortfall, the Non-Defaulting Members may elect, at such time, to purchase the Interests of the Defaulting Member(s) in accordance with the provisions of Section 8 below.
- 3.1.3. **Membership Interest Units and Certificates.** The capital contributed by a Member, whether by way of money, property, services, or an obligation to provide same, shall be evidenced by a Membership Interest Certificate setting forth the number of that Member's Membership Interest Units in the Company. The number of Membership Interest Units owned by a Member in proportion to those Membership Interest Units owned by all other Members shall determinate that Member's Percentage Interest.
- 3.1.3.1. **Number of Membership Interest Units Authorized.** The Company shall have the authority to issue one million (1,000,000) Membership Interest Units of the Company to evidence a Member's Membership Interest in the Company.
- 3.1.3.2. **Execution of Certificates.** Every holder of Membership Interest Units in the Company shall be entitled to have a certificate signed in the name of the Company by the Manager, certifying the Membership Interest Units and the class or series of Membership Interest Units owned by the Member.
- 3.1.3.2.1. Any or all of the signatures on the certificate may be facsimile.



- 3.1.3.2.2.** In case any Manager who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be a Manager before such certificate is issued, the issuance of such certificate by the Company shall have the same effect as if such person were a Manager at the date of issue.
- 3.1.3.3.** **Classes of Membership Units.** Unless specifically designated in this Operating Agreement, the Membership Interest Units have no preferences, qualifications, limitations, restrictions, nor any special or relative rights, including convertible rights.
- 3.1.3.3.1.** If the Membership Interest Units or the Preferred Membership Interest Units of the Company are classified, or if any class has two (2) or more series, there shall appear on the certificate one of the following:
- 3.1.3.3.1.1.** a statement of the rights, preferences, privileges, and restrictions granted to or imposed upon each class or series authorized to be issued and upon the holders thereof;
- 3.1.3.3.1.2.** a summary of such rights, preferences, privileges, and restrictions with reference to the provisions of the Certificate of Formation establishing the same; or
- 3.1.3.3.1.3.** a statement setting forth the office or agency of the Company from which Members may obtain, upon request and without charge, a copy of the statement referred above.
- 3.1.3.4.** There shall also appear on the certificate the statements required by all of the following clauses to the extent applicable:
- 3.1.3.4.1.** the fact that the Membership Interest Units are subject to restrictions upon transfer;
- 3.1.3.4.2.** if the Membership Interest Units are assessable or are not fully paid, a statement that they are assessable or, on partly paid Membership Interest Units, the total amount of the consideration to be paid therefor and the amount paid thereon;
- 3.1.3.4.3.** the fact that the Membership Interest Units are subject to an irrevocable Proxy or restrictions upon voting rights contractually imposed by the Company;
- 3.1.3.4.4.** the fact that the Membership Interest Units are redeemable; and
- 3.1.3.4.5.** the fact the Membership Interest Units are convertible and the period for conversion. Any such statement or reference thereto on the face of the certificate required by this paragraph shall be conspicuous.
- 3.1.3.5.** When the Company's Certificate of Formation/Articles of Organization is amended in any way which affects the statements contained in the certificates for outstanding Membership Interest Units, or when it becomes desirable for any reason, in the discretion of the Members, to cancel any outstanding certificate for Membership Interest Units and issue a new certificate therefor conforming to the rights of the holder, the Members may order any holders of outstanding certificates for Membership Interest Units to surrender and exchange them for new certificates within a reasonable time to be fixed by the Members.

- 3.1.3.5.1. The order may provide that a holder of certificates so ordered to be surrendered is not entitled to Vote or to receive Distributions or exercise any of the other rights of a Member until a Member has complied with the order, but such order operates to suspend such rights only after notice and until compliance.
    - 3.1.3.5.2. The duty of surrender of any certificates may also be enforced by civil action.
  - 3.1.3.6. **Transfer of Membership Interest Units.**
    - 3.1.3.6.1. Subject to any applicable restrictions on transfer imposed by the Company, by this Operating Agreement or by law, Membership Interest Units of the Company may be transferred in any manner permitted or provided by law.
    - 3.1.3.6.2. Before any Transfer of a Membership Interest Units is entered upon the books of the Company or any new certificate issued therefor, the old certificate properly endorsed, or accompanied by an Irrevocable Membership Interest Transfer Power, shall be surrendered and canceled, except when a certificate has been lost or destroyed.
  - 3.1.3.7. **Lost Certificates.** The Company shall issue a new Membership Interest Unit, or if applicable Preferred Membership Interest Unit, certificate or a new certificate for any other security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, provided that, prior to the issuance of such new certificate the Company may require the owner of the lost, stolen, or destroyed certificate or the owner's legal representative to give the Company a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.
- 3.2. **No Additional Contributions.** Except as set forth above, no Member shall be required to contribute any additional capital to the Company, and no Member shall have personal liability for any obligation of the Company except as expressly provided by law.
- 3.3. **No Interest on Contributions.** Neither Members nor Interest Holders shall be paid interest with respect to Contributions.
- 3.4. **Return of Contributions.** Except as otherwise provided in this Agreement, no Member or Interest Holder shall have the right to receive the return of any Contribution or withdraw from the Company, except as specifically set forth in this agreement, upon the dissolution of the Company or as other as otherwise unanimously agreed to in writing by all Members.
- 3.5. **Form of Return of Capital.** If a Member or an Interest Holder is entitled to receive the return of a Contribution, the Company may distribute in lieu of money, notes, or other property having a value equal to the amount of money distributable to such Person.
- 3.6. **Capital Accounts.**
  - 3.6.1. A separate Capital Account shall be maintained for each Member and Interest Holder. In maintaining such capital accounts there shall be increases or decreases in each Member's capital account as necessary to reflect a revaluation of the Company's assets.
  - 3.6.2. **Capital Account of Assignee.** On any sale or transfer of any Membership Interest, the Capital Account of the transferor Member shall become the Capital Account of the Assignee Member, as it existed at the effective date of the transfer of the Member's Interest.
  - 3.6.3. **Deficit Capital Account.** No Member shall have any liability to the Company, to the other Member, or to the creditors of the Company on account of any deficit Capital Account balance.

#### 4. **Financial.**

- 4.1. **Accounting Method.** The Company books shall be kept on a basis to be determined by all of the Members.
- 4.2. **Fiscal Year.** The fiscal year of the Company shall end December 31 unless otherwise agreed to by all Members and approved by the Internal Revenue Service.
- 4.3. **Loans and Other Business Transactions.** Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member agree. Members may also transact other business with the Company and, in doing so, as they shall have the same rights and be subject to the same obligations arising out of any such business transaction as would be enjoyed by and imposed upon any Person, not a Member, engaged in a similar business transaction with the Company.
- 4.4. **Expenses of the Company.** The Company shall pay or reimburse to the Manager or Members for expenses paid by said Manager or Member for expenses incurred on behalf of the Company, including, but not limited to, organizational expenses (including legal and filing fees), operational expenses and any expenses incurred in connection with purchasing, operating and disposing of any Company property; provided, however, that the Members shall not incur expenses on behalf of the Company or be reimbursed for any expenses that are not related to the business of the Company and shall only be reimbursed for expenses incurred on behalf of the Company if approved by the Manager.
- 4.5. **Net Income, Net Losses and Distributions.**
- 4.5.1. **Distributions.** Other than Distributions in liquidation as provided in Section 10, Distributable Cash shall be distributed at such times as determined by the Manager and when distributed shall be distributed to the Manager in accordance with their Percentage Interests; provided, however, that Distributable Cash shall be calculated not less frequently than at the end of each calendar quarter.
- 4.5.2. **Consent of Member.** The methods, hereinabove set forth, by which Net Income, Net Losses and Distributions are allocated and distributed are hereby expressly consented to by the Members as an express condition of becoming a Member.

#### 5. **Management.**

- 5.1. **Management of the Company by Manager.** Subject to this Operating Agreement relating to actions required to be approved by the Members, the operations and affairs of the Company shall be administered and managed by the Manager. Except as otherwise set forth in this Agreement, the Manager shall have, all authority, rights, and powers conferred by law and those necessary or appropriate to carry out the purposes of the Company, and all such authority, rights and powers shall be exercised by or under the direction of the Manager. If more than one Manager is appointed by the Members, then all decisions and powers of the Manager shall require the affirmative vote of a majority of those appointed as Managers of the Company by the Members.
- 5.2. **Election of Manager.**
- 5.2.1. **Initial Number of Managers and Initial Manager.**
- 5.2.1.1. The number of Managers shall be initially fixed at **one (1)**. The number of Managers may be changed from time to time by a vote of the Members holding a Majority in Interest.
- 5.2.1.2. The initial Managers shall be **Joshua Golder**.
- 5.2.2. **Tenure.** Unless he, she or it resigns or is removed, each Manager shall hold office until a successor shall have been elected and qualified.
- 5.2.3. **Election; Qualifications of Manager.**
- 5.2.3.1. Subsequent changes in the Managers of the Company may be undertaken by written resolution of the current Members, holding a Majority in Interest, or by an amendment and restatement of the Operating Agreement by the Members.
- 5.2.3.2. A Manager need not be a Member or an individual.
- 5.2.4. **Resignation.** A Manager may resign at any time by giving written notice to the other Manager. The resignation of a Manager who is also a Member shall not affect the Manager's rights as Member and shall not constitute a withdrawal of that Member.



- 5.2.5. **Removal.** A Manager shall be removed upon the vote of the Members holding a Majority in Interest, at any time, with or without cause. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of that Member.
- 5.2.6. **Vacancies.** Any vacancy in the number of Manager occurring for any reason, other than a vacancy created by the removal of a Manager, may be filled by the affirmative vote or written consent of the Members holding a Majority in Interest.
- 5.3. **Responsibilities of the Manager.** A Manager shall devote such time to administering the business of the Company as the Manager reasonably deems necessary to perform the Manager's duties as set forth in this Agreement. Nothing in this Agreement shall preclude the employment by the Company of any agent or third party to provide services in respect of the business of the Company; provided, however, that the Manager shall continue to have ultimate responsibility under this Agreement. The Manager shall cause to be filed such certificates or filings as may be required for the continuation and operation of the Company as a limited liability company in its state of organization or any other state in which the Company elects to do business.
- 5.4. **Limitation on a Manager's Authority.** The Manager shall not have the authority to:
- 5.4.1. **Act in Contravention of Agreement.** Do any act in contravention of this Agreement;
- 5.4.2. **Create Liability to the Members.** Perform any action (other than an act required by this Agreement or any act taken in good faith) which would, at the time such act occurred, subject the Members to liability in any jurisdiction;
- 5.4.3. **Alter or Hinder Purpose of Company.** Alter the primary purpose of the Company or do any act which would make it impossible to carry on the ordinary business of the Company.
- 5.5. **Manager Meeting.** Nothing in this Agreement is intended to require that Manager meetings be held, it being the intent of the Members that meetings of Manager are not required. Meetings of the Manager may be called by a majority of the Managers; provided, however, if there are less than three Managers, any one Manager may call a meeting. Managers may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Managers participating in such meeting can hear one another. Participation in a meeting in such manner constitutes a presence in person at such meeting.
- 5.6. **Compensation of Manager.** The Manager may be entitled to reasonable compensation for providing services to the Company in an amount determined by the Members holding a Majority in Interest, which amount shall be determined based on an amount that would be charged by an unrelated third party for the same or similar services. The Manager shall also be entitled to a reimbursement for a direct payment of all reasonable and necessary business expenses incurred in the management and administration of the Company.
- 5.7. **Execution of Company Instruments, Banking, Ratification of Contracts, and Voting of Stocks Owned by the Company.**
- 5.7.1. **Execution of Company Contracts, Instruments & Company Banking Powers.**
- 5.7.1.1. The Manager shall have the power and authority to act on behalf the Company with respect to the execution of any Membership Interest Certificate, contract, bank loan, preferred ship mortgage, security agreement or any other agreement, instrument or other document related to the Company and/or its assets or assets to be acquired by the Company and such execution or signature of said Manager shall be binding upon the Company.
- 5.7.1.2. No other agent, employee, or person purporting to act on behalf of the Company shall have any power or authority to bind the Company in any way, to pledge the Company's credit, or to render the Company liable for any purpose or in any amount, unless that person was acting with the authority duly granted by the unanimous consent of the Members or unless an unauthorized act was later ratified by the unanimous consent of the Members.

5.7.1.3. All checks and drafts drawn on banks or other depositories of funds to the credit of the Company, or in special accounts of the Company, shall be signed by such person or persons as the Members shall authorize and in the absence of such Member authorization the Manager shall have signatory authority for all checks and drafts drawn on banks or other depositories of funds to the credit of the Company, or in special accounts of the Company.

5.7.2. **Ratification by Unanimous Consent of Members.** Any contract or act which shall be approved or ratified by the unanimous consent of the Members shall be valid and binding upon the Company.

5.7.3. **Voting of Stocks Owned by the Company.** All stock or other interest of other entities owned or held by the Company for itself or for other parties in any capacity shall be voted, and all proxies with respect thereto shall be executed by the Manager.

## 6. **Member Provisions.**

6.1. **Liability of Members.** Except as specifically provided in this Agreement, no Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company except with respect to their Capital Contributions as indicated herein. Only the Manager, (and no third party creditor, either in its own right or as a successor-in-interest of the Company, and including a trustee, receiver or other representative of the Company Or Member), shall be entitled to enforce the requirements to make Capital Contributions. The Members intend and agree that the obligation of the Members to make Capital Contributions constitutes an agreement to make financial accommodations to and for the benefit of the other Member(s) of the Company.

6.2. **Members Are Not Agents.** The management of the Company is vested in the Manager. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind or execute any instrument on behalf of the Company, except as expressly provided in Section 5.

6.3. **Voting.** Members shall have the right to vote only with respect to those matters and in the manner as specifically set forth in this Agreement. Assignees who have not become Substituted Members shall not be entitled to vote and any voting rights associated with a Membership Interest transferred to such Assignee shall remain with the transferring Member.

6.4. **Limitation of Rights of Members.** No Member shall have the right or power to:

6.4.1. Withdraw or reduce its Capital Contribution, except as a result of the dissolution of the Company or as otherwise provided in this Agreement or by law;

6.4.2. Bring an action for partition against the Company; or

6.4.3. Demand or receive property in any distribution other than cash.

6.4.4. Except as otherwise provided in this Agreement, no Member shall have priority over any other Member either as to the return of Capital Contributions or as to allocations of the Net Income, Net Losses or Distributions of the Company.

6.5. **Return of Distributions.** In accordance with the Act, a Member may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Member.

6.6. **Meetings of Members.** Meetings of the Members are not required. Provided, however, that notwithstanding the foregoing to the extent a meeting of the Members is desired the terms of this Section 6 shall govern the manner in which said meeting may be called and held.

6.6.1. **Place of Meetings.** All the meetings of Members shall be held at the principal executive office of the Company, or at any other place, within or without the State of the Marshall Islands, specified by the Members. The place of any meeting of Members shall be specified in the notice calling such meeting.

**6.6.2. Annual Meeting.** An annual meeting of the Members is not required but may be held and may be held in some years and not others. If an annual Meeting is held the same may be held at 10:00 A.M., on the last Friday in January of each year, if not a legal holiday, and if a legal holiday, on the next business day following. In the event the annual meeting of Members shall not be held on the date above specified, the Members may cause a meeting in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at such meeting shall be as valid as if such business were transacted or election held at the annual meeting. At the annual meeting, Manager(s) may be elected, reports of the affairs of the Company shall be considered, and any other business may be transacted which is within the power of the Members.

**6.6.3. Special Meetings.**

**6.6.3.1.** A special meeting of the Members for any purpose or purposes whatsoever may be called at any time by any Manager, or by one or more Members holding Membership Interest Units entitled to cast, in the aggregate, in excess of ten percent (10%) of the votes at the meeting.

**6.6.3.2.** Upon request In Writing to any Manager by any Member or Members entitled to call a special meeting of Members, the Manager to whom such request is made forthwith shall cause notice to be given to the Members entitled to Vote that a meeting of the Members will be held at a time, requested by the Person or Persons calling the meeting, which shall be not less than ten (10) nor more than sixty (60) days after the receipt of such request.

**6.6.4. Notice of Meetings.**

**6.6.4.1.** Whenever Members are required or permitted to take any action at a meeting, a Written notice of the meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Member entitled to Vote thereat. Such notice shall state the place, date and hour of the meeting and the general nature of the business to be transacted, and no other business may be transacted at such meeting.

**6.6.4.2.** Notice of a Members' meeting or any report shall be given either personally or by first class mail or other means of Written communication, addressed to the Member at the address of such Member appearing on the books of the Company or given by the Member to the Company for the purpose of notice; or if no such address appears or is given, at the place where the principal executive office of the Company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located.

**6.6.4.2.1.** The notice or report shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of Written communication.

**6.6.4.2.2.** If any notice or report addressed to the Member at the address of such Member appearing on the books of the Company is returned to the Company by the Postal Service marked to indicate that the Postal Service is unable to deliver the notice or report to the Member at such address, all future notices or reports shall be deemed to have been duly given without further mailing if any such notice or report shall be available for the Member at the principal executive office of the Company for a period of one year from the date of the giving of the notice or report to all other Members.

**6.6.4.3.** When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than forty-five (45) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of Record entitled to Vote at the meeting.

**6.6.5. Consent to Members' Meetings and Actions Without Meetings.**

**6.6.5.1.** The actions taken at any meeting of Members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by Proxy, and if, either before or after the meeting, each of the Persons entitled to Vote, not present in person or by Proxy, signs a written waiver of notice or consents to the holding of the meeting or approves of the minutes thereof.

**6.6.5.1.1.** All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**6.6.5.1.2.** Attendance of a Person at a meeting shall constitute a waiver of notice of and presence at such meeting except when the Person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

**6.6.5.1.3.** Attendance of a Person at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the beginning of the meeting.

**6.6.5.1.4.** Neither the business to be transacted nor the purpose of any regular or special meeting of Members need be specified in any written waiver of notice, except that any Member approval at a meeting, other than unanimous approval by those entitled to Vote, shall be valid only if the general nature of the proposal so approved is stated in the notice of meeting or in any written waiver of notice.

**6.6.5.2.** Any action that may be taken at any annual or special meeting of the Members may be taken without a meeting and without prior notice, if a consent In Writing, setting forth the action so taken, shall be delivered to the Company within sixty (60) days of the record date for that action by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to Vote thereon were present and voted.

**6.6.5.3.** Unless the consents of all Members entitled to Vote have been solicited In Writing,

**6.6.5.3.1.** notice of any Member approval of an amendment to the Certificate of Formation or Operating Agreement, dissolution of the Company, or a merger of the Company, without a meeting by less than unanimous Written consent shall be given at least ten (10) days before the consummation of the action authorized by such approval to those Members entitled to Vote who have not consented In Writing; and

**6.6.5.3.2.** prompt notice shall be given of the taking of any other corporate action approved by Members without a meeting by less than unanimous Written consent to those Members entitled to Vote who have not consented In Writing.

**6.6.5.3.3.** Any Member giving a Written consent, or the Member's Proxyholder, may revoke the consent by a Writing received by the Company prior to the time that Written consents of Members having the minimum number of votes that would be required to authorize the proposed action have been filed with the Company, but may not do so thereafter. Such revocation is effective upon its receipt by the Company at the Principal Executive Office.

**6.6.6. Quorum.**

**6.6.6.1.** A simple majority of Membership Interest Units of the Members, represented in person or by Proxy, shall constitute a quorum at a meeting of Members. If a quorum is present at a duly held meeting, the affirmative Vote of the majority of the Membership Interest Units represented and Voting at the meeting on any matter shall be the act of the Members unless the Vote of a greater number or Voting by classes is required by law, the Certificate of Formation or this Operating Agreement.

**6.6.6.2.** The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after the loss of a quorum (other than adjournment) is approved by the requisite percentage of Membership Interest Units specified by law, or in the Article of Organization or this Operating Agreement.

**6.6.6.3.** In the absence of a quorum, any meeting of Members may be adjourned from time to time by the Vote of a majority of the Membership Interest Units represented either in person or by Proxy, but no other business may be transacted, except as provided above.

**6.6.7. Voting Rights.**

**6.6.7.1.** Except as otherwise provided by law and except as may be otherwise provided in the Certificate of Formation or this Operating Agreement, each outstanding Membership Interest Unit shall be entitled to one Vote on each matter submitted to a Vote of Members. Any holder of Membership Interest Units entitled to Vote on any matter may Vote part of the Membership Interest Units in favor of the proposal and refrain from Voting the remaining Membership Interest Units or Vote them against the proposal, other than elections to office, but, if the Member fails to specify the number of Membership Interest Units such Member is Voting affirmatively, it will be conclusively presumed that the Member's approving Vote is with respect to all Membership Interest Units such Member is entitled to Vote.

**6.6.7.2.** Every Person entitled to Vote Membership Interest Units may authorize another Person or Persons to act by Proxy with respect to such Membership Interest Units. No Proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the Proxy. Subject to the foregoing, every Proxy shall continue in full force and effect until revoked by the Person executing it prior to the Vote pursuant thereto. Such revocation may be affected by a Writing delivered to the Company stating that the Proxy is revoked or by a subsequent Proxy executed by the Person executing the prior Proxy and presented to the meeting, or, as to any meeting, by attendance at the meeting and Voting in person by the Person executing the Proxy. A Proxy is not revoked by the death or incapacity of the maker unless, before the Vote is counted, Written notice of such death or incapacity is received by the Company.



- 6.6.7.2.1.** If the Company has outstanding Membership Interest Units held of record by one hundred (100) or more Persons, and it distributes any form of Proxy or Written consent to ten (10) or more Members, it shall afford an opportunity on the Proxy or form of Written consent to specify a choice between approval and disapproval of each matter or group of related matters intended to be acted upon at the meeting for which the Proxy is solicited or by such Written consent, other than elections to office, and shall provide, subject to reasonable specified conditions, that where the Person solicited specifies a choice with respect to any such matter, the Membership Interest Units will be Voted in accordance therewith.
- 6.6.7.2.2.** In any election of Managers, any form of Proxy in which the Managers to be Voted upon are named therein as candidates and which is marked by a Member "withhold" or otherwise marked in a manner indicating that the authority to Vote for the election of a Manager is withheld shall not be Voted either for or against the election of a Manager.
- 6.6.7.3.** In any election of Managers, the candidates receiving the highest numbers of affirmative Votes of the Membership Interest Units entitled to be Voted for them are elected. Votes against the candidate and Votes withheld shall have no effect. Elections for Managers need not be by ballot unless a Member demands election by ballot at the meeting and before the Voting begins.
- 6.6.8. Determination of Members of Record.**
- 6.6.8.1.** In order that the Company may determine the Members entitled to notice of any meeting or to Vote, or entitled to receive any Distribution or to exercise any rights in respect of any other lawful action, a Manager, or Members representing more than ten (10) percent of the Interests of Members, may fix, in advance, a record date which shall not be more than sixty (60) nor less than ten (10) days prior to the date of such meeting nor more than sixty (60) days prior to any other action.
- 6.6.8.2.** If no record date is fixed:
- 6.6.8.2.1.** the record date for determining Members entitled to notice of or to Vote at a meeting of Members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held;
- 6.6.8.2.2.** the record date for determining Members entitled to give consent to Company action In Writing without a meeting, shall be the day on which the first Written consent is given;
- 6.6.8.2.3.** the record date for determining Members for any other purpose shall be at the close of business on the day on which the Members adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later.
- 6.6.8.3.** A determination of Members of Record entitled to notice of or to Vote at a meeting of Members shall apply to any adjournment of the meeting unless the Manager or Members who called the meeting fix a new record date for the adjourned meeting, but the Manager or Members who called the meeting shall fix a new record date if the meeting is adjourned for more than forty-five (45) days from the date set for the original meeting.

6.6.8.4. Members at the close of business on the record date are entitled to notice and to Vote or to receive the Distribution, or to exercise the rights, as the case may be, notwithstanding any Transfer of any Membership Interest Units on the books of the Company after the record date, except as otherwise provided by law, in the Company's Certificate of Formation or by agreement.

7. **Transfer of Membership Interests and Buy-Sell Provisions.** The purpose of this section is to set forth the various circumstances triggering the rights or obligations of Members to purchase a Membership Interest in the event of a proposed assignment, sale or transfer of a Membership Interest or upon the occurrence of a Valuation Event as defined below. Certain Valuation Events as defined below are tied into events concerning a Member's "Deemed Owner." When a Membership Interest is owned by a trust or an entity that trust or entity is incapable of dying, or becoming disabled and certain events e.g., bankruptcy of the principal effect the affairs of the Member and thus these principals, trustees, shareholders, members, for purposes of this section are referred to as a "Deemed Owner" of that Member's Membership Interests for Valuation Events described herein. The intent of the concept of Deemed Owners is that the Valuation Events defined below shall be deemed to relate to a Member when a Valuation Event occurs with respect to that Member's Deemed Owner which shall trigger sale or purchase obligations or rights as set forth below.

7.1. **Definitions for Section 7.** In addition to the terms set forth in Section 1 of this Agreement, as used herein in this Section 7.1, the following capitalized terms shall have the meanings as hereinafter set forth in this Section 7.1.

7.1.1. **"Appraised Value"** as used herein shall mean the fair market value of a Selling Member's Membership Interest upon the occurrence of a Valuation Event and shall be either:

7.1.1.1. The fair market value as agreed upon by all Members of the Company adopted by written resolution within twelve (12) months preceding a Valuation Event; or

7.1.1.2. In the event that no determination of value has been made by the Members by written resolution within the last twelve (12) months prior to any Valuation Date then the fair market value shall be determined as agreed upon by and between the Selling Member or the representative of the Selling Member and the non-Selling Members within twenty (20) days of a Valuation Event; or

7.1.1.3. If the Selling Member or the representative of the Selling Member and the non-Selling Members are unable to agree upon a fair market value within twenty (20) days following a Valuation Event then fair market of the Selling Member's Membership Interest shall be determined by an appraiser agreed upon by such parties.

7.1.1.4. If such parties are unable to agree on an appraiser within twenty (20) days thereafter, the Selling Member or the Selling Member's legal representative as one party, and the non-Selling Member's as the other party shall each name an appraiser experienced in the valuation of closely-held companies in the business of the Company and each such appraiser shall make an independent determination of the value of the assets of the Company. The value of a Membership Interest shall be equal to the amount that would be distributed by the Company with respect to such Membership Interest if the assets were sold for such value and all costs and obligations of the Company were paid (including reasonable costs of sale) and the remaining proceeds were distributed in liquidation of the Company. If the lower of the two resulting valuations is less than eighty-five percent (85%) of the higher valuation, the original appraisers shall appoint a third appraiser whose determination of the value shall be used to determine the final purchase price. Otherwise, the purchase price shall be determined using the average of the two valuations originally determined, The Selling Member or the legal representative of Selling Member as one party, and the non-Selling Members the other party shall share equally the fees and expenses of the appraiser jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by him or her.

- 7.1.1.5. **Appraisals and Appraisal Criteria.** In determining the purchase of a Membership Interest, the appraisers appointed under this Agreement shall consider all opinions and relevant evidence submitted to them by the Members or otherwise obtained by them and shall set forth their determination in writing, together with their opinions and the considerations on which the determination is based, with a signed counterpart to be delivered to each party, within sixty (60) days of commencing appraisal. In appraising the Membership Interest of the Company the appraisers shall appraise the Membership Interest without regard to discounts based upon undivided or minority interests. However, the appraisers may take into consideration discounts for lack of marketability and any other such factors that they deem applicable.
- 7.1.1.6. **Binding Effect.** The value determined pursuant to Section 7.1.1.1. and its subsections shall be binding upon the parties to this Agreement, their legal representatives, and their successors in interest for purposes of purchases and sales made pursuant to Section 7.
- 7.1.2. **“Assignee”** as used herein shall mean the person or entity to whom a Member has assigned his, her or its Membership Interest.
- 7.1.3. **“Disability” / “Disabled”** as used herein shall mean unable to engage in any substantial gainful activity by reason of any medically determinable, physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. as certified by a physician.
- 7.1.4. **“Employee Member”** as used herein shall mean a Member who is also an employee of the Company.
- 7.1.5. **“Notice”** as used herein shall mean the written notice required to be given by the Selling Member to the other Members set forth in full the terms upon which the Selling Member proposes to sell, assign or transfer the Offered Interest, including the identity of any offeree.
- 7.1.6. **“Offered Interest”** as used herein shall mean that portion of a Selling Member’s Membership Interest that the Selling Member proposes to sell, assign or transfer to a person or entity.
- 7.1.7. **“Permitted Transfer”** as used herein shall mean the transfer of a Membership Interest that is permitted without the consent of the Members. These Permitted Transfers have been specifically negotiated and discussed by the Members prior to the execution of this Operating Agreement. The following transfers of Membership Interests by a Member are permitted without consent of the other Members. A transfer to:
- 7.1.7.1. a Member’s Spouse;
- 7.1.7.2. a revocable trust established by the Member for estate planning purposes. Notwithstanding the foregoing the death of the settlor/trustor/grantor Member shall be a Valuation Event. In other words the dispositive provisions of the Member’s trust cannot be used to thwart the assignment and transfer limitations and restrictions established by this Operating Agreement.
- 7.1.8. **“Permitted Transferee”** as used herein shall mean the person or entity to whom a Membership Interest was assigned as either a result of a Permitted Transfer or as a result of the consent of the Members.
- 7.1.9. **“Selling Member”** as used herein shall mean the Member, or Member’s legal representative, that is assigning, selling or transferring all, or any portion, of his, her or its Membership Interest, or whose Membership Interest is being purchased as a result of a Valuation Event pursuant to the terms of this Agreement.
- 7.1.10. **“Selling Member’s Membership Interest”** as used herein shall mean that portion of the Membership Interest of a Selling Member that is being sold or purchased pursuant to the terms of this Agreement.

- 7.1.11. **“Valuation Event”** as used herein shall mean the occurrence of any of the following events:
- 7.1.11.1. Death of a Member; or
  - 7.1.11.2. Disability of a Member; or
  - 7.1.11.3. Entry of a final decree of divorce by a court concerning a Member; or
  - 7.1.11.4. The maintenance of any proceeding initiated by a Member under any bankruptcy or debtor & relief laws of the United States or of any other jurisdiction, which proceeding is not terminated within ninety (90) days after its commencement; or
  - 7.1.11.5. A levy upon the Membership Interest of a Member pursuant to a writ of execution or subject to the authority of any governmental entity, which levy is not removed within thirty (30) days; and
  - 7.1.11.6. A general assignment for the benefit of the creditors of a Member.
- 7.2. **Assignment of Membership Interest – Right of First Refusal**. This Section 7.2 is intended to deal with the situation where a Member desires to assign, sell or transfer his, her or its Membership Interest.
- 7.2.1. **Consent Required**. Provided there is more than one Member, any transfer, other than a Permitted Transfer, not approved by the written consent of **all other Members** shall be subject to this right of first refusal purchase option contained in this Section 7.2 and its subsections. Any Permitted Transferee of a Membership Interest shall merely be an Assignee possessing only an Economic Interest and shall not become a Substituted Member except upon compliance with Section 7.3. A Member assigning a Membership Interest in the Company to an Assignee shall not assign to, nor obligate itself to act on behalf of or upon the direction of that Assignee with regard to, the Member’s right:
- 7.2.1.1. To require any information from the Company or obtain accountings of the Company’s activities;
  - 7.2.1.2. To inspect the Company’s books and records; or
  - 7.2.1.3. To vote on any matter upon which a Member is entitled to vote pursuant to either this Agreement or any applicable law.
- 7.2.2. **Transfers Null and Void**. Any transfer or attempted transfer in violation of this Agreement shall be null and void and of no effect. Each Member acknowledges the reasonableness of the restrictions on transfer imposed by this Agreement in view of the purposes of the Company, its status as a limited liability company and the relationship of its Members. The transfer restrictions contained herein are expressly consented to by each Member as an express condition of becoming a Member.
- 7.2.3. **Right Of First Refusal**. Provided there is more than one Member, if a Member shall decide to offer, sell or transfer the Offered Interest such Member shall Notice. The other Members shall then have the right and option, for a period of **thirty (30) calendar days** following the receipt of the Notice, to elect to purchase all of the Offered Interest at the purchase price and upon the terms specified in the bona fide offer set forth in the Notice. Unless otherwise provided in the original terms of the bona fide offer, purchase by the other Member shall be completed within **sixty (60)** calendar days following receipt of the Notice.
- 7.2.3.1. If the other Members do not elect to purchase all of the Offered Interest, pursuant to the Right Of First Refusal the Selling Member may sell or transfer the Offered Interest to the transferee upon the terms set forth in the Notice, whereupon the transferee, upon execution of the Operating Agreement, shall take and hold the Membership Interest subject to this Agreement and to all of the obligations and restrictions upon the Member from whom such Membership Interest was acquired and shall observe and comply with this Agreement and all such obligations and restrictions; provided, however, that such Assignee shall not become a Substituted Member unless the consent requirements of Section 7.3 are met. Any such transfer of the Offered Interest must be affected within thirty (30) calendar days after the date of the termination of the other Member’s option as provided herein. If no such transfer is affected within the seventy-five (75) calendar day period, then any subsequent proposed transfer of all or any part of such interest shall once again be subject to the provisions of this Section 7.

7.2.3.2. For purposes hereof, in the event any consideration offered for the Offered Interest in the bona fide offer consists of rights, interests or properties other than money, the Members shall, in good faith, determine the fair market value of such consideration in monetary terms as of the date the bona fide offer was received by the Member desiring to sell the Offered Interest pursuant thereto. The fair market value of such consideration in monetary terms, as so determined, shall be included in the purchase price payable by the Company and/or the remaining Member hereunder, but the Company and/or the other Member need not transfer to the selling Member the actual rights, interests or properties offered in the bona fide offer, nor afford the selling Member the same tax treatment that would have been available to him under the bona fide offer, in order to exercise the rights of first refusal granted pursuant to this Section 7.

7.2.4. **Purchase Upon Occurrence of Valuation Events.**

7.2.4.1. **Election of Members upon Occurrence of a Valuation Event – Members’ Mandatory Purchase Obligation at Appraised Value or Members Option To Purchase at Appraised Value.** The Members acknowledge that buy-sell obligations or rights are a material part of any closely held business. The Members have discussed this Section 7 in detail amongst themselves and with respect to the occurrence of a Valuation Event the Members elect that upon the occurrence of a Valuation Event, the non-Selling Members’, in proportion that their respective Percentage Interests bear to the other non-Selling Members, shall not be obligated to purchase the Selling Member’s Membership Interest at the Appraised Value but shall have the option to purchase the Selling Member’s Membership Interest at the Appraised Value.

7.2.4.1.1. For a period of sixty (60) days following the occurrence of a Valuation Event, the non-Selling Members shall have the right and option to elect to purchase all or any part of a Selling Member’s Membership Interest upon the occurrence of a Valuation Event. If one or more non-Selling Members elect not to participate in the option to purchase, the other non-Selling Members shall have a right to purchase the remaining Selling Member’s Membership Interest in such proportion that their respective Percentage Interest’s bear to all other non-Selling Members electing to participate in the purchase option for the Selling Member’s Membership Interest. If the non-Selling Members, in the aggregate, do not elect to purchase all of the Selling Member’s Membership Interest, none of the affected Member’s interest may be purchased pursuant to this Section 7.2.4; provided that the Selling Member’s Membership Interest shall remain subject to this Agreement and all such obligations and restrictions; provided further that if the Valuation Event causes a transfer of the Selling Member’s Membership Interest any transferee shall become an Assignee only and shall not become a Substituted Member except upon compliance with Section 7.3.

7.2.4.1.2. If this subsection is elected by the Members the Appraised Value shall be paid as set forth in Section 7.2.4.2. below.

7.2.4.2. **Payment of Purchase Price.** Unless otherwise agreed to in writing by and between the Selling Member or the Selling Member’s legal representative and the non-Selling Members, the non-Selling Members, shall each pay their respective portion of the Appraised Value in **sixty (60) equal monthly installments with interest thereon at the rate of seven percent (7%) per annum** commencing thirty days after final determination of the Appraised Value. Upon the receipt of a duly executed promissory executed by the non-Selling Members, the Selling Member or the Selling Member’s legal representative shall execute all documents required or appropriate to transfer the Selling Member’s Membership Interest to the non-Selling Members in proportion to their respective purchase of the Selling Member’s Membership Interest. If the Selling Member or the Selling Member’s legal representative refuses to do so, the Company shall nevertheless enter the transfer on its records and the non-Selling Members shall be authorized to amend this Agreement to reflect such transfer.



7.2.5. **Member Option to Purchase On Death of Spouse.** Notwithstanding anything to the contrary hereinabove, if the Deceased Spouse of a Member leaves his or her interest in the Membership Interest in a manner which would otherwise give rise to an obligation to purchase such interest by the Company and/or remaining Members, such Member spouse shall have the first option to purchase any such interest of his Deceased Spouse for the price and upon the terms specified under 7.2.4.1 and its subsections.

7.2.6. **Notice of Death.** Upon the death of a Member, Deemed Owner, or the spouse of a Member or Deemed Owner, the legal representative of the estate or trust of the Deceased Member or Deemed Owner or spouse of a Deemed Owner shall promptly notify the Manager of the Company and the remaining Member(s) of such death.

7.2.7. **Distributions to Assignee That Does Not Become a Substituted Member.** permitted Assignee shall be entitled to receive distributions from the Company attributable to the Membership Interest acquired by reason of such assignment from and after the effective day of the assignment of such Membership Interest to him; however, anything herein to the contrary notwithstanding, the Company shall be entitled to treat the assignor of such Membership Interest as the absolute owner thereof in all respects, and shall incur no liability for allocations of Net Income or Net Losses. Distributions or transmittal of reports and notices required to be given to Members hereunder which are made in good faith to such assignor until such time as the written instrument of assignment has been received by the Company and recorded on its books, and the effective date of assignment has passed.

7.3. **Substituted Members- Conditions of Substitution.** An Assignee may have the right to become a Substituted Member in place of his assignor only if all of the following conditions are first satisfied:

7.3.1. **Written Assignment.** A duly executed and acknowledged written instrument of assignment shall have been filed with the Company, which instrument shall specify the percentage of the Membership Interest in the Company being assigned and which sets forth the intention of the Assignor that the Assignee succeed to the assignor's interest as a Substituted Member in its place;

7.3.2. **Instruments of Substitution.** The Assignee shall have executed and acknowledged such other instruments as may be necessary or desirable to affect such substitution, including the written acceptance and adoption by the Assignee of the provisions of this Agreement; and

7.3.3. **Consent of Members.** The written consent of the non-transferring Members to such substitution shall have been obtained, the granting or denial of which shall be within the sole and absolute discretion of the non-transferring Members.

8. **Inter Vivos Buy-Sell Obligation-Texas Draw Clause.** This Section 8 is intended to provide a solution to the situation where one or more members are no longer able to get along with one another with respect to Company affairs. The Members understand that the election to utilize this provision works best when all members are economically similarly situated. The Members also realize the economic situations change over time.

8.1. **Offer to Purchase or Sell.** Each Member agrees that within sixty (60) days after receipt of a written offer to purchase or sell the entire Membership Interest he holds by another Member (the "Offering Member") at a specified price, such Member (the "Offeree Member") shall either sell the entire Membership Interest sought by the Offering Member at the specified price and on the terms specified in Section 8.2 hereof, or shall purchase the entire Membership Interest held by the Offering Member at the specified price and on the same specified terms. Notwithstanding the foregoing, to the extent the Members hold unequal Membership Interests in the Company then the purchase price shall be converted such that the purchase price is proportionate to the Membership Interests held by the Members.

*By way of Example and for illustration purposes only, if Member A owns 2/3 of the Membership Interests and Member B holds 1/3 of the Membership Interests in the Company, and Member A offers \$100 for Member B's 1/3 interest, if Member B in turn elects to buy out Member A's 2/3 Membership Interest pursuant to this Section, the purchase price would be  $(2/3 \div 1/3)$  which equals 2 multiplied by \$100 which equals \$200. Vice versa if Member B offered to buy Member A's 2/3 for \$200 and Member A in turn elected to buy Member B's 1/3 Membership Interest the purchase price that Member A would pay to Member B for Member's 1/3 Membership interest would be  $(1/3 \div 2/3)$  which equals .5 multiplied by \$200 which equals \$100.*

For the purposes of the foregoing, the Offering Member's offer to purchase or sell shall be deemed an irrevocable offer to sell his entire Membership Interest to the other Member or purchase the entire Membership Interest from the Offeree Member, as the case may be, at the specified price and on the terms specified in Section 8.2 hereof. The Offeree Member shall make an irrevocable election whether to purchase or sell his Membership Interest within thirty (30) days of receipt of the written offer from the Offering Member. The purchase or sale shall occur within the sixty (60) day period specified above.

8.2. **Notice of Buy-Sell.** The Offering Member shall give written notice (the "Offer Notice") of such proposed transfer to the other Member. The Offer Notice must set forth the offered price and terms for the purchase of Membership Interest.

8.3. **Payment of Purchase Price.** The entire purchase price shall be paid in the manner set forth in the Offer Notice or such other terms as may be mutually agreed by the Members. Upon the sale or purchase described herein, the selling Member shall execute all documents required or appropriate to transfer the Membership Interest to the purchasing Member. If the selling Member refuses to do so, the Company shall nevertheless enter the transfer on its records and the purchasing Member shall be authorized to amend this Agreement to reflect such transfer.

## 9. **Books and Records.**

9.1. **Records.** The Company shall keep at the principal office of the Company, or such other place as shall be designated by the Members, the following documents:

- 9.1.1. A current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the contribution and share in profits and losses of each Member or Assignee;
- 9.1.2. A copy of the Articles and all amendments thereto, and executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto were executed;
- 9.1.3. Copies of the original Agreement and all amendments to the Agreement, together with any powers of attorney pursuant to which this Agreement or any amendment to the Agreement were executed;
- 9.1.4. Financial statements of the Company for the six most recent fiscal years; and
- 9.1.5. The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four fiscal years.

## 9.2. **Inspection.**

- 9.2.1. Upon the request of a Member or Assignee, the Company shall promptly deliver to the requesting Member or Assignee, at the expense of the Company, a copy of the information required to be maintained by Section 9.1.1 above.
- 9.2.2. Each Member and Assignee has the right, upon reasonable request, to:
  - 9.2.2.1. Inspect and copy during normal business hours any of the Company records required to be maintained by Section 9.1.

## 9.3. **Reports.**

- 9.3.1. The Company shall cause an annual financial report to be sent to each Member not later than 90 days after the close of each fiscal year and that financial report shall contain:
  - 9.3.1.1. A balance sheet as of the end of the fiscal year;
  - 9.3.1.2. An income statement; and
  - 9.3.1.3. A statement of changes in financial position for the fiscal year.
- 9.3.2. The Company shall send to each Member within 75 days after the end of each taxable year the information necessary for the Member to complete any kind of information returns for the year.

## 10. **Dissolution and Termination of the Company.**

10.1. **Events Causing Dissolution.** The Company shall be dissolved and its affairs shall be wound-up upon the earliest to occur of the following events:

- 10.1.1. the expiration of the term of the Company as stated in the Articles;
- 10.1.2. the unanimous vote of the Members to dissolve the Company; or
- 10.1.3. an entry of a decree of judicial dissolution pursuant to the Act.

10.2. **Certificate of Dissolution.** As soon as possible following the occurrence of any of the events specified in Section 10.1., the Members shall execute a Certificate of Dissolution in such form and file the Certificate as required by the Act.

10.3. **Distribution on Dissolution.** Upon a determination to dissolve the Company, the Members shall make full account of the Company's assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining their fair value, or, if the assets cannot be sold, they shall be valued and distributed in kind, and shall apply and distribute the proceeds or assets in the following order:

10.3.1. To the payment of creditors of the Company but excluding secured creditors whose obligations will be assumed or otherwise transferred on the liquidation of Company assets;

10.3.2. To the creation of any reserves which the Members jointly deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company;

10.3.3. To the repayment of any outstanding loans made by any Member to the Company; and

10.3.4. To the Members with positive Capital Accounts in accordance with the ratio of their Capital Accounts.

## 11. **Indemnification.**

11.1. **General.** The Company, its receiver or its trustee, shall indemnify, defend, save harmless and pay all judgments and claims against each of the Members or any of their respective Affiliates ("Indemnitees") from any liability, loss or damage incurred by it or by the Company by reason of any act performed or omitted to be performed by it in connection with the business of the Company, including costs and attorneys' fees (which attorneys' fees may be paid as incurred) and any amounts expended in the settlements of any claims of liability, loss or damage; provided that the indemnification shall be recoverable only from the assets of the Company and not any assets of the Members. The Company may, however, purchase and pay for that insurance, including extended coverage liability and casualty and worker's compensation, as would be customary for any person engaging in a similar business, and name the Indemnitees as additional or primary insured parties.

11.2. **Advancement of Expenses.** The Company shall advance all expenses incurred by an Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding. The Indemnitee person shall repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that such person is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to the indemnified person within ten (10) days following delivery of a written request therefor by the indemnified person to the Company.

## 12. **Representations and Warranties of the Members.**

12.1. Each Member hereby represents, warrants and covenants to the Company that, as of the date hereof:

12.1.1. **Investment Representation.** The Member has acquired or is acquiring its Membership Interest in good faith for its own personal account, for investment purposes only and not with a view to or for the distribution, resale, subdivision, fractionalization or disposition thereof, and the Member has no present interest of selling or otherwise distributing such Membership Interest. The Member is or will be the sole party in interest in its Membership Interest and as such is or will be vested with all legal and equitable rights in such Membership Interest.

12.1.2. **Sophistication of the Member.** The Member either has a preexisting personal or business relationship with the Company or, by reason of its business or financial experience or the business or financial experience of its professional advisors, who are unaffiliated with and not compensated by the Company or an Affiliate of the Company, directly or indirectly, has the capacity to protect his or its own interests in connection with this investment. The Member is able to bear the economic risk of an investment in its interest and can afford to sustain a total loss on such investment. The nature and amount of the Member's investment in such Membership Interest is consistent with its investment objectives, abilities and resources.

- 12.1.4. **Speculative Investment.** The Member recognizes that an investment in the Company is speculative in nature and involves a high degree of risk, and it has carefully considered the risk factors involved. These factors include, without limitation, the fact that the business of the Company is in the formative stages and that the Company's initial capitalization may be insufficient to satisfy the Company's working capital requirements.

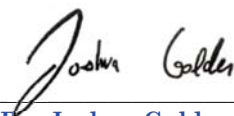
### 13. **General Provisions.**

- 13.1. **Assurances.** Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.
- 13.2. **Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and delivered personally, sent by certified or registered mail, postage prepaid, return receipt requested or sent by overnight courier.
- 13.2.1. Any notice to be given hereunder by the Company shall be given by the Members. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on the records of the Company.
- 13.2.2. A notice to the Company must be addressed to the Company's principal office.
- 13.2.3. A notice delivered personally will be deemed given only when acknowledged in writing by the Person to whom it is delivered.
- 13.2.4. A notice that is sent by Mail will be deemed given three (3) business days after it is mailed. A notice that is sent by courier will be deemed given one (1) business day after it is couriered.
- 13.2.5. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.
- 13.3. **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate fully to remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders;
- 13.3.1. Restraining and enjoining any act which would constitute a breach, or
- 13.3.2. Compelling the performance of any obligation which, if not performed, would constitute a breach.
- 13.4. **Integration.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.
- 13.5. **Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, unless said law is in conflict with any provision of the Act, in which case the law of the State of the Marshall Islands shall govern.
- 13.6. **Headings.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.
- 13.7. **Binding Provisions.** This Agreement is binding upon, and to the limited extent specifically provided herein, inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and assigns.
- 13.8. **Jurisdiction and Venue.** Any suit involving any dispute or matter arising under this Agreement shall be brought to a location agreed to by and between the Members hereto in writing. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

- 13.11. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.
- 13.12. **Estoppel Certificate.** Each Member shall, within ten (10) days after written request by the Members, deliver to the requesting Person a certificate stating, to the Member's knowledge, that:
- 13.12.1. This Agreement is in full force and effect;
- 13.12.2. This Agreement has not been modified except by any instrument or instruments identified in the certificate; and
- 13.12.3. There is no default hereunder by such Member, or if there is a default, the nature and extent thereof.
- 13.13. **Amendment.** This Agreement may be amended only upon the unanimous vote of all Members.
- This Operating Agreement ("Agreement") is effective as of **April 3, 2019**.

**Member**

**King Benji, LLC**  
**757 SE 17th Street, Suite 114**  
**Ft. Lauderdale, FL 33316**  
**Jurisdiction: Florida**  
**File Date: December 13, 2016**  
**Entity No.: L16000226724**  
**EIN/TIN: 81-4724809**



**By: Joshua Golder, Its Sole Member**



# Schedule A

Member Name	Capital Contribution	Cert No.	Membership Interest Units Issued
King Benji, LLC 757 SE 17th Street, Suite 114 Ft. Lauderdale, FL 33316	\$1,000 and other good and valuable consideration paid towards the purchase of a yacht by the Company.	1	1,000