

OPERATING AGREEMENT

of

ALTON PRESERVE, LLC

A California Limited Liability Company

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This Operating Agreement ("Agreement") of **ALTON PRESERVE, LLC**, a limited liability company organized pursuant to the Act, is entered into this 8th day of June 2005, by and among the signatories to this Agreement.

Recitals

The Manager has organized the Company as a California limited liability company pursuant to the provisions of the Act. All parties have agreed to operate the Company in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

Section I

I. Defined Terms

The following capitalized terms shall have the respective meanings specified in this Section I. Capitalized terms not defined in this Agreement shall have the meanings specified in the Act;

A. "*Act*" means the Beverly-Killea Limited Liability Company Act (California Corporations Code, Sections 17000-17655), including amendments from time to time.

B. "*Additional Capital Contribution*" shall mean the amounts called for by the Manager pursuant to Section III.B.1.a. of the Agreement.

C. "*Adjusted Capital Account Deficit*" means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

1. the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g), and 1.704-2(i)(5); and

2. the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6) shall increase the deficit.

D. *"Adjusted Capital Balance"* means, as of any day, an Interest Holders total Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections IV.A.1.a.(2) and IV.A.2.d.(2). If any Membership Interest is transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

E. *"Affiliate"* of a Member or Manager shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Member or Manager, as applicable. The term "control," as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, the power to direct or cause the direction of the management of policies of the controlled entity.

F. *"Agreement"* means this Operating Agreement, as amended from time to time including each exhibit hereto.

G. *"Assignee"* means the Person who has acquired an Economic Interest in the Company but is not a Member.

H. *"Capital Account"* means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

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 allocated to the Interest Holder pursuant to the provisions of Section IV.C (other than Section IV.C.3); and

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, and the Interest Holders distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section IV.C (other than Section IV.C.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. If the book value of Company property is adjusted pursuant to Section IV, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gains or losses equal to the amount of such aggregate adjustment. 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), 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.

I. "*Capital Proceeds*" means the gross receipts received by the Company from a Capital Transaction.

J. "*Capital Transaction*" means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales, exchanges, or other dispositions of property not in the ordinary course of business, financing, refinancing, condemnations, recoveries of damage awards, and insurance proceeds.

K. "*Cash Flow*" means all cash derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Manager. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

L. “*Class A*” means an interest in the Company that entitles the holder to certain voting rights, preferential distributions of Cash Flow and Capital Proceeds as described in Section IV.

M. “*Class B*” means an interest in the Company issued to the Manager that entitles the holder to subordinated distributions of Cash Flow and Capital Proceeds as described in Section IV.

N. “*Code*” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding revenue law.

O. “*Company*” means the limited liability company formed in accordance with this Agreement.

P. “*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.

Q. “*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.

R. “*Interest Holder*” means any Person who holds an Economic Interest, whether as a Member or as an Assignee of a Member.

S. “*Involuntary Withdrawal*” has the meaning provided therefor in Section VI.B.2.

T. “*Majority of the Members*” means the Members whose proportional interest in the Company constitutes at least fifty-one percent (51%) of the aggregate Percentages.

U. “*Manager*” means the Person or Persons designated as such in Section V, without regard to number.

V. “*Member*” means any person who executes a counterpart of this Agreement as a Member and any Person who subsequently is admitted as a Member of the Company.

W. “*Member Loan Nonrecourse Deductions*” means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation Section 1.704-2(i).

X. “*Member Nonrecourse Debt Minimum Gain*” has the meaning set forth in Regulation Section 1.704-2(i)(2) (determined by substituting “Member” or “Interest Holder” for “partner”).

Y. “*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.

Z. “*Minimum Gain*” has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under IRC Section 704(b).

AA. “*Negative Capital Account*” means a Capital Account with a balance of less than zero.

BB. “*Nonrecourse Deductions*” has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulation Section 1.704-2(c).

CC. “*Nonrecourse Liability*” has the meaning set forth in Regulation Section 1.704-2(b)(3).

DD. “*Percentage*” means, as to a Member, the percentage set forth after the Member’s name on Exhibit B, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage or part of the Percentage that corresponds to the portion of a Member’s Economic Interest that the Interest Holder has Acquired, to the extent the Interest Holder has succeeded to that Member’s interest.

EE. “*Person*” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

FF. “*Positive Capital Account*” means a Capital Account with a balance greater than zero.

GG. “*Profit*” and “*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. 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;

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;

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;

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;

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; and

6. notwithstanding any other provision of this definition, any items, which are specially allocated pursuant to Section IV.C shall not be taken into account in computing Profit or Loss.

HH. "*Project*" means a single or group of related real properties acquired as a deal separate and distinct from other deals as determined by the Manager.

II. "*Project Cost Projections*" means a schedule prepared by the Manager which projects the costs of a Project in a format similar to Exhibit E.

JJ. "*Project Profitability Projections*" means a schedule prepared by the Manager which projects the profitability of a Project in a format similar to Exhibit F.

KK. "*Property*" shall refer to real property purchased by the Company.

LL. "*Regulation*" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

MM. "*Secretary of State*" means the Secretary of State of the State of California.

NN. "*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.

OO. "*Voluntary Withdrawal*" means a Member's disassociation from the Company by means other than a Transfer or an Involuntary Withdrawal.

PP. "Written" or "in Writing" includes facsimile and telegraphic communication and, where applicable, a facsimile signature.

Section II

II. Formation and Name; Office; Purpose; Term.

A. *Filing of Articles of Organization.* The Articles of Organization were filed with the California Secretary of State on June 8, 2005, File Number 200516010027. A copy of the Articles of Organization as filed is attached to this Agreement as Exhibit A.

B. *Name of the Company.* The name of the Company shall be "**ALTON PRESERVE, LLC.**" The Company may do business under that name and under any other name or names that the Members select. If the Company does business under a name other than that set forth in its Articles of Organization, the Company shall file and publish a fictitious business name statement as required by law.

C. *Purpose.* The Company is organized to purchase, acquire, buy, sell, own, trade in, hold for investment and otherwise deal in and with real properties in various locations within the State of California and to do any and all things necessary, convenient, or incidental to that purpose.

D. *Term of Company's Existence.* The term of existence of the Company shall commence on the effective date of filing of Articles of Organization with the California Secretary of State, and shall continue until terminated by provisions of this Agreement or as provided by law.

E. *Principal Place of Business.* The Company's Principal Place of Business shall be located at 336 Bon Air Center PO Box 387, Greenbrae, California 94904 or at any other place within the State of California that the Members select.

F. *Resident Agent.* The name and address of the Company's resident agent in the State of California is HARVEY O. RICH, 336 Bon Air Center #387, Greenbrae, California 94904.

G. *Members.* The name, present mailing address, taxpayer identification number, and Percentage of each Member are set forth on Exhibit B.

Section III

III. Members; Capital; Capital Accounts

A. *Initial Contributions.* Upon the execution of this Agreement, the Members shall contribute to the Company cash in the amounts respectively set forth in Exhibit B.

B. *Additional Capital Contributions.*

1. Additional Capital Contribution.

a. If the Manager, at any time or from time to time, determines that the Company requires additional capital, but not in excess of ten percent (10%) of the Project Cost Projections attached as Exhibit E unless otherwise agreed to by all Members, each Interest Holder of Class A Interests shall contribute his or her Percentage share of such Additional Capital Contribution. An Interest Holder's share of the Additional Capital Contribution shall be equal to the product obtained by multiplying the Interest Holder's Percentage times the total additional capital required. Within thirty (30) days after the Manager has determined the amount of the Additional Capital Contribution required, each Interest Holder shall pay his or her share to the Company.

b. If the Manager requires or requests additional capital in excess of ten percent (10%) of the Project Cost Projections at any six (6) month interval, unless otherwise agreed to by all Members, the following shall apply:

(1) The Manager shall be solely responsible for, and shall pay for all costs in excess of ten percent (10%) of the Project Cost Projections.

(2) If the Manager does not comply with provisions of Section III.B.1.b.(1), above, the Manager becomes a Defaulting Manager with the following consequences:

(a) Class A Interest Holders may remove and replace the Defaulting Manager with another Manager.

(b) Class A Interest Holders may reduce the Defaulting Manager's share of the actual profit from such Project to fifteen percent (15%).

2. Failure to Make Contribution. If a Class A Interest Holder fails to make an additional Capital Contribution required under Section III.B.1.a above within 30 days after it is required to be made, such Class A Interest Holder thereafter becomes a Defaulting Interest Holder with the following consequences:

(a) The Manager may elect to replace the Defaulting Interest Holder with an outside party with respect to that Project.

(b) The Defaulting Interest Holder will not receive any profit or preferred return with respect to that Project and is entitled solely to an amount not greater than the Defaulting Interest Holder's capital invested in that Project.

(c) The amount distributable to the Defaulting Interest Holder from that Project shall be distributed to the Defaulting Interest Holder only after the Company has made the following distributions in the following order:

- (1) Any preferred return with respect to that Project.
- (2) Capital invested in that Project other than the Defaulting Interest Holder's capital.
- (3) Profit from that Project as originally determined by the Manager in Exhibit F.

(d) On the occurrence of, and for the duration of, a Default by any Class A Interest Holder, the Defaulting Interest Holder shall not have any right to vote the Defaulting Interest Holder's Membership Interest or otherwise participate in the management or control of the business and affairs of the Company and any and all provisions of this Agreement with respect to management and control shall be determined without including the Membership Interest of the Defaulting Interest Holder. The foregoing provisions shall be in addition to the Company's remedies under Corporations Code section 17201(a)(2). On satisfaction of a Defaulting Interest Holder's obligations (whether by enforcement of a remedy or otherwise) under Subsection 3.(b), that Member shall be restored to full membership status to the extent of any remaining Percentage Interest.

3. In the event of Additional Contributions the Percentage Interests shall be adjusted, in which event each Interest Holder's Percentage Interest shall be a fraction, the numerator of which represents the aggregate amount of such Interest Holder's Adjusted Capital Balance and the denominator of which represents the sum of all Interest Holders' Adjusted Capital balances, including Additional Capital Contributions.

C. *No Interest on Contributions.* Neither Members nor Interest Holders shall be paid interest with respect to Contributions.

D. *Return of Contributions.* Except as otherwise provided in this Agreement, neither Member nor Interest Holder shall have the right to receive the return of any Contribution or withdraw from the Company, except upon the dissolution of the Company.

E. *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.

F. *Capital Accounts.* A separate Capital Account shall be maintained for each Member and Interest Holder.

Section IV

IV. Profit, Loss, and Distribution

A. *Distributions of Cash Flow.* Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders, as follows:

1. Cash Flow.

a. Until the Interest Holders have recovered the full amount of their Adjusted Capital Balance, cash flow shall be distributed as follows:

(1) First, to the Interest Holders of Class A Interest until such time as such Interest Holders have received an amount equal to the mathematical equivalent of compound interest at the rate of ten percent (10%) per annum on the balance from time to time of each such respective Interest Holder's Adjusted Capital Balance.

(2) Thereafter one hundred percent (100%) to the Interest Holders of Class A Interests until they receive an amount equal to their Adjusted Capital Balance.

b. After the Interest Holders have recovered the full amount of their Adjusted Capital Balance, cash flow shall be distributed to the extent available as follows:

(1) First \$ __TBD__ to Interest Holders of Class A Interests;

(2) Second \$ __TBD__ __TBD__ percent (TBD%) to Interest Holders of Class A Interests and __TBD__ percent (TBD%) to Interest Holders of Class B Interests; and

(3) Balance __TBD__ percent (TBD%) to the Interest Holders of Class A Interest and __TBD__ percent (TBD%) to the Interest Holders of Class B Interests.

2. Capital Proceeds. Distribution of Capital Proceeds, including those derived in connection with liquidation or dissolution of the Company, shall be distributed and applied by the Company in the following order and priority:

a. First, to the payment of all expenses of the Company incident to the Capital Transaction;

b. Second, to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder);

c. Third, to the establishment of any reserves which the Manager deems necessary for liabilities or obligations of the Company;

d. Fourth, the balance shall be distributed as follows:

(1) First, to the Interest Holders of Class A Interest until such time as such Interest Holders have received an amount equal to the mathematical equivalent of compound interest at the rate of ten percent (10%) per annum on the balance from time to time of each such respective Interest Holder's Adjusted Capital Balance.

(2) Second, to the Interest Holders of Class A Interests until the Interest Holders have received an amount equal to their Adjusted Capital Balance; and

(3) Thereafter, and to the extent available, as follows:

(a) First \$ __TBD__ to Interest Holders of Class A Interests;

(b) Second \$ __TBD__ __TBD__ percent (TBD%) to Interest Holders of Class A Interests and __TBD__ percent (TBD%) to Interest Holders of Class B Interests; and

(c) Balance __TBD__ percent (TBD%) to the Interest Holders of Class A Interest and __TBD__ percent (TBD%) to the Interest Holders of Class B Interests.

B. *Allocation of Profit or Loss.* After giving effect to the special allocations set forth in Section IV.C (Regulatory Allocations), Profit and Loss from the operations of the Company shall be allocated as follows:

1. Profit. Profits shall be allocated among the Interest Holders based on the allocations made pursuant to Sections IV.A.1.a.(1), IV.A.1.b, IV.A.2.d.(1) and IV.A.2.d.(3) and the balance, if any, shall be allocated among the Interest Holders on the basis of the Interest Holder's Percentage Interest shown in Exhibit B.

2. Loss. Loss shall be allocated among the Interest Holders on the basis of the Interest Holder's Percentage Interests shown in Exhibit B.

C. *Regulatory Allocations.*

1. Impermissible Deficit and Qualified Income Offset. No Interest Holder shall be allocated Losses or deductions if the allocation causes the Interest Holder to have an Adjusted Capital Account Deficit; instead, such items shall be allocated to the other Interest Holders. If an Interest Holder for any reason (whether or not expected) receives (1) an allocation of Loss or deduction (or item thereof) or (2) any Distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year (other than an allocation under Section IV.C.2), in the amount and in proportions required to eliminate the excess as quickly as possible. This Section IV.C.1 is intended to comply with, and shall be interpreted consistently with, the "alternate test for economic effect" and "qualified income offset" provisions of the Regulations promulgated under IRC Section 704(b).

2. Minimum Gain Chargebacks. In order to comply with the "minimum gain chargeback" requirements of Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4), and notwithstanding any other provision of this Agreement to the contrary, in the event there is a net decrease in an Interest Holder's share of Minimum Gain and/or Interest Holder Nonrecourse Debt Minimum Gain during a Company's taxable year, such Interest Holder shall be allocated items of income and gain for that year (and if necessary, other years) as required by and in accordance with Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4) before any other allocation is made. It is the intent of the parties hereto that any allocation pursuant to this Section IV.C.2 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f) and 1.704-2(i)(4).

3. **Contributed Property and Book-Ups.** In accordance with IRC Section 704(c) and the Regulations thereunder, including Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of Contribution (or deemed Contribution). If the adjusted book value of any Company asset is adjusted under Regulation Section 1.704-1(b)(2)(iv)(f), subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take into account any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under IRC Section 704(c) and the Regulations thereunder. The parties hereto agree to use the traditional method with curative allocations, as described in Regulation Section 1.704-3(c), for making IRC Section 704(c) allocations.

4. **IRC Section 754 Adjustment.** To the extent an adjustment to the tax basis of any Company asset pursuant to IRC Section 734(b) or IRC Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

5. **Nonrecourse Deductions.** Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

6. **Interest Holder Loan Nonrecourse Deductions.** Any Interest Holder Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the Interest Holder Loan Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(i).

7. **Guaranteed Payments.** To the extent any compensation paid to any Interest Holder by the Company, including any fees payable to any Interest Holder pursuant to Section V.C hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under IRC Section 707(c) or is not paid to the Interest Holder other than in the Person's capacity as a partner (Interest Holder) within the meaning of IRC Section 707(a), the Interest Holder shall be specially

allocated gross income of the Company in an amount equal to the amount of that compensation, and the Interest Holder's Capital Account shall be adjusted to reflect the payment of that compensation.

8. Unrealized Receivables. If an Interest Holder's Economic Interest is reduced (provided the reduction does not result in a complete termination of the Interest Holder's Interest), the Interest Holder's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of IRC Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section IV.A.2 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture.

9. Withholding. All amounts required to be withheld pursuant to IRC Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Interest Holders for all purposes under this Agreement.

10. Nonrecourse Liabilities. Solely for purposes of determining an Interest Holder's proportional share of "excess nonrecourse liabilities" of the Company within the meaning of Regulation Section 1.752-3(a)(3), the Interest Holders' interest in Company profits shall be based on their respective Percentages.

11. Intent of Allocations. The tax allocation provisions of this Agreement are intended to produce final Capital Account Balances of the Interest Holders that will permit liquidating distributions that are made in accordance with such final Capital Account Balances to be equal to the distributions and such liquidating proceeds distributed pursuant to Section IV.A.2 (in the same order and priority). To the extent that the tax allocation provisions of this Agreement would not produce such final Capital Account Balances, (1) such provisions shall be amended by the Manager if and to the extent necessary to produce such result and (2) taxable income or taxable loss of the Company for prior open years (or items of gross income and deduction of the Company) shall be reallocated among the Interest Holders to the extent it is not possible to achieve such result with allocations of income (including gross income) and deduction for the current year and future years.

This Section IV.C.11 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

12. **Income Tax Provisions.** The Interest Holders are aware of the income tax consequences of this Section IV and agree to be bound by these provisions in reporting their shares of Profit, Loss, and other items for federal and state income tax purposes.

D. *General.*

1. Except as otherwise provided in this Agreement, the Manager shall determine the timing and amount of all Distributions.

2. If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued on the basis of their fair market value, and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager. The Profit or Loss for each distributed asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section IV.B and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the Distribution of the assets in liquidation pursuant to Section IV.A.2.

3. All Profit and Loss shall be allocated and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or Distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary non-recurring items of the Company.

4. The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this Section IV to comply with the Code and the Regulations promulgated under IRC Section 704(b); provided, however, that no amendment shall materially affect Distributions to an Interest Holder without the Interest Holder's prior Written consent.

Section V

V. Management: Rights, Powers, and Duties

A. *Management by Manager*

1. Manager. A Manager shall manage the Company. HARVEY O. RICH is hereby designated to serve as the initial Manager.

2. General Powers. The Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, the power to:

- a. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;
- b. maintain, own, sell, convey, assign or lease any real property and any personal property;
- c. sell, dispose, trade, or exchange Company assets;
- d. enter into agreements and contracts and give receipts, releases, and discharges;
- e. purchase liability and other insurance to protect the Company's properties and business;
- f. execute or modify leases with respect to any part or all of the assets of the Company;
- g. prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any asset of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;
- h. make any and all expenditures which the Manager, in the sole discretion of the Manager, deems necessary or appropriate in connection with the management of the affairs of the Company and the performance of its obligations and responsibilities under this

Agreement, including, without limitation, expenditures for legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

- i. enter into any kind of activity necessary to, in connection with, or incidental to, accomplishing the purposes of the Company; and
- j. invest and reinvest Company reserves in short-term instruments or money market funds.

3. Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, without the approval of the Majority of the Members holding Class A Interests the Manager shall not have the power and authority to take any actions inconsistent with the Project Profitability Projections and Project Cost Projections approved by the Members.

4. The Manager shall present Project Profitability Projections and Project Cost Projections to the Members for approval before the Project is undertaken.

5. Limitation on Authority of Members.

a. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

b. This Section V.A supersedes any authority granted to the Members pursuant to Section 17157 of the Act. Any Member who takes any action or binds the Company in violation of this Section V.A shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

B. *Meetings of and Voting by Members.*

1. A meeting of the Members may be called at any time by the Manager or by a Majority of the Interest Holders of Class A Interests. Meetings of Members shall be held at the Company's principal place of business or at any other place in San Francisco, California, designated by the Person or Persons calling the meeting. Not less than ten (10) nor more than sixty (60) days before each meeting, the Person or Persons calling the meeting shall give Written notice of the meeting to each Member entitled to Vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice may waive notice, either before or after the meeting, by executing a waiver of such notice, or

by participating, in person, by Proxy, or by telephone in the meeting. Unless this Agreement provides otherwise, at a meeting of Members, the participation in person, by Proxy, or by telephone of Members holding Percentages which aggregate to not less than fifty-one percent (51%), constitutes a quorum. A Member may Vote in person, by Written Proxy signed by the Member, by the Member's duly authorized agent, or by telephone.

2. Except as otherwise provided in this Agreement, the affirmative Vote of Members holding a majority of the aggregate Percentages participating in the meeting by personal appearance, by Proxy or by telephone shall be required to approve any matter coming before the Members.

3. In lieu of holding a meeting, the Members may take action by written consents specifying the action to be taken, which consents must be executed and delivered to the Company by not less than a Majority of the Members. Any such approved action shall be effective immediately. The Company shall give prompt notice to all Members of any action approved by Members by less than unanimous consent.

4. The following matters shall require the vote or consent of the percentage interest of Members holding Class A Interests indicated after each such item for such action to be approved by the Members:

- a. A decision to continue the business of the Company after dissolution of the Company (51%);
- b. An amendment to the Articles of Organization or this Agreement (51%);
- c. An in-kind distribution not made upon the dissolution of the Company (51%) ; and
- d. Removal of a Manager (60%).

C. *Personal Service.* No Member, other than a member acting as a Manager, shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Manager, no Member other than the Manager shall perform services for the Company or be entitled to compensation for services performed for the Company.

D. *Duties of Parties.*

1. The Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the Manager's duties set forth in this Agreement. The Manager shall present all opportunities for investment in properties, which are presented or offered to Manager or Manager's Affiliate, to the other Members and the other Members shall have right of first refusal with respect to such investment opportunity.

2. Except as otherwise expressly provided in Sections V.D.1 and V.D.3, nothing in this Agreement shall be deemed to restrict in any way the rights of any Manager, Member, or of any Affiliate of any Manager or Member, to conduct any other business or activity whatsoever, and no Manager or Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Manager or Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. The Manager and each Member waives any and all rights the Manager or Member might otherwise have to share or participate in such other interests or activities of any other Manager or Member or the Manager or Member's Affiliates.

3. Each Member recognizes that the statement that a Manager's fiduciary duties are limited to those specifically set forth herein provides for a more restricted interpretation of the scope of such duties than would otherwise be applicable under California law. Nevertheless, in order to reduce possible ambiguities and to eliminate potential litigation or other disputes arising out of such ambiguities, the Members consent to this more restricted definition of fiduciary duties. The only fiduciary duties a Manager owes to the Company and the other Members are the duty of loyalty and the duty of care set forth in subdivisions (a) and (b):

a. A Manager's duty of loyalty to the Company and the other Members is limited to the following:

(1) To account to the Company and hold as trustee for it any property, profit, or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of Company property, including the appropriation of a Company opportunity, without the consent of the other Members;

(2) To refrain from dealing with the Company in the conduct or winding up of the Company business as or on behalf of a party having an interest adverse to the Company without the consent of the other Members.

b. A Manager's duty of care to the Company and to the Members in the conduct and winding up of the Company business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. Members who are not Managers do not have, and shall not be deemed to have, fiduciary duties to the Company or to the Members except to the extent any such fiduciary duty shall be based upon or arise out of another relationship or contract between such Member and the person or entity asserting the existence of a fiduciary duty.

E. *Indemnification of Each Manager.*

1. Each Manager shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by such Manager within the scope of the authority conferred on such Manager by this Agreement, and within the standard of care specified in Section V.E.2.

2. The Company shall indemnify each Manager for any act performed by the Manager within the scope of the authority conferred on the Manager by this Agreement, unless such act constitutes grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

F. *Power of Attorney.*

1. Grant of Power. Each Member constitutes and appoints the Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge, and file:

- a. one or more Articles of Organization;
- b. all documents (including amendments to Articles of Organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;
- c. all other certificates or other instruments required to be filed by the Company under the laws of the State of California or of any other state or jurisdiction, including,

without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a Limited Liability Company under the laws of the State of California;

d. one or more fictitious trade name certificates; and

e. all documents that may be required to dissolve and terminate the Company and to cancel its Articles of Organization.

2. Irrevocability. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of a Membership Interest, except that if the Assignee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

G. *Arbitration of Deadlock.* If a Vote is required on any matter arising under this Agreement and there are neither sufficient Votes to approve nor disapprove the matter, any Member may require that the matter be submitted to arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be held in the city in which the Company's principal executive office is then situated. Each Member desiring to participate in such arbitration shall be under a duty to ensure that the arbitration process proceeds expeditiously. The finding or ruling resulting from the arbitration shall be binding upon the Company and each of its Members.

Section VI

VI. Transfer of Interests and Withdrawals of Members

A. *Transfers.* Except as provided herein, no Member may Transfer all, or any portion of, or any interest or rights in, the Membership Interest owned by the Member. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The attempted Transfer of any portion or all of a Membership Interest

in violation of the prohibition contained in this Section VI.A shall be deemed invalid, null and void, and of no force or effect, except any Transfer mandated by operation of law and then only to the extent necessary to give effect to such Transfer by operation of law.

1. A Member may Transfer all or any portion of or any interest or rights in the Member's Economic Interest if each of the following conditions ("Conditions of Transfer") is satisfied:

- a. the Transfer may be accomplished without registration, or similar process, under federal and state securities laws;
- b. the transferee delivers to the Company a Written agreement to be bound by the terms of Section IV;
- c. the Transfer will not result in the termination of the Company pursuant to IRC Section 708;
- d. the Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;
- e. the transferor or the transferee delivers the following information to the Company:
 - (1) the transferee's taxpayer identification number; and
 - (2) the transferee's initial tax basis in the transferred Membership Interest; and
- f. the transferor complies with the provisions set forth in Section VI.A.4.

2. If the Conditions of Transfer are satisfied, the Member may Transfer all or any portion of the Member's Economic Interest. The Transfer of an Economic Interest pursuant to this Section VI.A shall not result in the Transfer of any of the transferor's other Membership rights. The transferee of the Economic Interest shall have no right to:

- a. become a Member;
- b. exercise any Membership rights other than those specifically pertaining to the ownership of an Economic Interest; or
- c. act as an agent of the Company.

3. Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section VI.A in view of the purposes of the Company and the relationship of the Members. The attempted transfer of any Membership Interest in violation of the prohibition contained in this Section VI.A shall be deemed invalid, null and void, and of no force or effect except any transfer mandated by operation of law and then only to the extent necessary to give effect to such transfer by operation of law.

4. Right of First Refusal.

a. If a Member (a "Transferor") receives a bona fide written offer which the Member desires to accept (the "Transferee Offer") from any other Person, including another Member (a "Transferee") to purchase all or any portion of or any interest or rights in the Transferor's Economic Interest (the "Transferor Interest") then, prior to any Transfer of the Transferor's Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

- (1) the Transferee's identity;
- (2) a true and complete copy of the Transferee Offer; and
- (3) the Transferor's offer (the "Offer") to sell the Transferor Interest to the Company for consideration equal to that contained in the Transferee Offer or, if the consideration specified in the Transferee Offer is not specified as cash, then for consideration in U.S. Dollars equal in value to the consideration specified in the Transferee Offer (the "Transfer Purchase Price").

b. The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 P.M. local time at the Company's principal office, on the thirtieth (30th) day following the date the Transfer Notice is given to the Company. At any time during the Offer Period, the Company may agree to purchase the Transferor Interest by giving Written notice to the Transferor of its acceptance (the "Offeree Notice"). The Transferor shall not be deemed a Member for the purpose of the Vote on whether the Company shall accept the Offer. If the Company agrees to purchase the Transferor Interest, the Offeree Notice shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than ten (10) or more than ninety (90) days after the expiration of the Offer Period.

c. If the Company does not agree to purchase the Transferor Interest in its entirety within thirty (30) days after the Offer Date, the Company shall give immediate notice to that effect (the "Remaining Members Notice") to each Member, other than the Transferor (the "Remaining Members"). Such notice to the Remaining Members shall include a copy of the Transfer Notice and inform the Remaining Members of their right to purchase all, or a portion, of the Transferor Interest for a pro rata portion of the Transfer Purchase Price.

d. The Remaining Members Notice shall be and remain irrevocable for the remainder of the Offer Period. At any time during such period, a Remaining Member may agree to purchase the Transferor Interest by notifying the Transferor in Writing that the Remaining Member intends to purchase all, but not less than all, of the Transferor Interest. If two (2) or more Remaining Members desire to agree to purchase the Transferor Interest, then, in the absence of an agreement between or among them, each such Remaining Member shall purchase the Transferor Interest in the proportion that such Member's respective Percentage bears to the total Percentages of all of the Remaining Members who desire to agree to purchase the Transferor Interest, adjusted to reflect the portion, if any, of the Transferor Interest to be purchased by the Company.

e. If the Company or the Remaining Members or both (collectively, the Purchasers") have agreed to purchase the Transferor Interest prior to the end of the Offer Period, any Purchaser may give written notice to that effect to the Transferor specifying a Transfer Closing Date for the purchase which shall be no earlier than ten (10) nor later than ninety (90) days after the expiration of the Offer Period.

f. If neither the Company nor any Remaining Member agrees to purchase the Transferor Interest (within the time and in the manner specified in this Section), then the Transferor shall be free for a period (the "Permitted Transfer Period") of ninety (90) days after the expiration of the Offer Period to Transfer the Transferor Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice. The Transfer shall be subject, however, to the Conditions of Transfer (other than Section VI.A.1). If the Transferor does not Transfer the Transferor's Interest within the Permitted Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

g. Any Transfer by the Transferor after the last day of the Permitted Transfer Period or without strict compliance with the terms, provisions, and conditions of this

Section and the other terms, provisions, and conditions of this Agreement, shall be null and void and of no force or effect.

5. Rights of Transferee of Membership Interest.

a. Notwithstanding anything contained herein to the contrary, the transferee of all or any portion of a Membership Interest shall not be entitled to become a Member or exercise any rights of a Member unless the Members consent as provided in the next subsection. The transferee shall be entitled to receive, to the extent transferred, the distributions to which the transferor would be entitled.

b. Any transferee of a Membership interest desiring to become a Member shall give written notice to the Company requesting that such transferee be admitted as a Member. The Company may, but shall be under no obligation to, submit the matter to the Members for their Vote or consent. The transferee shall only become a Member upon the Vote or consent of the Manager, and such transferee fulfilling any other conditions imposed by the Company upon such admission.

c. The Company, and any transferee admitted as a Member pursuant to the terms of this Agreement, shall indemnify and hold harmless the person from whom such new Member's Membership Interest derived (the "Predecessor Member"), from any and all claims, demands, and liabilities that may be asserted against such Predecessor Member based upon or arising out of such Predecessor Member's Membership Interest, provided, however, that if the new Member has acquired only a portion of the Predecessor Member's Membership Interest, the obligations of the Company and such new Member hereunder shall be limited to such proportional amount of any such claim, demand, and/or liability.

d. No transferee, assignee or other claimant as to all or any portion of the Membership Interest of any Member shall have any right to obtain information from the Company, or to inspect the books, records, or property of the Company, unless and until such person has become a Member in accordance with the provisions of this Agreement.

B. *Withdrawal of a Member.*

1. No Member shall have the right or power to effect a Voluntary Withdrawal from the Company.

2. *"Involuntary Withdrawal"* means, the removal of a Manager pursuant to Section V.B.4.d.

C. *Required Buyout.* In the event of the removal of a Manager pursuant to Section V.B.4.d, such Manager shall be entitled to receive from the Company an amount equal to the Appraised Value of its Membership interest, as determined by the provisions of Section VI.D below.

D. *Appraised Value.*

1. The term "Appraised Value" means the appraised value of the Company as hereinafter provided. Within forty-five (45) days after demand by either one to the other, the Company and the removed Manager shall each appoint an appraiser to determine the value of the Company. If the two appraisers agree upon such value, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the value of the Company, they shall each render a separate written report and shall appoint a third appraiser, who shall appraise the Company, determine its value, and render a written report of such appraiser's opinion thereon. Each party shall pay the fees and other costs of the appraiser appointed by such party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

2. The value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Appraised Value; provided, however, that if the value of the equity contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall govern; and provided, further, that if the value of the equity contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall govern.

3. The appraisers shall not reduce the Appraised Value due to the restrictions on the Transfer of a Membership Interest as set forth in this Agreement or due to the illiquidity of any Member's Membership Interest. The appraisers shall appraise the Company on a fair market value method.

E. *Triggering Events.* On the happening of any of the following events (Triggering Events) with respect to a Member, the Company and the other Members shall have the option to purchase all or any portion of the Membership Interest in the Company of such Member (Selling Member) at the price and on the terms provided in Section VI.H of this Agreement:

1. the death or incapacity of a Member;
2. the bankruptcy of a Member;
3. the winding up and dissolution of a corporate Member, or merger or other corporate reorganization of a corporate Member as a result of which the corporate Member does not survive as an entity;

Each Member agrees to promptly give Notice of a Triggering Event to all other Members.

F. *Marital Dissolution or Death of a Spouse.* Notwithstanding any other provisions of this Agreement:

1. If, in connection with the divorce or dissolution of the marriage of a Member, any court issues a decree or order that transfers, confirms, or awards a Membership Interest, or any portion thereof, to that Member's spouse (an Award), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Member shall have the right to purchase from his or her former spouse the Membership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Membership Interest or portion thereof to that Member at the price set forth in Section VI.H of this Agreement. If the Member has failed to consummate the purchase within 180 days after the Award (the Expiration Date), the Company and the other Members shall have the option to purchase from the former spouse the Membership Interest or portion thereof pursuant to Section VI.G of this Agreement; provided that the option period shall commence on the later of (1) the day following the Expiration Date, or (2) the date of actual notice of the Award.

2. If, by reason of the death of a spouse of a Member, any portion of a Membership Interest is transferred to a Transferee other than (1) that Member or (2) a trust created for the benefit of that Member (or for the benefit of that Member and any combination between or among the Member and the Member's issue) in which the Member is the sole Trustee and the Member, as Trustee or individually possesses all of the Voting Interest included in that Membership Interest, then the Member shall have the right to purchase the Membership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Membership Interest or portion thereof at the price set forth in Section VI.H of this Agreement. If the Member

has failed to consummate the purchase within 180 days after the date of death (the Expiration Date), the Company and the other Members shall have the option to purchase from the estate or other successor of the deceased spouse the Membership Interest or portion thereof pursuant to Section VI.G of this Agreement; provided that the option period shall commence on the later of (1) the day following the Expiration Date, or (2) the date of actual notice of the death.

G. *Option Periods.* On the receipt of actual notice of any Triggering Event by the other Members, the Company shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section VI.H, to purchase the Membership Interest in the Company to which the option relates, at the price and on the terms provided in Section VI.H, and the other Members, pro rata in accordance with their prior membership of 30 days thereafter, to purchase the Membership interest in the Company not purchased by the Company, on the same terms and conditions as apply to the Company. If all other Members do not elect to purchase the entire remaining Membership Interest in the Company, then the Members electing to purchase shall have the right, pro rata in accordance with their prior Membership Interest in the Company, to purchase the additional Membership Interest in the Company available for purchase. The transferee of the Membership Interest in the Company that is not purchased shall hold such Membership Interest in the Company subject to all of the provisions of this Agreement.

H. *Option Purchase Price.* The purchase price of the Membership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such membership interest as determined under this Section VI.H. Each of the selling and purchasing parties shall use his, her or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the date on which the option is first exercisable (the Option Date), the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Membership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations,

shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.

Section VII

VII. Dissolution, Liquidation, and Termination of the Company

A. *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

1. upon the Written agreement of a Majority in Interest of the Members; or
2. upon the death, withdrawal, resignation, expulsion, bankruptcy, or dissolution of all Managers, unless a Majority in Interest of the remaining Members, within ninety (90) days after the occurrence of the termination of the Member's interest in the Company, elect to continue any business of the Company. For purposes of this Section VII.A.2, a "Majority in Interest" means a majority of both capital and profits interest, as determined under Revenue Procedure 94-46, 199428 I.R.B. 129.

B. *Procedure for Winding Up and Dissolution.* If the Company is dissolved, the Manager shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then, to the Interest Holders in accordance with Section IV.A.2.

C. *Filing of Certificate of Cancellation.* Upon completion of the affairs of the Company, the Manager shall promptly file the Certificate of Cancellation of Articles of Organization with the Secretary of State. If there is no Manager, then the Certificate of Cancellation shall be filed by the remaining Members; if there are no remaining Members, the Certificate shall be filed by the last Person to be a Member; if there is neither a Manager, remaining Members, nor a Person who last was a Member, the Certificate shall be filed by the legal or personal representatives of the Person who last was a Member.

Section VIII

VIII. Books, Records, Accounting, and Tax Elections

A. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Manager shall determine the financial institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

B. *Books and Records.*

1. The Manager shall keep or cause to be kept complete and accurate books, records, and financial statements of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books, records, and financial statements of the Company shall be maintained on the cash method of accounting. Such books, records, financial statements, and documents shall include, but not be limited to, the following:

- a. a current list of the full name and last known business or residence address of each Member and Interest Holder, in alphabetical order, with the Contribution and the share in profits and losses of each Member and Interest Holder specified in such list;
- b. a current list of the full name and business or residence address of each Manager;
- c. the Articles of Organization, including all amendments, and any powers-of-attorney under which the Articles of Organization or amendments were executed;
- d. federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;
- e. this Agreement and any amendments thereto; and any powers-of-attorney under which this Agreement or amendments were executed;
- f. financial statements for the six most recent years;
- g. internal books and records for the current and three most recent years; and
- h. a true copy of relevant records indicating the amount, cost, and value of all property, which the Company owns, claims, possesses, or controls.

2. Such books, records, and financial statements of the Company and supporting documentation shall be kept, maintained, and available at the Company's office within the State of California.

C. *Right to Inspect Books and Records; Receive Information.*

1. Upon the reasonable request of a Member for a purpose reasonably related to the interest of that Member, the Manager shall promptly deliver to the requesting Member at the expense of the Company a copy of this Agreement, as well as the information required to be maintained by the Company under subparagraphs (a), (b), and (d) of Section VIII.B.1.

2. Each Member and Manager has the right upon reasonable request, and for purposes reasonably related to the interest of that Member or Manager, to do the following:

- a. to inspect and copy during normal business hours any of the records required to be maintained by the Company under Section VIII.B.1; and
- b. to obtain from the Company promptly after becoming available, a copy of the Company's federal, state, and local income tax or information returns for each year.

3. If a Manager has executed an amendment to the Articles of Organization or this Agreement pursuant to a power of attorney from the Members, such Manager must promptly furnish to the Members a copy of such amendment.

4. The Manager shall send or shall cause to be sent to each Member or Interest Holder within ninety (90) days after the end of each fiscal year of the Company:

- a. such information as is necessary to complete federal and state income tax or information returns.

5. Unless otherwise expressly provided in this Agreement, the inspecting or requesting Member or Manager, as the case may be, shall reimburse the Company for all reasonable costs and expenses incurred by the Company in connection with such inspection and copying of the Company's books and records and the production and delivery of any other books or records.

D. *Annual Accounting Period.* The annual accounting period of the Company shall be its taxable year. The Manager, subject to the requirements and limitations of the Code, shall select the Company's taxable year.

E. *Tax Matters Partner.* The Manager shall be the Tax Matters Partner for purposes of IRC Section 6231(a)(7), and shall have all the authority granted by the Code to the Tax

Matters Partner, provided that the Manager shall not have the authority without first obtaining the consent of all Members to do any of the following:

1. Enter into a settlement agreement with the Internal Revenue Service that purports to bind the Members.
2. File a petition as contemplated in IRC Section 6226(a) or IRC Section 6228.
3. Intervene in any action as contemplated in IRC Section 6226(b)(5).
4. File any request contemplated in IRC Section 6227(b).
5. Enter into an agreement extending the period of limitations as contemplated in IRC Section 6229(b)(1)(B).

F. *Tax Elections.* The Manager shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under IRC Section 754. The decision to make or not make an election shall be at the Manager's sole and absolute discretion.

G. *Title to Company Property.* All real and personal property acquired by the Company shall be acquired and held by the Company in the Company's name, or if required by lending restrictions in a wholly owned subsidiary of the Company.

Section IX

IX. General Provisions

A. *Assurances.* Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Manager 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.

B. *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. Any notice to be given hereunder by the Company shall be given by the Manager. A notice must be addressed to an Interest Holder at the

Interest Holder's last-known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in Writing by the Person to whom it is delivered. 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. 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.

C. *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 to fully 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 (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

D. *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.

E. *Applicable Law.* The internal law, not the law of conflicts, of the State of California, shall govern all questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

F. *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.

G. *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.

H. *Jurisdiction and Venue.* Any suit involving any dispute or matter arising under this Agreement may only be brought in the appropriate United States District Court in California or any California State Court having jurisdiction over the subject matter of the dispute or matter.

All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

I. *Interpretation.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require. References to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement, unless otherwise indicated.

J. *Separability of Provisions.* Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

K. *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.

L. *Certificate.* A Membership Interest shall be represented by a certificate of membership (See Exhibit C). The exact contents of a certificate of membership may be determined by action of the Managers but shall be issued substantially in conformity with the following requirements. The certificates of membership shall be respectively numbered serially, as they are issued, shall be impressed with the Company seal or a facsimile thereof, if any, and shall be signed by the Manager of the Company. Each certificate of membership shall state the name of the Company, the fact that the Company is organized under the laws of the State of California as a limited liability company, the name of the person to whom the certificate is issued, the date of issue and the Percentage Interest represented thereby. A statement of the designations, preferences, qualifications, limitations, restrictions and special or relative rights of the Membership Interest, if any, shall be set forth in full or summarized on the face or back of the certificates which the Company shall issue, or in lieu thereof, the certificate may set forth that such a statement or summary will be furnished to any holder of a membership Interest upon request without charge. Each certificate of membership shall be otherwise in such form as may be determined by the Manager.

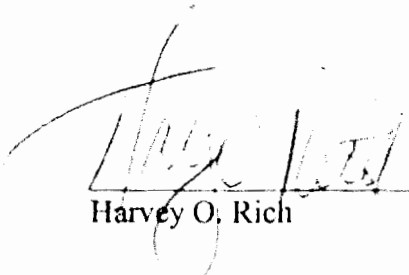
M. *Estoppel Certificate.* Each Member shall, within ten (10) days after Written request by the Manager, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by such Member, or if there is a default, the nature and extent thereof (See Exhibit D). If the certificate is not received within the 10-day period, the Manager shall execute and deliver the certificate on behalf of the requested Member, without qualification, pursuant to the power-of-attorney granted in Section V.F.

END OF AGREEMENT

SIGNATURE PROVISIONS FOLLOW

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed as of the date first above written.

MANAGER:

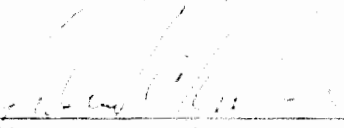
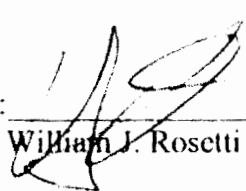


Harvey O. Rich

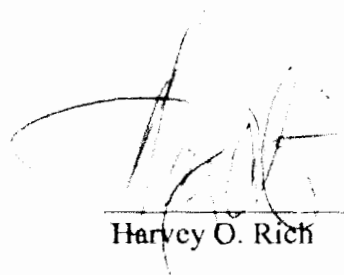
INITIAL MEMBERS:

Class A Interest

Pelton Environmental, LLC


By: _____
Richard C. Kirchner
By: _____
William J. Rosetti

Class B Interest



Harvey O. Rich

EXHIBIT A

[attach copy of form LLC-1]



State of California
Secretary of State

LIMITED LIABILITY COMPANY
ARTICLES OF ORGANIZATION

File #

200510010027

ENDORSED - FILED

In the office of the Secretary of State
of the State of California

JUN 8 2005

A \$70.00 filing fee must accompany this form.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

ENTITY NAME (End the name with the words "Limited Liability Company," "Ltd. Liability Co.," or the abbreviations "LLC" or "L.L.C.")

1. NAME OF LIMITED LIABILITY COMPANY

ALTON PRESERVE, LLC

PURPOSE (The following statement is required by statute and may not be altered.)

2. THE PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ENGAGE IN ANY LAWFUL ACT OR ACTIVITY FOR WHICH A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THE BEVERLY-KILLEA LIMITED LIABILITY COMPANY ACT

INITIAL AGENT FOR SERVICE OF PROCESS (If the agent is an individual, the agent must reside in California and both Items 3 and 4 must be completed. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 3 must be completed (leave Item 4 blank).)

3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

HARVEY O. RICH

4. IF AN INDIVIDUAL ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY

STATE ZIP CODE

336 BON AIR CENTER #387

GREENBRAE

CA 94904

MANAGEMENT (Check only one)

5. THE LIMITED LIABILITY COMPANY WILL BE MANAGED BY:



ONE MANAGER



MORE THAN ONE MANAGER



ALL LIMITED LIABILITY COMPANY MEMBER(S)

ADDITIONAL INFORMATION

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE.

EXECUTION

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

R. Michael Delagnes
SIGNATURE OF ORGANIZER

JUNE 7, 2005

DATE

R. MICHAEL DELAGNES

TYPE OR PRINT NAME OF ORGANIZER

RETURN TO (Enter the name and the address of the person or firm to whom a copy of the filed document should be returned.)

8. NAME

R. MICHAEL DELAGNES

FIRM

DELAGNES, LINDER & DUEY, LLP

ADDRESS

300 MONTGOMERY STREET #1050

CITY/STATE/ZIP

SAN FRANCISCO CA 94104-1999

RESOLUTION OF MEMBERS OF ALTON PRESERVE, LLC

The undersigned being all of the members of the Alton Preserve, LLC, a California limited liability company ("the Company"), hereby enter into this Resolution to authorize, approve, and ratify the following:

1. Harvey O. Rich, Managing Member of the Company, may execute any and all agreements between and/or among the U.S. Fish & Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), and the Company, including, but not limited to, those agreements required by USFWS and CDFG to establish the Alton North Conservation Bank ("ANCB") and to transfer the ANCB to the State of California/CDFG.

2. Harvey O. Rich may negotiate and execute any and all commitments, indemnities, certificates, affidavits, applications, notices and any other instruments or agreements to effectuate the agreements between and/or among the USFWS, the CDFG, and the Company.

3. Harvey O. Rich may take any action which Harvey O. Rich determines to be appropriate to effectuate the transaction contemplated by the agreements between and/or among the USFWS, the CDFG, and the Company.

4. The Company approves and ratifies all actions heretofore taken by Harvey O. Rich on behalf of the Company including, but not limited to, any and all agreements entered into by Harvey O. Rich on behalf of the Company with either the USFWS and/or the CDFG.

**ALTON PRESERVE, LLC,
A California Limited Liability Company**

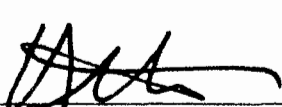
Its: Managing Member


Harvey O. Rich

Date: 1/9/07

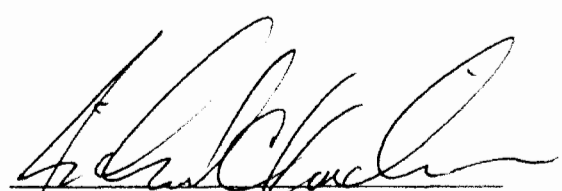
Pelton Investments, LLC consents to Alton Preserve, LLC entering into the above agreements:

**Pelton Investments, LLC,
A California Limited Liability Company**


By: William J. Rosetti

Its: Managing Member

Date: 1/17/07


By: Richard C. Kirchner

Its: Member

Date: 1/17/07