

OPERATING AGREEMENT

OF

RISE OVER RUN LLC

THIS OPERATING AGREEMENT of Rise Over Run LLC (the “Company”) is entered into as of the Effective Date by and among Nearby Cactus Family Holding LLC (the “Manager”), and those “Members” set forth on Schedule A who have executed this Agreement.

Article 1

General Provisions

1.1 Formation. The Company has been formed pursuant to the Arizona Limited Liability Company Act, A.R.S. § 29-3101 *et seq.* (as may be amended from time to time, the “Act”), by filing the Articles of Organization with the Arizona Corporation Commission. This Agreement shall be effective as of the date of filing of the Articles of Organization with the Arizona Corporation Commission (the “Effective Date”). The Manager and Members have executed this Agreement to serve as the operating agreement of the Company, as that term is defined in Section 29-3102(17) of the Act, and subject to any applicable restrictions in the Act, the business and affairs of the Company, and the relationship of the parties to one another shall be operated in accordance with and governed by the terms and conditions set forth in this Agreement. The parties agree to execute all further amendments to the Articles of Organization and all other documents that are needed to enable the Manager to accomplish all filing, recording, publishing and other acts as may be necessary or appropriate from time to time to comply with all requirements of the Act or as otherwise required by the Manager.

1.2 Name. The name of the Company shall be “Rise Over Run LLC”

1.3 Principal Address. The principal address of the Company is 524 W. Hatcher Road, Phoenix, Arizona 85021, or at such other place as the Manager from time to time shall determine.

1.4 Company Purposes. The purpose and business of the Company shall be to acquire, renovate, operate, hold for investment, and eventually sell that certain real estate located at 503-509 W. Hatcher Road and 524 W. Hatcher Road, by obtaining 100% ownership in the single purpose entities owning the properties (the “Project”). The Manager of the Company shall have the power to do any and all acts and things necessary, appropriate, proper, advisable, incidental to, or convenient for furtherance and accomplishment of the business and purposes of the Company as set forth herein. It is understood that the foregoing statement of purposes shall not serve as a limitation on the powers or abilities of the Company, which shall be permitted to engage in any and all lawful business activities as shall be permitted under the laws of the State of Arizona the Manager deems in the best interest of the Company.

1.5 Term. The term of the Company shall commence on the filing of the Articles of Organization and shall continue indefinitely until the Company is dissolved in accordance with this Agreement.

1.6 Statutory Agent for Service of Process. The statutory agent for service of process required to be appointed and maintained by the Company under 29-3115 of the Act shall be: Harry J. Miller, located at 80 E. Columbus Avenue, Phoenix, Arizona 85012, or such other person as the Manager shall appoint from time to time.

1.7 Name and Address of Member. The names and addresses of the Members are set forth on Schedule A.

1.8 Treatment as a Partnership. It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a “partnership” for federal and state income tax purposes, but that the Company shall not be operated or treated as a partnership for any other purpose.

1.9 Definitions. Capitalized terms used in this Agreement are defined in Article 13.

Article 2

Capital Contributions; Affiliate Loans

2.1 Initial Capital Contribution. The Members initial capital contributions to the Company are set forth on Schedule A.

2.2 Additional Capital Contributions.

(a) If the Manager determines that the Company requires additional capital contributions, then the Manager shall give notice to each Member of (i) the total amount of additional capital contributions required, (ii) the reason the additional capital contribution is required, (iii) each Member’s proportionate share of the total additional capital contribution (determined in accordance with this Section), and (iv) the date each Member’s additional capital contribution is due and payable, which date shall be no less than ten (10) days after the notice has been given. A Member’s share of the total additional capital contribution shall be equal to the product obtained by multiplying the Member’s Capital Contribution Percentage and the total additional capital contribution required. Each Member’s share of the additional capital contribution shall be payable in cash or by certified check, or wire transfer.

(b) Notwithstanding anything herein to the contrary, no Member shall be required to make any additional capital contribution to the Company.

(c) If a Member fails to pay when due all or any portion of any additional capital contribution required under Section 2.2(a) (each, a “Non-Contributing Member”), then each Member other than any Non-Contributing Member (each, a “Contributing Member”) shall have the right, but not the obligation, to contribute to the Company (in addition to its initial pro rata share of the additional capital contribution) its pro rata portion of those amounts that the Non-Contributing Member fails to contribute (the “Remaining Contribution”), and the Manager shall have the right to re-allocate the Capital Contribution Percentage based on the then Capital Contributions made by the Contributing Members and Non-Contributing Members.

(d) Immediately following any additional capital contribution, the Capital Contribution Percentage of the Members shall be adjusted if the Manager determines that the Capital Contribution Percentage of the Members are to be altered as a result of the additional capital contribution, and Schedule A shall be revised to reflect any such additional capital contribution and any such adjustment of the Capital Contribution Percentage of the Members. Any revision of Schedule A in accordance with the preceding sentence shall require only the consent of the Manager (and not any consent of the Members).

2.3 Affiliate Loans. If funds are needed by the Company, the Manager or Members may make loans to the Company in such amounts as the Manager reasonably determines are needed by the Company. The Manager shall have the discretion to accept loans from the Members, and the Members shall not have a right to make or participate in any loan to the Company. All Member loans shall be evidenced

by a promissory note executed by the Manager on behalf of the Company and shall contain such terms and conditions as are commercially reasonable or as may be agreed to by the Manager, on behalf of the Company, and the Member. All Member loans shall be fully recourse to the Company and its assets but non-recourse as to the Member and his assets, and shall be repayable in whole or in part without penalty. Notwithstanding the foregoing, in the event that the Manager determine that funds are needed by the Company, the Company may borrow funds from non-Members on terms and conditions determined by the Manager before borrowing such funds from the non-Member.

2.4 Maintenance of Capital Accounts. The Company shall maintain for each Member a Capital Account that complies with Section 1.7041(b)(2)(iv) of the Regulations.

Article 3 Distributions

3.1 Amount and Time of Distributions. Distributions of Net Cash Flow shall be made from time to time as determined by the Manager, in the order of priority set forth in this Article 3.

3.2 Distributions of Net Cash Flow. Net Cash Flow shall be distributed in the following order of priority:

3.3 The Manager shall distribute proceeds from the Company as follows:

(a) First, to pay all approved debts, liabilities and expenses of the Company including (i) any principal, interest and other unpaid amounts due under any loan made to the Company, (ii) any operating or other expenses related to the operation and management of the Company, as reasonably determined by the Manager, and (iii) to create an expense reserve (in an amount to be determined by the Manager) to pay future anticipated expenses and obligations of the Company or to meet unforeseen contingencies all as determined by the Manager;

(b) Second, to the Members in proportion to the Members' respective Capital Contribution Percentages as set forth in Schedule A until the Members receive a return of their Capital Contribution; and

(c) Third, to the Members in proportion to the Members' respective Capital Contribution Percentages.

3.4 Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of state, local, or foreign tax law with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts paid or distributed under this Article 3 to the Members with respect to which such amount was withheld. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members, and to pay over to any federal, state, and local government or any foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, or local law or any foreign law.

3.5 Income Tax Advances. The Company will advance to each Member, to the extent of available Net Cash Flow and without borrowing additional funds, an amount equal to the federal and state income taxes that would be payable by such Member as a result of the recognition of Company income by such Member to the extent such Member has not received distributions pursuant to Section 3.2 for any Taxable Year sufficient to pay such income taxes.

3.6 Limitation of Distributions. Notwithstanding any other provision in this Agreement, the Company shall not make a distribution to any Member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the Company would exceed the fair market value of the assets of the Company, or as otherwise limited by Section 29-3405(A) of the Act.

3.7 No Distribution Upon Dissociation. No dissociating Member shall be entitled to receive any distribution or the value of such Member's Membership Interest as a result of dissociation from the Company prior to the liquidation of the Company, except as specifically provided in this Agreement.

3.8 Return of Capital. No Member shall be entitled to the return of, or interest on, that Member's Capital Contributions except as specifically provided in this Agreement.

3.9 Liquidating Distributions. Upon dissolution and liquidation of the Company, liquidating distributions shall be made to the Members as set forth in Section 9.3.

Article 4 Tax Allocations

4.1 Allocations of Profits and Losses for Tax Purposes. After giving effect to the allocations contained in Sections 1.704-1 and 1.704-2 of the Regulations, Profits and Losses of the Company for each Taxable Year, and each item of income, gain, loss and deduction entering into the computation thereof, shall be allocated in a manner consistent with the distributions received by the Members pursuant to Section 3.2 above.

4.2 Knowledge of Tax Consequences. The Members are aware of the income tax consequences of the allocations made by this Article 4 and the economic impact of the allocations on the amounts receivable by them under the Agreement. The Members hereby agree to be bound by the provisions of this Article 4 in reporting their share of the Company's income and loss for income tax purposes.

Article 5 Management

5.1 Manager-Managed Status of Company. The management of the Company shall be vested in the Manager, and the business and affairs of the Company shall be managed exclusively by the Manager.

5.2 Initial Designation of Manager. Nearby Cactus Family Holding LLC shall be initially designated as the Manager. The Manager may be removed from its position as such only for Cause, by a vote of a two thirds majority in Interest of the Members, which two thirds majority shall not include Nearby Cactus Family Holding LLC. In no instance shall the number of Managers be more or less than one.

5.3 Rights and Powers of the Manager. The Manager shall have full, exclusive and complete power to manage and control the business and affairs of the Company and shall have all of the rights and powers provided to a Manager of a manager-managed limited liability company by law including, but not limited to, the power and authority to (a) execute instruments and documents, and (b) to take any other actions on behalf of the Company, which are for carrying on the business of the Company in its usual way. Without limiting the generality of the foregoing, the powers of the Manager shall include, but not be limited to, the power and authority to:

- (a) Employ, promote, terminate the employment of, and fix the terms of employment for any or all employees, accountants, legal counsel, management agents or other consultants for the company, including but not limited to Affiliates of the Manager;
- (b) Execute, acknowledge and deliver any contract, lease, instrument, document or certificate (or any amendment thereto) which is related to the purpose of the Company;
- (c) Construct, alter, improve, repair, replace or rebuild improvements upon property leased or owned by the Company;
- (d) Purchase policies of liability, casualty, course of construction and other insurance which the Manager deems advisable or appropriate for the protection of the Company and the Manager;
- (e) Enter into short term or long-term agreements for the management and/or operation of the Project, including but not limited to property management agreements;
- (f) Sell or cause the Company to sell the Project;
- (g) Borrow money on behalf of the Company, or sign all documents related thereto on behalf of the Company; and
- (h) Wind up the Company in accordance with Article 9.

5.4 Limitations on Powers of Manager. Notwithstanding the Rights and Powers of the Manager described in Section 5.3 above, or any other provisions of this Agreement, no Manager or Member shall do any of the following without the unanimous consent of the Members:

- (a) Cause the Company to loan money to any Member, Assignee or Manager of the Company;
- (b) Do any act which would be beyond the scope of the purpose for which this Company is formed;
- (c) Change the business purposes of the Company as set forth herein;
- (d) Participate in any reciprocal business arrangements in circumvention of the terms of this Agreement;
- (e) Authorize any transaction, agreement, or action on behalf of the Company that is unrelated to its purpose or business as stated herein or that otherwise violates this Agreement;
- (f) Authorize an amendment to the Articles of Organization of the Company that changes the structure of the Company from one in which management is vested in the Manager or Managers to one in which management is reserved to the members, or vice versa;
- (g) Amend or restate this Agreement; and
- (h) Assign to any creditor the right to enforce any Member's obligation under this Agreement.

5.5 Reliance by Third Parties.

(a) A third party shall be entitled to rely on all actions of the Manager and shall be entitled to deal with the Manager as if they were the sole party in interest, both legally and beneficially. Every instrument purporting to be the action of the Company and executed by the Manager or his, her or its designate shall be conclusive evidence in favor of any Person relying thereon or claiming there under that, at the time of delivery thereof, this Agreement was in full force and effect and that the execution and delivery of that instrument is duly authorized by the Manager and the Company.

(b) No Member other than a Manager shall be considered to be an agent of the Company solely by virtue of being a Member, and no Member other than a Manager shall have the authority to act for the Company.

5.6 Banking. The Members hereby authorize the Manager to open all bank accounts as they deem necessary and to enter into any deposit agreements as are required by the financial institution at which such accounts are opened. The Manager shall have signing authority with respect to such bank accounts. Funds deposited into such accounts shall be used only for the business of the Company.

5.7 Fiduciary Duties.

(a) Except for the duty of good faith and fair dealing, the Manager may act in the interest of the Members who designated the Manager hereunder, whether or not such interest conflicts with interests of the Company or any other Member. The Manager shall have no duty nor obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or any other Members. Notwithstanding anything contained in this Agreement to contrary, and except to the extent limited by Section 29-3105(C), the Manager shall only have those duties and obligations set forth in this Agreement. The Company and each Member agrees that the provisions of this Agreement, to the extent such provisions restrict or limit the duties (including, without limitation, fiduciary duties) or liabilities of the Manager that may otherwise exist at law or in equity, shall replace such other duties and liabilities of the Manager that are not set forth in this Agreement.

(b) Notwithstanding Section (a), the Manager shall not be required to manage the Company as his sole and exclusive function and the Manager may each engage in other business and investment activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, solely by virtue of this Agreement or his, her or its relationship to the Manager or the Company, to share or participate in any such other investments or activities of the Manager or to the income or proceeds derived therefrom. The Manager shall not have any obligation to disclose any such other investments or activities to the Members unless it is directly competitive with or otherwise actually or potentially adversely affects the business or property of the Company, as determined in reasonable good faith by the Manager. In addition to the foregoing, each Member acknowledges and agrees that the Manager is a member of the Company as identified on Schedule A.

5.8 Filing of Documents.

(a) The Manager shall file or cause to be filed all certificates and documents, and shall perform all other acts, as may be necessary or appropriate for the formation, continuation, qualification and operation of a limited liability company in the State of Arizona, and any other state in which the Company may elect to do business.

(b) The Manager shall file an amendment to, or restatement of, the Articles of Organization as required under Section 29-3202 of the Act.

5.9 Compensation & Reimbursement. The Company shall not pay the Manager a management fee. However, the Company may reimburse the Manager for all actual out-of-pocket third-party expenses incurred on behalf of the Company prior to the date hereof, including but not limited to legal and accounting and all other expenses related to the organization and formation of the Company. After the date hereof, direct expenses of the Company will be paid by the Company; provided, however, that if the Manager shall pay any proper obligation or liability of the Company or advance any funds to or for the benefit of the Company for the purpose of discharging any of the Company's proper obligations or liabilities, the Manager shall be entitled to full reimbursement of such payment or advance.

Article 6

The Members

6.1 Meetings of the Members. The Members have no obligation to hold meetings. Meetings of the Members shall be held on the call of any Member; provided that at least three (3) days' notice shall be given to all Members with respect to any meeting, including an annual meeting. Attendance at any meeting shall constitute a waiver of any required notice unless the attendance is solely to object to the failure to provide notice. A waiver of any required notice shall be equivalent to the giving of such notice if such waiver is in writing and signed by the Person entitled to such notice, whether before, at or after the time stated therein. The Members may make use of telephones and other electronic devices to hold meetings; provided that each Member may simultaneously participate with the other Members with respect to all discussions and votes of the Members. The Members may act without a meeting if the action taken is reduced to writing (either prior to or thereafter) and approved and signed by all of the Members. Written minutes shall be taken at each meeting of the Members; however, any action taken or matter agreed upon by the Members shall be deemed final, whether or not written minutes are prepared or finalized.

6.2 Voting of the Members. Each Member shall have a percentage vote equal to such Member's Capital Contribution Percentage. Unless otherwise specified in this Agreement, all actions, approvals, elections, and consents required to be made by "the Members" shall only be effective if approved by all the Members.

6.3 Rights and Obligations of Members.

(a) Each Member shall have the right to inspect and copy, during regular business hours, and upon reasonable notice to the Manager not less than five (5) business days, the books and records required to be kept by the Company pursuant to Section 11.1. In accordance with Section 29-3410 of the Act, a Member may seek to inspect the books and records of the Company pursuant to this Section 6.3(a) if: (i) the Member's purpose is reasonably related to the rights and duties of the Member under this Agreement or the Act, (ii) the member makes a demand to the Manager of Company describing with reasonable particularity the records sought or the purpose for seeking the records, and (iii) the records sought are directly connected to the applicable Member's purpose within the Company. In the event a Member makes a demand pursuant to item (ii) above, no later than ten (10) days after receiving the demand, the Manager shall inform the Member making such demand either (i) which records the Company will make available in response to the demand and where and when such records will be available, or (ii) the reason the Company declines to provide the demanded records.

(b) Each Member hereby acknowledges that he, she or it has been and will be in possession of Confidential Information (as defined below) in the event a Member inspects and copies the books and records of the Company pursuant to this Section 6.3, and improper disclosure would have an adverse effect on the Company.

(c) Each Member shall have the right to inspect and copy, during regular business hours, any information regarding the affairs of the Company that is not described in Section 6.3, but only if just and reasonable (within the meaning of Section 29-3401(B) of the Act) for any purpose reasonably related to the Member's Membership Interest.

(d) Each Member's liability for the debts and obligations of the Company shall be limited as set forth in the Act and other applicable law.

(e) Each Member shall timely furnish to the Company upon request any information with respect to such Member reasonably determined by the Manager to be necessary or convenient for the formation, operation, dissolution, winding-up, or termination of the Company. Additionally, each Member shall timely execute any and all documents required by the Company for the formation, operation, dissolution, winding-up, or termination of the Company, but in all instances no later than ten (10) days from request of the Manager.

6.4 Fiduciary Duties; Independent Activities.

(a) Except as otherwise specifically provided in this Agreement, each of the Members agrees that such Member shall owe to the Company and each other Member the same fiduciary duties that are owed by a partner to a partnership and the other partners under Section 29-1034 of the Arizona Revised Uniform Partnership Act, as that section (or its successor) may be amended from time to time.

(b) Notwithstanding Section (a) or any other provision of this Agreement, each Member may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to business ventures that compete with the Company, and neither the Company nor any of its Members shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived there from.

6.5 Default by a Member.

(a) The occurrence of any of the following events shall constitute an event of default (each an "Event of Default") and the Member so defaulting (the "Defaulting Member") will (except as otherwise provided in clause (iv) of this Section (a)) thereafter be deemed to be in default without any further action whatsoever on the part of the Company, a Manager or the other Member: (i) the attempted dissolution of the Company by the Member other than pursuant to the provisions of this Agreement, (ii) the bankruptcy or insolvency of a Member, (iii) an Event of Dissociation with respect to a Member, but not if such Event of Dissociation is described in clause (ii) or (iv) of Section 8.1(a), or (iv) a material violation or breach of any of the terms or provisions of this Agreement by a Member; provided, however, that a Member will not be deemed to be in default under this clause (iv) until that Member has failed to cure the default during the thirty (30) day period following the receipt of notice of such default, except that if the default is a non-monetary default and cannot reasonably and with due diligence and in good faith be cured within such thirty (30) day period, and if the Defaulting Member immediately commences and proceeds to complete the cure of such default with due diligence and in good faith, the thirty (30) day period with respect to such default shall be extended to include such additional period of time as may be reasonably necessary to cure such default, not to exceed ninety (90) days.

(b) Any provision of this Agreement to the contrary notwithstanding, on the date that a Member becomes a Defaulting Member, that Member will not have any voting rights with respect to any matters set forth in this Agreement, but only for as long as the default continues and is not cured by the Defaulting Member or waived by all of the non-Defaulting Members.

(c) Upon an Event of Default by a Member, the Company and the non-Defaulting Members shall have all rights and remedies available at law and in equity and may institute legal proceedings against the Defaulting Member with respect to any damages or losses incurred by the Company or by the non-Defaulting Members. The Company and the non-Defaulting Members will be entitled to reasonable attorneys' fees and expenses incurred in connection with any action brought against a Defaulting Member pursuant to this Agreement.

6.6 Additional Members. The Company shall not issue additional Membership Interests after the date hereof without the unanimous written consent or approval of all of the Members. No new Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Partnership Representative (as defined below) may, at his, her or its option, at the time a new Member is admitted, close the Company's books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder. Notwithstanding the foregoing, in the event the opportunity to make additional Capital Contributions to the Company is offered to the Members, and regardless if a Member elects to or elects not to participate in making such additional Capital Contribution to the Company, no Member shall be required to consent to or approve the additional Capital Contributions or admissions of an additional Member who desires to make such additional Capital Contribution to the Company.

Article 7

Restrictions to Transfers

7.1 Transfer Restrictions.

(a) A Member shall not directly or indirectly Transfer all or any part of his, her or its Membership Interest now or hereafter owned of record or beneficially by the Member except with the unanimous written consent of the Manager and Members. Each Member acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members to each other and the Company.

(b) Any Person to whom a Membership Interest is attempted to be Transferred in violation of this Article shall have no rights of a member of a limited liability company under the Act, including but not limited to the right (i) to receive allocations or distributions from the Company, (ii) to vote on any matter, (iii) to participate in the management of the Company, (iv) to act as an agent of the Company, (v) to obtain any information or accounting of the affairs of the Company, and (vi) to inspect the books or records of the Company. If, however, the Company is required by law to recognize the purported Transfer of a Member's Economic Interest, the purported transferee's rights shall be strictly limited solely to allocations and distributions as provided by this Agreement with respect to such Economic Interest. The purported transferee shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights to vote or participate in management or other rights of a Member under the Act. Any allocations and distributions to such purported transferee may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations or liabilities for damages that the transferor or transferee may have to the Company. The parties attempting to engage in any purported Transfer that has not been approved in writing by the Manager shall be liable to indemnify and hold harmless the Company, the Manager and the other Members from all costs, liability and damages that they may incur (including, but not limited to, incremental tax liability and attorneys' fees and expenses) as a result of such purported Transfer and efforts to enforce the indemnity granted under this section.

7.2 Transfers to a Controlled Entity or Trust. Notwithstanding the foregoing, any Member may Transfer all or any portion of his, her or its Membership Interest to (a) a corporation, limited liability company or other entity in which the Member holds a controlling interest or (b) any family trust, family partnership, family limited liability company, or other vehicle used for estate planning purposes in which the transferor, or any member of the transferor's family, or any entity controlled, directly or indirectly, by the transferor or a member of his, her or its family, is the grantor, trustee, general partner, managing member, or otherwise controls, directly or indirectly, the management of such entity. As a condition to a Transfer being permitted pursuant to this section, the transferee must deliver to the transferor (with a copy to the Company) the transferee's irrevocable written proxy to vote on all matters with respect to which the holder of the transferred Membership Interest is entitled to vote, and the transferor must agree in writing to exercise the right to vote authorized by such proxy.

7.3 Death of a Member. Upon the death of any Member who is a natural person, the deceased Member's Economic Interest in the Company shall be transferred to his or her successors in interest, but such successors in interest shall not have the right to become Substituted Members in the Company unless the conditions set forth in Section 7.5 are satisfied.

7.4 Transfers in Compliance with this Article. In the case of a Transfer of all or part of a Member's Membership Interest that is made with the consent of the Manager or pursuant to Sections 7.2, the following shall apply:

(a) The transferee (other than a transferee who was a Member prior to the Transfer) shall not have the right to become a Substituted Member of the Company without satisfying the applicable conditions of Section 7.5;

(b) The transferor shall cease to be a Member and shall be released from his, her or its obligations and liabilities to the Company, and the transferee (upon satisfying the applicable conditions of Section 7.5) shall become a Substituted Member subject to the restrictions and liabilities of a Member, including any obligation of the transferor to make Capital Contributions;

(c) If the applicable conditions set forth in Section 7.5 are not satisfied by the transferee, then the transferor shall remain a Member of the Company and shall not be released from his, her or its obligations and liabilities to the Company;

(d) Upon the Transfer, the Capital Account of the transferor that is attributable to the transferred Membership Interest shall carry over to the transferee or Member to whom the Membership Interest was transferred; and

(e) Any transferee or remaining Member who acquires the transferor's Membership Interest shall receive and hold the Membership Interest subject to the terms and conditions of the Act and this Agreement and shall not be entitled to Transfer such Membership Interest except in accordance with this Agreement.

7.5 Requirements for Transferee Becoming a Substituted Member. No transferee shall become a Substituted Member of the Company unless the following conditions are satisfied:

(a) The Person to whom the Transfer is to be made shall have assumed any and all of the obligations under this Agreement with respect to the Membership Interest to which the Transfer relates;

(b) All reasonable expenses required in connection with the Transfer shall have been paid by or for the account of the Person to whom the Transfer is to be made;

(c) All applicable state and federal laws, including securities laws, have been complied with; and

(d) All agreements and all other documents shall have been executed and filed and all other acts shall have been performed that the Manager deems necessary to make the Person to whom the Transfer is to be made a Substituted Member of the Company.

7.6 Continued Obligation. No transfer or exchange of a Membership Interest pursuant to this Article shall relieve the transferor, transferee, seller or purchaser from any duty or obligation owed to the Company or the other Members that accrued prior to the date of the transfer or exchange or shall constitute a waiver or release of claims with respect thereto.

Article 8 Dissociation

8.1 Events of Dissociation.

(a) Except as approved by the written consent of the Manager, a Person shall cease to be a Member of the Company at the following times: (i) upon the Member's dissociation from the Company as provided in Section 29-3602 of the Act, (ii) upon the Transfer of a Member's entire Membership Interest in accordance with Article 7 and the admission the transferee(s) as Substituted Member(s), (iii) upon the Member being expelled as a Member pursuant to the Articles of Organization or this Agreement, (iv) if the Member is a natural person, upon the Member's death, or the entry of an order or judgment by a court of competent jurisdiction adjudicating the Member incompetent to manage his or her person or estate, (v) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee), (vi) if a Member is a partnership, corporation, or limited liability company, at the time such entity ceases to exist as a legal entity, and (vii) if the Member is an estate, the distribution by the fiduciary of the estate's entire Membership Interest. This section is intended to be consistent with Sections 29-3602 and 29-3603 of the Act and shall be interpreted consistently therewith. Each of the events set forth in this section shall be referred to as an "Event of Dissociation."

(b) A Person shall not cease to be a Member of the Company upon the occurrence of any of the events set forth in paragraphs (a)-(c) of Section 29-3602 of the Act (relating to the bankruptcy, insolvency or other financial difficulties of a Member).

8.2 Dissociation as Breach of Agreement. Notwithstanding clause (i) of the first sentence of Section 8.1(a) or any provision of the Act, each Member acknowledges that (a) he, she or it has entered into this Agreement based on the expectation that each Member will continue as a Member and carry out his, her or its duties and obligations under this Agreement, (b) no Member has the right to dissociate from the Company without the written consent of the other Members, and (c) any Event of Dissociation other than an event described in clause (ii) or (iv) of the first sentence of Section 8.1(a) shall constitute a breach of this Agreement.

8.3 Consequences of Dissociation in Breach of Agreement. If a Member's dissociation from the Company constitutes a breach of this Agreement as provided in Section 8.2, the Company may recover damages for such breach from the dissociating Member (as provided under Section 29-3601 of the Act and any other applicable provision of law) and the following shall apply:

(a) The Member (or the Member's successor in interest, as the case may be) shall be treated as an assignee of a Member's Membership Interest, as provided in the Act;

(b) The Member (or the Member's successor in interest, as the case may be) shall have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act; and

(c) The Member (or the Member's successor in interest, as the case may be) shall continue to share in distributions from the Company, on the same basis as if such Member had not dissociated; provided that any damages to the Company as a result of such dissociation shall be offset against amounts that would otherwise be distributed to such Member.

Article 9

Dissolution and Termination

9.1 Dissolution. The Company shall dissolve and commence winding up and liquidation upon the earliest of the following to occur:

(a) The unanimous written consent of the Manager and all of the Members to the dissolution of the Company;

(b) It becomes unlawful for the business of the Company to be carried on, or for the Members to carry on the business in the Company;

(c) The sale or other disposition of all or substantially all of the Company's assets and receipt by the Company of the proceeds therefrom;

(d) An Event of Dissociation of the last remaining Member unless within one hundred eighty (180) days all assignees of Membership Interests in the Company consent in writing to admit at least one Member pursuant to Section 29-3701(A)(3) of the Act to continue the business of the Company;

(e) The entry of a judgment of dissolution under Section 29-3701(A)(4) of the Act; or

(f) The involuntary or administrative dissolution by the Arizona Corporation Commission under Section 29-3701 of the Act, unless and until the Company is reinstated pursuant to that section.

9.2 Continuation. Except as provided in Section 9.1(d), an Event of Dissociation with respect to a Member shall not cause a dissolution and the Company shall automatically continue following such Event of Dissociation.

9.3 Distributions Upon Winding Up. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the articles of termination have been filed with the Arizona Corporation Commission as required by Section 29-3702 of the Act, or until a decree dissolving the Company has been entered by a court of competent jurisdiction. Upon dissolution of the Company, the Company shall be wound up and liquidated as rapidly as business circumstances permit. The Manager shall act as the liquidating trustee, and the assets of the Company shall be liquidated and the proceeds thereof shall be paid (to the extent permitted by applicable law) in the order of priority set forth in Section 3.2. For the avoidance of doubt, the provisions of Section 29-3404(A) of the Act shall not apply to this Agreement.

9.4 Deficit Capital Accounts. Notwithstanding anything to the contrary in this Agreement, if any Member's Capital Account has a deficit balance (taking into account all contributions, distributions, and allocations for the Taxable Year in which the liquidation of the Company's assets occurs), the Member shall not be obligated to make any contribution to the capital of the Company and the negative balance of such Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other person for any purpose whatsoever.

9.5 Articles of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made there for, and all of the remaining property of the Company has been distributed to the Members, articles of termination shall be executed and filed by the Manager with the Arizona Corporation Commission as required by Section 29-3702 of the Act.

9.6 Return of Capital Contribution Non-Recourse to Other Members. Except as provided by law, upon dissolution and winding up, each Member shall look solely to the assets of the Company for the return of his, her or its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member or Members shall have no recourse against any other Member or Manager.

Article 10

Indemnification; Liability to Members

10.1 Indemnification of the Manager and Members. The Company shall indemnify, save harmless and pay all judgments and claims against each Manager and each Member relating to any liability or damage incurred by such Manager or Member attributable to any act performed or omitted to be performed by such Manager or Member in connection with the business of the Company, including attorneys' fees incurred by such Manager or Member in connection with the defense of any action based on any such act or omission, which attorneys' fees shall be paid as incurred. The Company shall have the right to assume the defense in any action or claim with respect to which it is indemnifying a Manager or Member in accordance with the provisions of this section. No Manager or Member shall be personally liable or responsible for any claims or obligations, whether to the Company, a Manager or a Member, with respect to any claim or obligation for which the Company has agreed to indemnify, save harmless or pay in accordance with the provisions of this Section 10.1; provided, however, that the provisions of this section shall not result in the indemnification of a Manager or a Member with respect to any liability, claim or obligation attributable to such Manager's or Member's fraud, bad faith, gross negligence or willful misconduct or for any expense, cost or liability for which such Manager or Member is personally responsible or liable under the terms of this Agreement or any other instrument.

10.2 Other Sources. The indemnification provided for in this Article shall apply only in the event, and to the extent, that a Manager or a Member is not entitled to indemnification, or other payment, from any other source (including insurance).

10.3 Liability to Other Members. No Manager or Member shall be personally liable for the failure of the Company to make distributions as set forth in this Agreement and shall not be liable, responsible, accountable in damages or otherwise to the Company or the Members for any act or omission performed or omitted by such Manager or Member in connection with the Company or its business. Notwithstanding the foregoing, a Manager and the Members shall in all instances be liable for acts or omissions in breach of this Agreement or which constitute fraud, gross negligence, willful misconduct or breach of fiduciary duty. If a Manager or a Member acts or refrains from acting in reasonable reliance on the advice of counsel, the Manager or Member shall be deemed to have had a good faith belief with respect

to such inaction or action. A Manager or Member shall not be required, however, to procure the advice of counsel to be entitled to the benefit of this section.

Article 11

Books, Records, Reports and Accounting

11.1 Books and Records. The Manager shall keep or cause to be kept at the Principal Address of the Company or electronically the following: (a) a current list of the full name and last known business, residence or mailing address of each Manager and Member, (b) a copy of the initial Articles of Organization of the Company and all amendments thereto, (c) copies of all written operating agreements and all amendments to the agreements, including any prior written operating agreements no longer in effect, (d) copies of any written and signed promises by any Member to make Capital Contributions to the Company, (e) copies of the Company's federal, state and local income tax returns and reports, if any, for the three (3) most recent years, (f) copies of any financial statements of the Company for the three (3) most recent years, and (g) minutes of every meeting of the Members as well as any written consents of Members or actions taken by Members without a meeting.

11.2 Taxable Year and Accounting. The Taxable Year of the Company shall be the calendar year. All decisions as to other accounting matters, except as specifically provided to the contrary in this Agreement, shall be made by the Manager.

11.3 Preparation of Tax Returns. The Manager shall arrange for the preparation and timely filing of all returns of the Company for federal and state income tax purposes and shall cause to be furnished to the Members the tax information reasonably required for federal and state income tax reporting purposes. The classification, realization and recognition of income, gain, losses and deductions and other items, for federal income tax purposes, shall be on that method of accounting as the Manager shall determine.

11.4 Tax Elections. The Partnership Representative (as defined below) may in his, her or its discretion determine whether to make any available elections pursuant to the Code.

11.5 Partnership Representative.

(a) The Manager shall designate a Person (the "Partnership Representative") as the Company's "partnership representative" as such term is defined in the Code.

(b) The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with the Partnership Representative and to do or refrain from doing any or all things reasonably required by the Partnership Representative to conduct those proceedings. The Partnership Representative agrees to promptly notify the Members upon the receipt of any correspondence from any federal, state or local tax authorities relating to any examination of the Company's affairs.

(c) Joseph McCallum shall serve as the initial Partnership Representative.

(d) The Partnership Representative will apply the provisions of subchapter C of Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015 (or any successor rules thereto) (the "2015 Act") with respect to any audit, imputed underpayment, other adjustment, or any such decision

or action by the Internal Revenue Service with respect to the Company or the Members for such taxable years, in the manner determined by the Partnership Representative. For the avoidance of doubt, the Partnership Representative may (i) elect to apply the rules in subchapter C of Chapter 63 of the Code, as amended by the 2015 Act, for taxable years prior to January 1, 2018, or (ii) elect to apply Section 6221(b) (if applicable) or Section 6226 of the Code or elect to file an administrative adjustment pursuant to Section 6227 of the Code, in each case as amended by the 2015 Act and in the manner determined by the Partnership Representative. Each Member does hereby agree to indemnify and hold harmless the Company from and against any liability with respect to its share of any tax deficiency paid or payable by the Company that is allocable to the Member (as reasonably determined by the Partnership Representative) with respect to an audited or reviewed taxable year for which such Member was a Member in the Company (for the avoidance of doubt, including any applicable interest and penalties). The obligations set forth in this section will survive such Member's ceasing to be a Member in the Company and/or the termination, dissolution, liquidation and winding up of the Company.

(e) Each Member will provide such cooperation and assistance, including executing and filing forms or other statements and providing information about the Member, as is reasonably requested by the Partnership Representative to enable the Company to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Member was admitted to the Company. If a Member fails to provide any such forms, statements, or other information requested by the Partnership Representative, such Member will be required to indemnify the Company for the share of any tax deficiency paid or payable by the Company that is due to such failure (as reasonably determined by the Partnership Representative). The obligations set forth in this section will survive such Member's ceasing to be a Member in the Company and/or the termination, dissolution, liquidation and winding up of the Company.

Article 12

Miscellaneous

12.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

12.2 Notices. Notices shall be delivered either by private messenger service, facsimile transmission, electronic mail (e-mail), or by private or governmental mail. Any notice or document required or permitted hereunder to a Member shall be in writing and shall be deemed to be given on the date received by the Member; provided, however, that all notices and documents mailed to a Member in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Member at his, her or its respective address as shown in the records of the Company, shall be deemed to have been received five (5) days after mailing. The address of each of the Members shall for all purposes be as set forth on Schedule A unless otherwise changed by the applicable Member by notice to the Company as provided in this section.

12.3 Severability. If any provision of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby. Every provision of this Agreement is intended to be severable.

12.4 Binding Effect. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective successors and, where permitted, assigns.

12.5 Titles and Captions. All article and section headings are for convenience only and are not a part of the context of this Agreement.

12.6 Pronouns and Plurals. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the appropriate Person may require.

12.7 No Third-Party Rights. This Agreement is intended to create enforceable rights between the parties hereto only, and creates no rights in, or obligations to, any other Persons whatsoever. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

12.8 Timing. Time is of the essence in the performance of each and every obligation imposed under this Agreement.

12.9 Number of Days. In computing any number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or day that is a legal holiday in the State of Arizona, then the final day shall be deemed to be the next day that is not a Saturday, Sunday or legal holiday in the State of Arizona.

12.10 Waiver of Partition. Each Member irrevocably waives any right it may have to maintain any action for partition with respect to any real property, personal property, or any other assets of the Company, including but not limited to the Project and its improvements.

12.11 Further Assurances. The Members shall execute all further instruments and perform all acts which are or may become necessary to effectuate and to carry on the business contemplated by this Agreement.

12.12 Estoppel Certificates. The Members hereby agree that, at the request of any Member, they shall each execute and deliver an estoppel certificate stating, to the extent true, that this Agreement is in full force and effect and that to the best of such Member's knowledge and belief there are no defaults by any Member (or that certain defaults exist, as the case may be) under this Agreement.

12.13 Amendments. The Manager may amend this Agreement in its sole discretion. Notwithstanding the forgoing, if an amendment to this Agreement will have a material and adverse effect on the interests of the Members, then such amendment shall require the unanimous agreement of the Members and the Manager.

12.14 Execution in Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of the Agreement, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. To facilitate execution of this Agreement, any party to this Agreement may execute and exchange counterparts of the signature pages by telephone facsimile or by electronic email, including by use of DocuSign or similar encrypted electronic document system, and in the event of such execution, such facsimile or electronic e-mail transmission shall be deemed to be an original signature for all purposes.

12.15 Entire Agreement. This Agreement contains all the agreements between the parties hereto and supersedes any and all prior agreements, arrangements or understandings between the parties

relating to the subject matter hereof. No oral understandings, oral statements, oral promises, or oral inducements exist. No representations, warranties, covenants or conditions, express or implied, whether by statute or otherwise, other than as set forth in this Agreement, have been made by the parties thereto to this Agreement.

12.16 Applicability of the Act. Except for those items set forth in Section 29-3105(C) of the Act, in the event of a conflict between this Agreement and the Act, the provisions of this Agreement shall govern. For the avoidance of doubt, at all times this Agreement shall supersede any provision, requirement or duty under the Act, and in the event this Agreement is silent on a matter set forth in the Act, such omission shall mean the provision, requirement or duty set forth in the Act shall not apply to the Company (unless such omission in this Agreement is prohibited by the Act).

12.17 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, that cannot be settled by negotiation between the parties will be referred to mediation by an independent and neutral third party selected by the parties or selected by independent nominees of each party. The mediation must be conducted within twenty days after the date a party requests mediation and must take place in Phoenix, Arizona. If the mediation fails to resolve the matter within five business days of the mediation, except as otherwise provided herein, all disputes arising out of or related to this Agreement then will be submitted to binding arbitration before a single arbitrator in the City of Phoenix in accordance with the Arizona Revised Uniform Arbitration Act, A.R.S. §§ 12-3001 et seq. as amended from time to time. If the parties cannot agree to an arbitrator within five business days of service of a Demand for Arbitration, then the arbitrator will be appointed by the presiding civil judge of the Maricopa County Superior Court. The prevailing party in the arbitration and any related court proceedings will be entitled to recover reasonable attorney's fees, costs and expenses, including fees paid to the arbitrator. The arbitration award may be entered as a judgment in any court of competent jurisdiction. The Maricopa County Superior Court will have exclusive original jurisdiction of all court proceedings relating to the arbitration.

12.18 Legal Counsel. The Company's majority Member and Manager, Nearby Cactus Family Holdings LLC, has retained Ambrosio Law LLC ("ALL") to prepare this Agreement and related documents.

(a) Each Member is advised that it is entitled to be represented by counsel of his, her or its choice with respect to becoming a member in the Company, and each Member should seek advice from its own counsel in regard to its Membership Interest in the Company and execution of this Agreement. Each Member acknowledges that it has sought advice from its own separate legal counsel in this regard, or has chosen not to do so. ALL is representing only the Manager, and each Member acknowledges that ALL has not undertaken any duty and has no duty or obligation of any kind to any Member in connection with this Agreement or any other documents contemplated by this Agreement.

(b) Each Member acknowledges that ALL is not giving tax advice to the Company or any Member.

(c) From time to time, and subject to the Rules of Professional Conduct of the State Bar of Arizona, ALL is permitted to render legal advice and to provide legal services to the Manager, its members and their respective Affiliates (collectively, the "Represented Parties") with respect to the Company. In no event does or will an attorney-client relationship exist between ALL and any other Member or any of their respective Affiliates in the absence of an express written engagement agreement between such Member and ALL.

(d) Subject to the Rules of Professional Conduct of the State Bar of Arizona, ALL shall be permitted to render legal advice and to provide legal services to the Company on behalf of Nearby Cactus Family Holdings LLC. Each Member agrees that such representation does not disqualify ALL from providing legal advice and legal services at any time in the future.

(e) Each Member will at all times continue to engage and consult with its own separate legal counsel, if any, in connection with matters and affairs relating to the Company, including matters pertaining to the tax consequences of this Agreement. If any dispute or controversy arises between any Member and any one or more of the Represented Parties, then each Member agrees that ALL may represent either the Company or Represented Parties (or their Affiliates), or both or all of them, in any such dispute or controversy to the extent permitted by the Rules of Professional Conduct of the State Bar of Arizona or similar rules in any other jurisdiction.

Article 13

Definitions

In addition to those terms which are otherwise defined in this Agreement, the following terms used in this Agreement shall have the meanings described below:

“Act” shall mean the Arizona Limited Liability Company Act, A.R.S. § 29-3101 *et seq.*, as amended from time to time (or any corresponding provisions of succeeding law).

“Adjusted Basis” shall have the meaning given such term in Section 1011 of the Code.

“Adjusted Capital Account Deficit” shall mean with respect to any Member, the deficit balance, if any, in that Member’s Capital Account as of the end of the relevant Taxable Year, after giving effect to the following adjustments: (a) the Capital Account shall be increased by the amounts that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Sections 1.704-2(g)(1) and (i)(5) of the Regulations, and (b) the Capital Account shall be increased by the items described in Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations. This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“Affiliate” shall mean, with respect to any Member, any Person (a) who directly or indirectly controls, is controlled by or is under common control with the Member; (b) who owns or controls ten percent (10%) or more of the outstanding voting or economic interests of the Member; (c) in which the Member owns more than ten percent (10%) of the voting or economic interests; (d) who is an officer, director, general partner or managing member of the Member; or (e) who is an officer, director, general partner, managing member, trustee, or holder of ten percent (10%) or more of the voting interests of any Person described in clauses (a) through (d) of this sentence. For purposes of this definition, the terms “controls,” “is controlled by,” and “is under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting interests, by contract or otherwise. In the case of a Person who is an individual, the term “Affiliate” includes the Person’s spouse, lineal ancestors or descendants by birth or adoption, and trusts for the benefit of such Person or any of the foregoing individuals.

“AFR” shall mean the annual long term percentage rate determined under Section 1274(d) of the Code.

“Agreement” shall mean this amended and restated operating agreement, as it may be amended from time to time, complete with any exhibits and schedules hereto.

“Articles of Organization” shall mean the Company’s articles of organization filed with the Arizona Corporation Commission, as they may be amended or restated from time to time.

“Capital Account” shall mean the accounting record of each Member’s capital interest in the Company maintained in accordance with the rules applicable to partnerships that are set forth in Section 1.704-1(b)(2)(iv) of the Regulations.

“Capital Contribution” shall mean, with respect to any Member, an amount of money contributed by that Member to the Company and, if property other than money is contributed, the initial Gross Asset Value of such property, net of liabilities assumed or taken subject to by the Company; the term shall not include the fair market value of, or any other amount attributable to, services rendered to the Company by a Member.

“Cause” shall mean any act or series of acts that both (a) constitutes fraud, a felony relating to the Manager’s role as such or involving moral turpitude, gross negligence in the management of the Company, or a breach of a fiduciary duty arising under this Agreement, and (b) in the reasonable judgment of a Super Majority in Interest (which super majority shall not include Nearby Cactus Family Holdings LLC), clearly reflects an unfitness on the part of the Manager to continue to serve in a management capacity with regard to the Company.

“Code” shall mean the Internal Revenue Code of 1986 (or successor thereto), as amended from time to time.

“Company” shall mean the limited liability company formed pursuant to this Agreement, as such limited liability company may from time to time be constituted.

“Economic Interest” shall mean the economic interest of a Person in the Company including, without limitation, such Person’s rights to a distributive share of the Profits and Losses of the Company, rights to a distributive share of assets, but excluding the right to vote and otherwise to participate in the management and control of the business and operations of the Company.

“Gross Asset Value” shall mean with respect to any Company asset, the asset’s Adjusted Basis, except that (a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of that asset, (b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values upon (i) the acquisition of an additional interest in the Company for more than a de minimus Capital Contribution by any new or existing Member, (ii) a distribution of more than a de minimus amount of Company assets in full or partial liquidation of any Membership Interest, or (iii) the liquidation of the Company. For purposes of determining the continuing Gross Asset Value of an asset, all depreciation, amortization and loss recovery deductions with respect to each asset shall be based on the Gross Asset Value of that asset and shall further adjust the Gross Asset Value of that asset.

“Losses” shall have the meaning set forth in the definition of “Profits” and “Losses.”

“Manager” shall mean any Person designated as a “Manager” pursuant to Article 5.

“Member” shall mean any Person who is identified as a member in Schedule A of this Agreement and each Person who may be subsequently admitted to the Company as a Substituted Member, until such time as an Event of Dissociation occurs with respect to that Person or the Person otherwise ceases to be a Member pursuant to this Agreement.

“Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action, of or by the Members granted pursuant to this Agreement or the Act.

“Net Cash Flow” shall mean the gross proceeds from Company operations, sales, and refinancing of debt, less the portion thereof used to pay or establish reasonable reserves for all Company expenses, debt payments, capital improvements, replacements and contingencies, all as determined by the Manager. “Net Cash Flow” shall not be reduced by depreciation, amortization, or similar allowances, but shall be increased by any reduction of reserves previously established pursuant to the first sentence of this definition.

“Person” shall mean an individual, firm, corporation, partnership, limited liability company, association, estate, trust, pension or profit-sharing plan, or any other entity.

“Principal Address” shall mean the registered Arizona office of the Company at which the records of the Company are kept as required under the Act.

“Profits” and **“Losses”** shall mean for each Taxable Year or other period, an amount equal to the Company’s taxable income or loss for that year or period, determined in accordance with Sections 702 and 703 of the Code with the following adjustments:

(a) Any income of the Company exempt from federal income tax not otherwise taken into account in computing Profits or Losses shall be added to that taxable income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations, shall be subtracted from that taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted as required by the definition of Gross Asset Value, the amount of that adjustment shall be taken into account as gain or loss from the disposition of that asset (assuming the asset was disposed of just prior to the adjustment) for purposes of computing Profits or Losses in the Taxable Year of adjustment;

(d) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the Adjusted Basis of that property may differ from its Gross Asset Value;

(e) Depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss shall be based on the Gross Asset Value of an asset; and

(f) Any items of income, gain, loss or deduction that are specially allocated pursuant to Article 4 shall not be taken into account in computing Profits or Losses.

“Regulations” shall mean pronouncements, as amended from time to time, or their successor pronouncements, which clarify, interpret and apply the provisions of the Code, and which are designated as “Treasury Regulations” by the United States Department of the Treasury.

“Substituted Member” shall mean any Person admitted to the Company as a Substituted Member pursuant to Article 7.

“Taxable Year” shall mean the year on which the accounting and federal income tax records of the Company are kept, which shall be the calendar year.

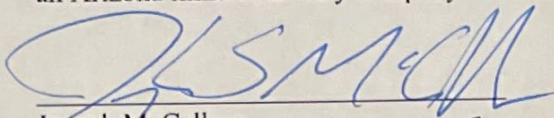
“Transfer” shall mean (i) when used as a verb, to sell, assign, transfer, give, donate, pledge, deposit, alienate, bequeath, devise or otherwise encumber or dispose of in any way or manner, or (ii) when used as a noun, any sale, assignment, transfer, gift, donation, pledge, deposit, alienation, bequest, devise or other encumbrance or disposition.

[Signature pages follow.]

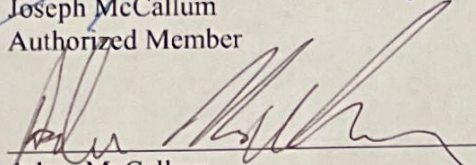
IN WITNESS WHEREOF, the parties have executed this Operating Agreement as of the Effective Date.

MANAGER:

Nearby Cactus Family Holdings LLC
an Arizona limited liability company

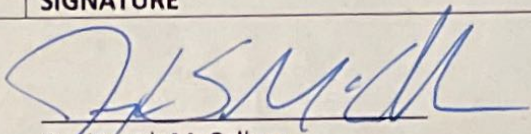
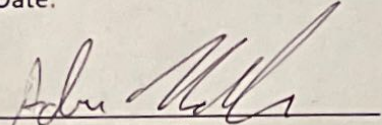


Joseph McCallum
Authorized Member



Adam McCallum
Authorized Member


MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	 By: Joseph McCallum, Its: Authorized Member Date: _____
	 By: Adam McCallum, Its: Authorized Member Date: 1/13/2022
Brett Caughran	_____ Date: _____
AMBRELL PHX XXI LLC	_____ By: Nathan Welborne, Its: Authorized Member Date: _____
SNOWDEN INVESTMENTS LLC	_____ By: Matthew Snowden, Its: Managing Member Date: _____
POMEROY LIVING TRUST	_____ By: Cathy Ann Pomeroy, Its: Trustee Date: _____
Paul Parent	_____ Date: _____


MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	_____ By: Joseph McCallum, Its: Manager Date:
Brett Caughran	_____  Date: 12/28/21
AMBRELL PHX XXI LLC	_____ By: Nathan Welborne, Its: Authorized Member Date:
SNOWDEN INVESTMENTS LLC	_____ By: Matthew Snowden, Its: Managing Member Date:
POMEROY LIVING TRUST	_____ By: Cathy Ann Pomeroy, Its: Trustee Date:
Paul Parent	_____ Date:


MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	_____ By: Joseph McCallum, Its: Manager Date:
Brett Caughran	_____ Date:
AMBRELL PHX XXI LLC	 By: Nathan Welborne, Its: Authorized Member Date:
SNOWDEN INVESTMENTS LLC	_____ By: Matthew Snowden, Its: Managing Member Date:
POMEROY LIVING TRUST	_____ By: Cathy Ann Pomeroy, Its: Trustee Date:
Paul Parent	_____ Date:

MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	_____ By: Joseph McCallum, Its: Manager Date:
Brett Caughran	_____ Date:
AMBRELL PHX XXI LLC	_____ By: Nathan Welborne, Its: Authorized Member Date:
SNOWDEN INVESTMENTS LLC	 _____ By: Matthew Snowden, Its: Managing Member Date: December 28, 2021
POMEROY LIVING TRUST	_____ By: Cathy Ann Pomeroy, Its: Trustee Date:
Paul Parent	_____ Date:

MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	_____ By: Joseph McCallum, Its: Manager Date:
Brett Caughran	_____ Date:
AMBRELL PHX XXI LLC	_____ By: Nathan Welborne, Its: Authorized Member Date:
SNOWDEN INVESTMENTS LLC	_____ By: Matthew Snowden, Its: Managing Member Date:
POMEROY LIVING TRUST	 By: Cathy Ann Pomeroy, Its: Trustee Date: 12/17/2021
Paul Parent	_____ Date:

MEMBERS:

MEMBER	SIGNATURE
NEARBY CACTUS FAMILY HOLDINGS LLC	_____ By: Joseph McCallum, Its: Manager Date:
Brett Caughran	_____ Date:
AMBRELL PHX XXI LLC	_____ By: Nathan Welborne, Its: Authorized Member Date:
SNOWDEN INVESTMENTS LLC	_____ By: Matthew Snowden, Its: Managing Member Date:
POMEROY LIVING TRUST	_____ By: Cathy Ann Pomeroy, Its: Trustee Date:
Paul Parent	<u>P.L.C. P.L.T.</u> Date: 12/30/2021

SCHEDULE A

Names and Addresses of Members, and Capital Contributions

Name and Address of Members	Capital Contributions	Capital Contribution Percentage
Nearby Cactus Family Holdings LLC 6534 N 13 th St Phoenix, AZ 85014	\$ 889,678.00	78.1%
Brett Caughran 8654 E Thoroughbred Trl Scottsdale, AZ 85258	\$100,000.00	8.8%
Ambrell PHX XXI LLC PO Box 2284 Scottsdale, AZ 85257	\$85,000.00	7.5%
Snowden Investments LLC 6868 N 7 th Ave, Suite 204 Phoenix, AZ 85013	\$25,000.00	2.2%
Pomeroy Living Trust Attn: Stephen Pomeroy 4708 N 30 th Pl Phoenix, AZ 85016	\$25,000.00	2.2%
Paul Parent 5455 N 18 th St, Unit 30 Phoenix, AZ 85016	\$15,000.00	1.3%
TOTAL:	\$1,139,678	100%