

## **OPERATING AGREEMENT OF RESUCHECK, LLC**

**THIS OPERATING AGREEMENT** (the “Agreement”) of Resuchek, LLC, a Kentucky limited liability company (the “Company”), is made as of March 13, 2012 (“Effective Date”) by and among the Company and the Members (as defined below).

### **RECITALS:**

**WHEREAS**, the Members desire to enter into this Agreement to provide for the operation and management of the Company.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **SECTION 1. FORMATION AND PURPOSE**

#### *1.1 Formation*

1.1.1 The members, by execution of this Agreement, for the Company as a limited liability company under and pursuant to the Kentucky Limited Liability Company Act (the “Act”). For that purpose, the Members have caused the Company’s Articles of Organization to be executed and filed with the Secretary of State of Kentucky.

#### *1.2 Subscription for Membership Interests*

1.2.1 Each Member agrees to his status as a Member and subscribes for the acquisition of a Membership Interest, upon the terms and conditions set forth in this Agreement.

#### *1.3 Name*

1.3.1 The name of the Company is Resuchek, LLC. All Company business must be conducted in the name of the Company or such other names that comply with applicable law as the Board of Managers may select from time to time.

#### *1.4 Governing Law*

1.4.1 This Agreement and all issues regarding the rights and obligations of the Members, the construction, enforcement, and interpretation hereof, and the formation, administration,

and termination of the Company shall be governed by the provisions of the Act and other applicable laws of the Commonwealth of Kentucky without reference to conflict of laws provisions.

### *1.5 Purposes*

- 1.5.1 The Company has been formed for the purposes of transacting any and all lawful business for which limited liability companies may be organized under the Act, including such activities as the Board of Managers shall have unanimously determined to be joint endeavors of the Members in which each member will share equally in the resulting income and expense.

### *1.6 Foreign Qualification Government Filings*

- 1.6.1 Prior to the Company's conducting business in any jurisdiction other than the Commonwealth of Kentucky, the Board of Managers, or Officers, if any, shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in such jurisdiction. The Board of Managers, or Officers, if any shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming to this Agreement that are necessary or appropriate to qualify, or, as appropriate, to continue or terminate such qualification of, the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

## **SECTION 2. DEFINITIONS**

### *2.1 Definitions*

- 2.1.1 "Act" means the Kentucky Limited Liability Company Act, as amended from time to time.
- 2.1.2 "Code" means the Internal Revenue Code of 1986, as amended, and any successor statute.
- 2.1.3 "Company" means Resuchek, LLC.
- 2.1.4 "Debt Instrument" means a promissory note or installment contractual obligation.
- 2.1.5 "Managers" means the individual(s) designated as Managers of the Company from time to time in accordance with the provisions of 4.1.1.

- 2.1.6 “Members” means those persons identified on *Exhibit A*, as such exhibit may be amended from time to time.
- 2.1.7 “Membership Interest” shall have the meaning ascribed to it in Section 3.1.2.
- 2.1.8 “Net Cash Flow” shall have the meaning ascribed to it in Section 6.1.1.
- 2.1.9 “Net Contributions” shall mean the amount of any capital contributions made by a Member.
- 2.1.10 “Officers” shall have the meaning ascribed to it in Section 4.1.1(b).
- 2.1.11 “Transfer” shall have the meaning ascribed to it in Section 9.2.1.
- 2.2 Other Terms
- 2.2.1 Other terms used in the Agreement are defined in the context in which they are used and shall have the meanings there indicated.

### **SECTION 3. STATUS, RIGHTS, AND OBLIGATIONS OF MEMBERS**

#### *3.1 Members*

- 3.1.1 *Members.* The names of the Members of the Company and the notice address of each such Member are set forth on *Exhibit A* attached hereto.
- 3.1.2 *Membership Interest.* The Members agree that each Member’s percentage of ownership interest in the Company (hereinafter referred to as a “Membership Interest”) shall be as set forth on *Exhibit A*, as it may be amended from time to time pursuant to this Agreement.

#### *3.2 Voting*

- 3.2.1 Members shall vote in relative proportion to their respective Membership Interests. Any action requiring a vote, consent, or approval of a “majority of the Members” shall be authorized if Members holding more than fifty percent (50%) of the outstanding Membership Interest entitled to vote, vote for, consent to, or approve of, such action.

#### *3.3 Meetings of Members*

- 3.3.1 *Meetings.* Meetings of Members shall be held at such date, time, and place as the Board of Managers may fix from time to time. Meetings of the Members may be called by the Board of Managers or by any Manager for the purpose of addressing any matters on which the Members may vote.

3.3.2 *Notice.* Written notice of a meeting of Members shall be sent or otherwise given to each Member not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice<sup>3</sup> shall specify the place, date, and hour of the meeting and the general nature of the business to be transacted. Notice of any meeting of Members shall be given in the manner prescribed by Section 10.4 hereof.

### *3.4 Action Without Meeting*

3.4.1 Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is approved a majority of the Members. Each such action without a meeting shall be evidenced by one or more written consents to be filed with the Company's records. Such action shall be effective as of the date specified in the written consent(s). Prompt notice of the taking of such action without a meeting by less than unanimous written approval shall be given to those Members who have not approved of such action in writing.

### *3.5 Restricted Activities*

3.5.1 *Use of Company Information.* Each Member covenants and agrees with the company and the other Members that, except on behalf of the Company and as authorized by the Company, it will not use or permit others to use, disclose, or divulge to others, copy or reproduce, or remove from the custody and control of the Company any information relating to or used in the business and operations of the Company whether in written or unwritten form or in a form produced or stored by any magnetic, electrical, or mechanical means or process, that is confidential information or a trade secret of the Company.

3.5.2 *Other Business Ventures.* Each Member may engage in or possess any interest in any other business of any nature and description, independently or with others, and neither the Company nor the other Members shall have any rights in or to any such independent venture or the income or profits derived there from.

### *3.6 No Preemptive Rights*

3.6.1 No Member shall have any preemptive, preferential, or other similar rights with respect to additional capital contributions or loans to the company or the issuance or sale of any Membership Interests by the Company.

## **SECTION 4. MANAGEMENT OF THE COMPANY**

#### 4.1 *Management by Board of Managers*

##### 4.1.1 *Appointment and Replacement of Managers; Officers.*

4.1.1.1 *Number; Election.* The operation of the Company shall be managed by, and the responsibility for managing the business and affairs of the Company shall be delegated to, a Board of Managers consisting of not more than five (5) managers (as defined in KRS 275.015) (each a “Manager”) appointed by a majority of the Members, each of whom shall be a natural person but who does not need to be a Member. The initial Managers of the Company shall be Brian Michael Weber and Kevin Michael McCarthy, Jr.

4.1.1.2 *Officers.* The responsibility for managing the business and affairs of the Company may be delegated by the Board of Managers to such other persons as may be appointed by the Board of Managers. The Board of Managers of the Company may, from time to time as they deem advisable, appoint officers of the Company (the “Officers”) and assign in writing titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Kentucky Business Corporation Act, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 4 may be revoked at any time by the Board of Managers.

4.1.1.3 *Term; Resignation; Removal.* Each Manager shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Any Manager may resign at any time upon written notice to the Company. Any Manager may be removed, with or without cause, by the vote of a majority of the Members.

4.1.1.4 *Filling Vacancies.* Vacancies resulting from any increase in the authorized number of Managers and any vacancies on the Board of Managers resulting from death, resignation, disqualification, removal, or other cause shall be filled by the affirmative vote of a majority of the remaining Managers, and the Managers so chosen shall hold office until the next annual election and until their successors are duly elected and shall not qualify, or until their earlier resignation or removal.

#### 4.1.2 *General Authority of the Board of Managers.*

4.1.2.1 Except to the extent that the approval of the Members (or Members holding a specified proportion of interests) is otherwise required by this Agreement or the Act, and subject to the conditions and limitations set forth elsewhere in this Section 4, the Board of Managers shall have full, complete, and exclusive discretion to manage and control the business of the Company in furtherance of the purposes for which the Company is formed. The Board of Managers shall exercise its best efforts to promote and protect the interests of the Company and shall devote such time and attention as is reasonably necessary and appropriate to discharge such obligations.

4.1.2.2 In furtherance and not in limitation of the foregoing grant of authority, the Board of Managers (including any delegated Officer) is empowered on behalf of the Company to negotiate, execute and deliver such agreements, instruments, deeds, certificates, and other documents as the Board of Managers deem necessary and appropriate in the Board of Managers' discretion to effect the purposes and interests of the Company.

4.1.2.3 All decisions made for and on behalf of the Company by the Board of Managers shall be binding upon the Company. No person dealing with the Company shall be required to determine the authority of the Board of Managers or any Officer to enter into any undertaking on behalf of the Company, nor to determine any fact or circumstance bearing upon the existence of such authority; *provided however*, that nothing herein shall extinguish, limit, or condition the liability of the Board of Managers or any Officer to the Members to discharge their obligations in accordance with this Agreement and the Act.

#### 4.1.3 *Meetings of the Board of Managers.*

4.1.3.1 *Place of Meetings.* The Board of Managers of the Company may hold meetings, both regular and special, either within or outside of the Commonwealth of Kentucky.

4.1.3.2 *Regular Meetings.* Regular meetings of the Board of Managers may be held without other notice at such time and at such place as shall from time to time be determined by the Board of Managers.

4.1.3.3 *Special Meetings.* Special meetings of the Board of Managers may be called by any Manager or the President of the Company (if a President has been designated), on one day's notice to each Manager, either personally or by mail, facsimile, telegram, or express courier.

4.1.3.4 *Quorum; Vote Required for Action.* At all meetings of the Board of Managers, a majority of the total number of Managers then in office shall constitute a quorum for the transaction of business and the act of a majority of the Board of Managers present at any meeting at which there is a quorum shall be the act of the Board of Managers, except as may be otherwise specifically provided herein or in the Articles of Organization. If a quorum shall not be present at any meeting of the Board of Managers, the Managers present may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

4.1.3.5 *Participation by Conference Telephone.* Managers may participate in a meeting of the Board of Managers by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

4.1.3.6 *Action Without Meeting.* Any action required or permitted to be taken at any meeting of the Board of Managers may be taken without a meeting, if a majority of the Managers then in office consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Managers.

4.1.4 *Limitations Upon Managers' Authority.*

4.1.4.1 Without first obtaining unanimous written consent of the Members, the Board of Managers shall not: (A) do any act in contravention of this Agreement, (B) do any act (other than a sale of all or any part of the assets of the Company) that would make it impossible to carry on the ordinary business of the Company, (C) admit a person as a Member of the Company other than in accordance with the terms of this Agreement, or (D) require any Member to contribute to the capital of the Company except as expressly provided in this Agreement.

4.1.4.2 The foregoing limitations are in addition to, and do not supersede any other limitations or prohibitions expressly imposed upon the Managers under this Agreement or by the Act.

4.1.5 *Reimbursement.* All expenses incurred with respect to the organization, operation, and management of the Company shall be borne by the Company. The Managers shall be

entitled to reimbursement from the Company for direct expenses allocable to the organization, operation, and management of the Company.

#### *4.2 Managers and Affiliates Dealing With the Company*

- 4.2.1 The Board of Managers may appoint, employ, contract, or otherwise deal with any person, including persons with whom a Manager is affiliated, and persons in which a Manager has a financial interest, for transacting Company business, including any acts or services for the Company as the Managers may approve; *provided however*, that fees or other payments and terms of any contract with such parties shall not be in excess of prevailing competitive rates for such transactions.

### **SECTION 5. CAPITAL CONTRIBUTIONS AND FINANCIAL OBLIGATIONS OF MEMBERS**

#### *5.1 Capital Contributions*

- 5.1.1 Contemporaneously with the execution of this Agreement, each Member shall make the initial cash capital contribution set opposite such Member's name in *Exhibit A*. Such capital shall be used by the Company to fund the operations of the Company and pay the expenses thereof.

#### *5.2 Additional Contributions*

- 5.2.1 The Board of Managers may arrange for the provision of such additional funds as are deemed necessary to conduct Company business. Such additional funds may be raised by loans to the Company from outside sources, or capital contributions to the Company from one or more Members.
- 5.2.2 No Member shall be required to make any additional capital contributions to the Company, unless all the Members have agreed in writing that such capital contribution is or may be required on certain conditions.

#### *5.3 No Interest Upon Capital Contributions.*

- 5.3.1 No Member shall be entitled to be paid interest by the Company on his capital contributions.

#### *5.4 Return of Capital Contributions.*



5.4.1 No Member shall be entitled to withdraw any part of his capital contributions or his capital account or to receive any distribution from the Company, except as specifically provided in this Agreement. Except as otherwise provided herein, there shall be no obligation to return to any Member or withdrawn Member any part of such Member's capital contribution to the Company for so long as the Company continues in existence.

*5.5 Loans Not to be Treated as Capital Contributions.*

5.5.1 Loans or advances by any Member to the Company shall not be considered capital contributions and shall not increase the capital account balance of the lending or advancing Member.

5.5.2 *No Loans Required.* Except as provided in this Agreement, no Member shall be required under any circumstances to contribute or lend any money or property to the Company, except to the extent that such Member has agreed to do so in writing.

5.5.3 *No Third Party Beneficiaries.* The provisions of this Agreement relating to the financial obligations of Members are not intended to be for the benefit of any creditor or other person (except Members) to whom any debts, liabilities, or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members; and, except for Members, no creditor or other person shall obtain any right under any of such provisions or shall by reason of any such provisions make any claim with respect to any debt, liability, or obligation (or otherwise) against the Company or any of the Members.

## **SECTION 6. DISTRIBUTION OF CASH AND PROPERTY**

*6.1 Distribution of Net Cash Flow and Mandatory Tax Distributions.*

6.1.1 *Net Cash Flow Defined.* The term "Net Cash Flow" for a fiscal year of the company shall mean: (A) all cash receipts as shown on the books of the Company (excluding, however, capital contributions from Members and net proceeds to the Company from the sale or the disposition of substantially all of the Company's assets), reduced by cash disbursements for Company purposes including interest and principal upon loans, and all cash reserves set aside by the Board of Managers that the Board of Managers deem necessary or appropriate to accomplish the Company business; *plus* (B) any other funds,

including amounts previously set aside as reserves by the Board of Managers, deemed available by the Board of Managers for distribution as Net Cash Flow.

6.1.2 *Priority of Distribution.* Subject to Section 6.1.3, the Board of Managers shall determine what portion of the Net Cash Flow of the Company for a fiscal year shall be paid to Members as a distribution; provided that such distribution shall be paid out to the Members *pro rata* in accordance with their respective Membership Interests. The Board of Managers shall determine the timing of when such distributions shall be made to the Members.

6.1.3 *Mandatory Distribution for Taxes.* With respect to any fiscal year in which the Company has net income allocable to the Members in accordance with Section 7.2.2, the Board of Managers shall cause the Company to distribute to each Member pursuant to Section 6.1.2 an amount equal to not less than fifty percent (50%) of the net income so allocated to such Member with respect to such fiscal year; provided however, that in no event shall a distribution be required under this Section 6.1.3 in excess of the Company's Net Cash Flow for such fiscal year. Distributions required under this section 6.1.3 shall be made not later than April 1 following the close of such fiscal year.

#### 6.2 *Distribution of the Proceeds of Dissolution.*

6.2.1 If the Company dissolves, the net proceeds of dissolution, including any accompanying sale of Company assets, shall be distributed in the following order of priority: first (A), toward the satisfaction of all outstanding debts and other obligations of the Company, including Members who are creditors, then (B) *pro rata* among those Members with positive capital account balances, in proportion to their respective capital account balances, after adjustments for distributions under Sections 6.1 and tax allocations for the current fiscal year.

#### 6.3 *Distribution of Debt Instruments.*

6.3.1 In the event the Company sells any of its assets and all or a portion of the sales price is paid by a Debt Instrument, if such sale occurs in conjunction with the dissolution of the Company, all interest and principal received by the Company shall be treated as net proceeds of dissolution, and shall be distributed in accordance with Section 6.2 hereof.

6.3.2 In the event the Company holds a Debt Instrument as described in Section 6.3.1 and the Company either is dissolved in conjunction with the sale that gave rise to such Debt

Instrument or dissolves prior to payment in full of such Debt Instrument, the Board of Mangers shall assign such Debt Instrument to a trustee who shall collect all sums that may become due and payable under the Debt Instrument, who have the power and authority to act to enforce all rights of the holder of such Debt Instrument and who shall distribute such sums pursuant to the formula described in Section 6.2.

#### *6.4 Distributions in Kind.*

6.4.1 No Member shall be entitled to demand and receive distributions other than in cash form.

6.4.2 If any Company assets are distributed in kind, such assets shall be distributed to each Member, provided that, to the maximum extent possible. The amount by which the fair market value of any property to be distributed in kind to the Member exceeds or is less than the tax basis of such property shall, to the extent not otherwise recognized by the Company, be taken into account for purposes of allocation of gain or loss and distributions of proceeds to the Members under this Section 6 as if the property had been sold by the Company for its fair market value on the date of the distribution and proceeds distributed. The fair market value of any property to be distributed in kind to the Members shall be determined by the Board of Mangers in their reasonable discretion, except that any to be distributed in kind to the Members shall be valued as follows: (A) If the securities are then traded on a national securities exchange, the NASDAQ National Market System (or similar national quotation system) or the NASDAQ SmallCap Market, then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and (B) If the securities are actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the distribution; and (C) If there is no active public trading market for the securities, then the value shall be the fair market value thereof, as determined in the reasonable discretion of the Board of Mangers.

### **SECTION 7. FEDERAL AND STATE TAX MATTERS**

7.1 *Maintenance of Members' Capital Accounts.* With respect to each Member, a separate "capital account" for such Member shall be established and maintained throughout the full

term of the Company in accordance with applicable Treasury Regulations that must be complied with in order for the allocations of taxable profits and losses provided in this Agreement to have “economic effect” under applicable Treasury Regulations.

*7.2 Allocations of Profits and Losses of the Company.* Subject to Section 7.3 below, the Company’s net income or loss for a fiscal year, computed in accordance with Treasury Regulations section 1.704-1(b)(2)(iv), shall be allocated among the members for each fiscal year as follows:

*7.2.1 Net Loss.* The net loss (other than from a sale or disposition of all or substantially all of the Company’s assets), if any, for a fiscal year of the Company shall be allocated to the Members in accordance with their respective Membership Interests.

*7.2.2 Net Income.* The net income (other than from a sale or disposition of all or substantially all of the Company’s assets), if any, for a fiscal year of the Company shall be allocated to the Members in accordance with their respective Membership Interests.

*7.2.3 Net Loss from Sale of All or Substantially All of the Company Assets.* The net loss from a sale or other disposition of all or substantially all of the Company assets shall be allocated among the Members as follows: First (A) to the Members, if any, having positive capital account balances in excess of their Net Contributions amounts in proportion to such excess positive balances, until the balance in each such Member’s capital account equals the amount of such Member’s Net Contributions, or, if there is insufficient loss to accomplish this result, to cause such excess positive balances to be in the same ratio as the Members’ respective Membership Interests; Second (B) to the Members, if any, having positive capital account balances, in proportion to such positive balances, until the balances in their capital accounts equal zero; and Thereafter (C) to the Members in accordance with their respective Membership Interests.

*7.2.4 Net Income from Sale of All or Substantially All of the Company Assets.* The net income from a sale or other disposition of all or substantially all of the Company assets shall be allocated among the Members as follows: First (A) to the Members, if any, having negative capital account balances, in proportion to such negative balances, until the balances in their capital accounts equal zero; Second (B) to the extent any Member has a positive capital account balance that is less than the amount of such Member’s Net Contributions, to each such Member, in the amounts necessary, and in the ratio of such

amounts, to cause the positive capital account balance of each such Member to be equal to the amount of such Member's Net Contributions; Third (C) to the Members in the amounts necessary, and in the ratio of such amounts, to cause their positive capital account balances in excess of the amounts of their respective Net Contributions to be in the same ratio as their respective Membership Interests; and Thereafter (D) to the Members in accordance with their respective Membership Interests.

*7.3 Special Tax Allocations.* Notwithstanding anything to the contrary contained above in Section 7.2:

- 7.3.1 The Company shall comply with Treasury Regulation Section 1.704-2 with respect to the allocation of deductions and minimum gain relating to nonrecourse debts of the Company.
- 7.3.2 No Member shall be allocated a net loss that would cause or increase a deficit balance in his capital account in excess of any actual or deemed obligation of such Member to restore deficits (as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4)-(6) that causes or increases a deficit in such Member's capital account, such Member shall be allocated items of income and gain in an amount and manner as will eliminate such deficit balance as quickly as possible. It is intended that this Section 7.3.2 shall constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3).
- 7.3.3 Any allocations required pursuant to Section 7.3.2 shall be taken into account in allocating net income and net loss pursuant to Section 7.2 above so that, to the extent possible, the net amount of such allocations shall be equal to the net amount that would have been allocated to each Member if the allocations pursuant to Section 7.3.2 had not occurred.
- 7.3.4 Any portion of any income, gain, loss, or deduction with respect to property contributed to the Company by a Member (or revalued pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) shall be allocated among the Members in accordance with Code Section 704(c) and Treasury Regulation Section 1.704-3 so as to take account of the variation, if any, between the adjusted tax basis of such property to the Company and its fair market value at the time of the contributions).

7.3.5 In the event of the Transfer of all or any part of a Membership Interest (in accordance with the provisions of this Agreement) at any time other than the end of a fiscal year, the share of income or loss (in respect of the Membership Interest so transferred) shall be allocated between the transferor and transferee in the same ratio as the number of days in such fiscal year before and after such Transfer. The provisions of this Section 7.3.5 shall not apply to any income or loss attributable to the sale or other disposition of all or substantially all of the Company assets, or to other extraordinary non-recurring items. Such income and loss shall be allocated to the owner of the Membership Interest as of the date of the closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the income is realized or the loss is incurred, as the case may be.

*7.4 Tax Year and Accounting Matters.*

7.4.1 The taxable year of the Company shall be the calendar year. The company shall adopt such methods of accounting, and file its tax returns on the methods of accounting, as determined by the Board of managers upon the advice of the certified public accounting firm servicing the books and records of the Company.

*7.5 Tax Matters Partner.*

7.5.1 Brian M. Weber shall be the “Tax Matters Partner” for federal income tax purposes. All costs and expenses incurred by the Tax Matters Partner in performing his duties as such (including legal and accounting fees) shall be borne by the Company.

*7.6 Tax Elections.*

7.6.1 The Tax Matters Partner, in the exercise of his reasonable discretion, may cause the company to make or revoke all tax elections provided for under the Code.

## **SECTION 8. TERM AND TERMINATION OF THE COMPANY**

8.1 *Term of the Company.* The term of the Company commenced upon the filing of the Articles of Organization, and shall continue until dissolved and terminated in accordance with this Agreement.

8.2 *Events of Termination.* The Company shall be dissolved upon the occurrence of any of the following events:

8.2.1 The unanimous written consent of the Members to dissolve and terminate the Company;

8.2.2 The sale, transfer, or assignment of substantially all the assets of the Company;

8.2.3 The death, resignation, retirement, expulsion, bankruptcy, or dissolution of a Member or occurrence of any other event that terminates the continued membership of a Member in the Company;

8.2.4 Entry of a decree of judicial dissolution; or

8.2.5 As otherwise required by Kentucky law.

8.3 *Conclusion of Affairs.* In the event of the dissolution of the Company for any reason, the Board of Managers shall proceed promptly to wind up the affairs of and liquidate the Company. Except as otherwise provided in this Agreement, the Members shall continue to share distributions and tax allocations during the period of liquidation in the same manner as before the dissolution. The Board of Managers shall have reasonable discretion to determine the time, manner, and terms of any sale or sales of Company property pursuant to such liquidation having due regard to the activity and the condition and relevant market and general financial economic conditions and consistent with their fiduciary obligations to the Members.

8.4 *Liquidating Distributions.* After paying or providing for the payment of all debts or liabilities of the Company and all expenses of liquidation, and subject to the right of the Board of Managers to set up such reserves as they may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, the proceeds of the liquidation and any other assets of the Company shall be distributed to or for the benefit of the Members in accordance with this Agreement. The Board of Managers shall have the right to distribute assets in kind, valued at the then fair market value of such assets (as determined in accordance with Section 6.4.2), as a liquidating distribution to the Members.

8.5 *Termination.* Within a reasonable time following the completion of the liquidation of the Company, the Board of Managers shall supply to each of the Members a statement that shall set forth the assets and the liabilities of the company as of the date of complete liquidation and each Member's portion of the distributions pursuant to this Agreement. Upon completion of the liquidation of the Company and the distribution of all Company assets, the Company shall terminate and the Board of Managers shall have the authority to execute and file with the Kentucky Secretary of State the Article of Dissolution for the Company, as well

as any and all other documents required to effectuate the dissolution and termination of the Company.

## **SECTION 9. ADMISSION, TRANSFERS, ADDITION, SUBSTITUTION, AND WITHDRAWAL OF MEMBERS**

9.1 *Admission.* A new Member may be admitted to membership in the Company through the issuance by the Company of a Membership Interest directly to such new Member upon the unanimous written consent of the Members.

9.2 *Restrictions on Transfers.*

9.2.1 Membership Interests (including “economic interest”) may be assigned, sold, gifted, pledged, mortgaged, or otherwise transferred (a “Transfer”) in whole or in part only upon the written consent of a majority of the Members; provided that no such transfer shall be made unless the Company shall have been offered, and such offer remains unaccepted for 20 days, the opportunity to purchase such Member’s Membership Interest at a price and on terms no less favorable than those of such proposed Transfer.

9.2.2 Unless waived by the Board of Managers, a Membership Interest shall not be Transferred in the absence of an opinion of counsel, satisfactory to the Board of Managers, that the transfer of the Membership Interest is exempt from the registration requirements under the Securities Act of 1933, as amended, or any applicable state securities laws.

9.3 *Admission of Substituted or Additional Members.*

9.3.1 No person not a Member on the date of this Agreement shall become a Member hereunder under any of the provisions hereof unless such person shall expressly assume and agree to be bound by all of the terms and conditions of this Agreement. Each such person shall also cause to be delivered to the Company, at his, her, or its sole cost and expense such documents or instruments as may be required in the discretion of the Board of Managers in order to effect such person’s admission as an additional Member. Upon compliance with all provisions hereof applicable to such person becoming a Member, the Board of Managers are authorized to execute and deliver such amendments hereto as are necessary to constitute such person or entity a Member of the company. Any transferee of a Membership Interest that has not been admitted as a substituted Member shall be an



“assignee,” entitled only to allocations of net profits, net losses, and other tax items of the Company and to distributions from the Company, and shall not be entitled to vote or participate in the affairs and management of the Company.

- 9.3.2 A Member who has Transferred his Membership Interest shall cease to be a Member upon Transfer of the Member’s entire Membership Interest and thereafter shall have no further powers, rights, or privileges as a Member hereunder, but shall, unless otherwise relieved of such obligations by agreement of all the other Members or by operation of law, remain liable for all obligations and duties as a Member related to the time during which he was a Member.
- 9.3.3 The Company, each Member, and any other person or persons having business with the Company need deal only with Members who are admitted as Members of the Company, and they shall not be required to deal with any other person by reason of a Transfer by a Member, except as otherwise provided by this Agreement. In the absence of the written consent provided in Section 9.2.1, any payment to an assigning Member shall acquit the Company and the Managers of all liability to any other persons who may be interested in such payment by reason of a Transfer by such Member.
- 9.3.4 No person shall have a perfected lien or security interest in a Membership Interest unless the creation of such interest is in accord with the provisions of this Agreement and the Company is notified of such interest and provided a copy of all documentation with respect thereto, including financing statements, prior to execution and filing.
- 9.3.5 Any Transfer not in accord with this Agreement shall be void.
- 9.3.6 Each Member agrees not to Transfer all or any part of his Membership Interest (or take or omit any action, that could result in a deemed Transfer) if such Transfer (either considered alone or in the aggregate with prior Transfers by other Members) would result in the Company being treated as a “publicly traded partnership” under Code Section 7704.
- 9.4 *No Right to Withdraw.* No Member shall have any right to voluntarily resign or otherwise withdraw from the Company without the unanimous written consent of the Members.
- 9.5 *Effect of Withdrawal.* On and as of the effective date of a Member’s withdrawal from the Company under the provisions of this Agreement, such former Member shall cease to have any Membership Interest or any management or other rights, status or privileges of a

Member, but such former Member shall not be released or discharged from any of the obligations of a Member under the provisions of this Agreement, unless agreed to and evidenced by the unanimous written consent of the Members.

## **SECTION 10. ADMINISTRATIVE PROVISIONS**

### **10.1   *Principal Office.***

10.1.1 The initial principal place of business and principal office of the Company shall be at 2424 Weber Lane, Louisville, Kentucky 40216. The Company may relocate the principal office and principal place of business and have such additional offices as the Managers may deem advisable.

10.1.2 The Managers shall have the power, on behalf of the Company, to designate, where required, a registered agent (or other agent for receipt of service of process) in each state or other jurisdiction in which the Company transacts business and to designate, to the extent required, an office, place of business or mailing address, within or without that state or other jurisdiction.

### **10.2   *Bank Accounts.***

10.2.1 Funds of the Company shall be deposited in an account or accounts of a type, in form and name, and in a bank(s) or other financial institution(s) that are participants in federal insurance programs as selected by the Board of Managers. The Board of Managers shall arrange for the appropriate conduct of such accounts. Funds may be withdrawn from such accounts only for bona fide and legitimate Company purposes and may from time to time be invested in such short-term securities, money market funds, certificates of deposit, or other liquid assets as the Board of Managers deem appropriate.

10.2.2 The Members acknowledge that the Board of Managers may maintain Company funds in accounts, money market funds, certificates of deposit, other liquid assets in excess of the insurance provided by the Federal Deposit Insurance Corporation or other depository insurance institutions and that the Board of Managers shall not be accountable or liable for any loss of such funds resulting from failure or insolvency of the depository institution.

### **10.3   *Books and Records.***

- 10.3.1 At all times during the term of the Company, the Board of Managers shall keep, or cause to be kept, full and faithful books of account, records, and supporting documents, which shall reflect, completely, accurately, and in reasonable detail, each transaction of the Company (including, without limitation, transactions with the Managers or affiliates). The books of account shall be maintained and tax returns prepared and filed in the method of accounting determined by the Board of Managers. The books of account, records, and all documents and other writings of the Company shall be kept and maintained at the principal office of the Company. Each Member or his designated representative shall, upon reasonable notice to the Board of Managers, have access to such financial books, records, and documents during reasonable business hours and may inspect and make copies of any of them at his own expense.
- 10.3.2 The Board of Managers shall cause the Company to keep at its principal office the following: (A) a current list of the full name and last known business address of each Member, in alphabetical order; (B) a copy of the Articles of Organization and all articles of amendment thereto; (C) copies of the Company's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years; and (D) copies of this Agreement, as it may be amended, and of any financial statements of the Company for the three (3) most recent years.
- 10.4 *Notices.* All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address set forth in Section 10.1.1 and to a Member at the Member's address as the company or a Member may designate by ten (10) days advance written notice to the other parties hereto.

## **SECTION 11. INDEMNIFICATION AND LIMITATION OF LIABILITY**

11.1 *Indemnification of Members and Managers.* Except as provided in Section 11.3, every person who was or is a party or who is threatened to be made a party to any pending, completed, or impending action, suit, or proceeding of any kind, whether civil, criminal, administrative, arbitrative, or investigative (whether or not by or in the right of the Company) by reason of (i) being or having been a Manager, Officer, or Member of the Company; (ii) being or having been a member, manager, partner, officer, or director of any other entity at the request of the Company; or (iii) serving or having served in a representative capacity for the Company in connection with any partnership, joint venture, committee, trust, employee benefit plan, or other enterprise, shall be indemnified by the Company against all expenses (including reasonable attorney fees), judgments, fines, penalties, awards, costs, amounts paid in settlement, and liabilities of all kinds, actually incurred by him incidental to or resulting from such action, suit, or proceeding to the fullest extent permitted under the Act, without limiting any other indemnification rights to which he otherwise may be entitled. The Company may, but shall not be required to, purchase insurance on behalf of such person against liability asserted against or incurred by such person in his capacity as a Manager, Officer, or Member whether or not the Company would have authority to indemnify him against the same liability under the provisions of this Section 11.1 or the Act.

11.2 *Liability Limitation.* Except as provided in Section 11.3, no Member or Manager shall have liability to the Company or other Members for monetary damages resulting from a single transaction, occurrence, or isolated course of conduct.

11.3 *Qualification of Indemnification.* The indemnification rights and limitations on liabilities set forth in Sections 11.1 and 11.2 shall not apply to claims based upon gross negligence, any willful misconduct, or intentional breach of the terms of this Agreement, or knowing violations of criminal law, or any federal or state securities law, nor shall such indemnification rights preclude the Company or any Member from recovery for any loss or damage otherwise covered under any insurance policy or fidelity bonding. Nothing herein shall be deemed to prohibit or limit the Company's right to pay, or obtain insurance covering, the costs (including attorney fees) to defend an indemnitee, Member, Officer, or Manager against any such claims, subject to a full reservation of rights to reimbursement in the event of a final adjudication adverse to such indemnitee, Member, Officer, or Manager.

- 11.4 *Advances for Expenses.* Expenses (including reasonable attorney fees) incurred by or in respect of any such person in connection with any such action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, may be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such person to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Company, in which case reimbursement shall not be required.
- 11.5 *Elimination of Liability.* The Members acknowledge, agree, and desire that, except as set forth in Section 11.3, the liability of any Member, Officer, or Manager to the Company or to any of the other Members shall be eliminated, to the maximum extent possible, pursuant to the Act. The provisions of this Section 11 are in addition to, and not in substitution for, any other right to indemnify to which any person who is or may be indemnified by or pursuant to this Section 11 may otherwise be entitled, and to the powers otherwise accorded by law to the Company to indemnify any such person against any liability asserted against or incurred by him in any capacity referred to in this Section 11 or arising from his status as serving or having served in any such capacity (whether or not the Company would have the power to indemnify against such liability).
- 11.6 *No Retroactive Effect of Amendment.* No amendment or repeal of this Section 11 shall limit or eliminate the right to indemnification provided by this Section 11 shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring before such amendment or repeal.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

- 12.1 *Entire Agreement.* This Agreement, including the exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement of the Members with respect to the matters covered herein. This Agreement supersedes all prior agreements and oral understandings among the Members with respect to such matters.
- 12.2 *Amendment; Form of Company.*
- 12.2.1 Except as provided by law or otherwise set forth herein, this Agreement may only be modified or amended by the written consent of a majority of the Members; *provided, however,* that *Exhibit A* hereto may be amended from time to time by the Board of

Managers to the extent required to accurately reflect the then current status of the information contained thereon.

12.2.2 Without first obtaining the written consent of a majority of the Members, the Board of Managers shall not change or reorganize the Company into any other legal form.

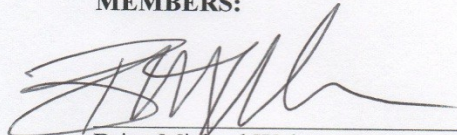
12.3 *Severability.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions hereof are determined to be invalid and contrary to existing or future law, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties to this Agreement in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect.

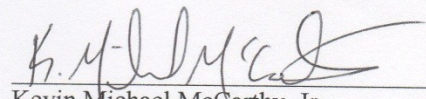
12.4 *Successors.* Except as expressly otherwise provided herein, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, and successors and assigns.

12.5 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument, binding upon all parties hereto, notwithstanding that all such parties may not have executed the same counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**MEMBERS:**

  
\_\_\_\_\_  
Brian Michael Weber

  
\_\_\_\_\_  
Kevin Michael McCarthy, Jr.

## EXHIBIT A

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Name	Address	Membership Interest Interest	Capital Contribution
Brian M. Weber	2424 Weber Lane Louisville, Ky 40216	50%	\$900.00
K. Michael McCarthy, Jr.	8409 Shepherdsville Rd Louisville, Ky 40219	50%	\$900.00
<hr/>			
TOTAL		100%	\$1,800.00