

Exhibit B

Sample Company Agreement for a Single Member L3C*

*(Designed for one to three Members,
Including Non-profit Members)*

***Disclaimer.** This Sample Company Agreement is not intended to be, and should not be construed as constituting legal or tax advice, or the recommendation or endorsement of the herein form for any particular client or transaction. Nor should this form be used in connection with the formation of any L3C, for any particular client or transaction, without the assistance of qualified tax and legal counsel. This Sample Company Agreement is furnished solely for educational and illustrative purposes, only.

This Operating Agreement was prepared under and in all respects complies with Vermont Law. It is designed for use in a manger-managed One Person L3C. Until there two or more members, the sole member is the Company Manager. Notwithstanding the L3C is a single member L3C, the Operating Agreement contemplates the addition of additional members, both for profit and private foundation members, subsequent to formation by Joinder and Adoption and Subscription Agreements, with individuals known to the single member, and who are sophisticated or qualified investors as further discussed herein.

**OPERATING AGREEMENT
FOR
One Person, L3C
A Low Profit Limited Liability Company**

This OPERATING AGREEMENT (the "Agreement") of **One Person, L3C**, a Vermont low profit limited liability company (the "Company"), effective as of May 21, 2012, is adopted, executed and agreed to, for good and valuable consideration, by **SINGLE MEMBER**, the "Sole Member". For the purposes of this Agreement, prior to the time at which another member is admitted to the Company, all references to "Member" or "Members" shall refer solely to the Sole Member.

**ARTICLE I
ORGANIZATION**

1.01 Formation. The Company has been organized as a Vermont low profit limited liability company by the filing of Articles of Organization (the "Articles") under and pursuant to *Chapter 21 of Title 11 of the Vermont Statutes Annotated* (hereinafter the "Act") and the issuance of a certificate of organization for the Company by the Secretary of State of Vermont.

1.02 Name. The name of the Company is "**One Person, L3C**" and all Company business must be conducted in that name or such other names that may be selected by the Member or, if there is more than one member, by a Majority Interest (as defined in **Section 5.02** below) and that comply with applicable law.

1.03 Registered Office; Registered Agent; Offices. The registered office and registered agent of the Company in the State of Vermont shall be as specified in the Articles or as designated by a Majority Interest in the manner provided by applicable law. The offices of the Company shall be at such places, as a Majority Interest may designate, which need not be in the State of Vermont.

1.04 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Vermont, the Members shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction.

1.05 Term. The Company commenced on the date the Secretary of State of Vermont issued a certificate of organization for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Agreement may specify.

1.06 Business Purpose. The Company is organized as an L3C or low-profit limited liability company, as defined under *Vermont Statutes Annotated, Title 11, Chapter 21, § 3001. Definitions, subdivision (27)*. Accordingly, the Company shall be exclusively organized and is at all times operated for a business purpose that satisfies each of the following requirements, as more particularly set out in this Agreement, so that:

(A) The Company:

(i) Significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of *Section 170(c)(2)(B) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c)(2)(B)*; by, among other things, **[FURTHER DETAIL SPECIFIC EXEMPT PURPOSESES HERE, RELATED TO L3C'S SPECIFIC OPERATION]**; and

(ii) Would not have been formed but for the Company's relationship to the accomplishment of such charitable or educational purposes.

(B) No significant purpose of the Company is the production of income or the appreciation of property; provided, however, that the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(C) No purpose of the Company is to accomplish one or more political or legislative purposes within the meaning of *Section 170(c)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c)(2)(D)*.

(D) If the Company meets the definition of this *subdivision (27)* at its formation and then, at any time thereafter, ceases to satisfy any one of the requirements, it shall immediately cease to be a low-profit limited liability company, but will continue to exist as a limited liability company by continuing to meet all the other requirements of *Chapter 21 of the Act*. Upon ceasing to be a low-profit limited liability company under *Chapter 21 of Title 11 of the Vermont*

Statutes Annotated, the name of the Company will be changed to be in conformance with *subsection 3005(a) of Chapter 21 of Title 11 of the Vermont Statutes Annotated*.

1.07 Operating Agreement. In accordance with the provisions of § 3003 of the *Act* (and incorporating same by reference), this Agreement regulates the affairs of the Company and the conduct of its business and governs relations among the members, among the managers and among the members, managers, and the Company, consistent with the Company's purpose as set out in **Section 1.06**. To the extent this Agreement does not otherwise provide, *Chapter 21 of the Act* and the relevant provisions thereof, shall regulate the affairs of the Company, the conduct of its business, and govern relations among the members, among the managers, and among members, managers and the Company, consistent with the purposes set out in **Section 1.06** of this Agreement.

1.08 No State Law Partnership. The Member intends that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

The Vermont Default Rule Regarding Purchase of a Member's Interest Following Dissociation -- Vermont has a default rule that requires a member's distributional interest to be purchased by the Company if a member is dissociated and the dissociating event does not result in the winding up of the Company. 11 V.S.A. § 3091. The default rule has been negated, in this Operating Agreement, except as to Non-profit Members

ARTICLE 2 MEMBERSHIP; DISPOSITIONS OF INTERESTS

2.01 Members: Sharing Ratios. As of the effective date of this Agreement, there is only one member of the Company. It is contemplated, however, that this Company will also have additional Members, including a Member, or Members, that is a private foundation, organized under the state law of its origin, a non-profit organization and classified as a tax-exempt private foundation by the Internal Revenue Service (a "Non-profit Member"). Each Person that is hereafter admitted to the Company as a Member, including a Non-profit Member, shall become a Member, as provided in **Section 2.04**, herein. Each Member, including the current sole Member and any other Member hereinafter admitted to the Company, as provided in this Agreement, shall share in the profits, losses and distributions of the Company, in accordance with their percentage ownership of Member Interests.

Section 2.02 imposes significant restrictions upon the transfer of a member interest, when there is more than member. Member interests may not be transferred, herein a "Disposition", other than a Disposition resulting from the death of such Member, except with the consent in writing of a Majority Interest. Any other attempted Disposition is void. A Person to whom a Membership Interest is Disposed (including as a result of the death of a Member) will have all the rights of a transferee of a distributional interest, under § 3072 of the Act. Such transferees are designated as Assignees in this Operating Agreement. Transfers of an Assignee interest are authorized under this Operating Agreement to Family Members (as defined under the Agreement) ,and such transfers are considered Permitted Transfers, not needing the required consent nor triggering a required purchase.

2.02 Dispositions of Membership Interests. Where there is more than one Member:

(a) A Member, including a Non-profit Member, may not make a sale, assignment, transfer, conveyance, gift, exchange or other disposition (voluntarily, involuntarily or by operation of law) (a "Disposition") of all or any portion of its rights or interest in the Company ("Membership Interest"), other than a Disposition resulting from the death of such Member, except with the consent in writing of a Majority Interest, calculated without reference to the Member desiring to make such Disposition and the approval of the admission of the transferee, as a Member, into this Company. Any attempted Disposition of all or any portion of a Membership Interest, other than in strict accordance with this **Section 2.02**, Shall be null and void ab initio.

(b) A Person to whom a Membership Interest is Disposed (including as a result of the death of a Member) will have all the rights of a transferee of a distributional interest, under **§ 3072 of the Act** (such transferee being referred to herein, in this Agreement, as an "Assignee"). A transfer of a distributional interest to an Assignee does not entitle the Assignee to become or to exercise any rights of a Member. A transfer of a distributional interest entitles the Assignee to receive, to the extent transferred, only the distributions to which the Member would be entitled to under this Agreement and the **Act**. A Member ceases to be a Member upon transfer of all of the Member's distributional interest other, than a transfer for security purposes or a court order charging the Member's distributional interest, which in either case has not been foreclosed. An Assignee may be admitted to the Company as a Member only with the unanimous consent of the other Members; and (without limiting the generality of **Section 5.02**) each Member's consent may be given or withheld in the Member's sole and absolute discretion, with or without cause, and subject to such conditions as it shall deem appropriate ("Sole Discretion").

Transferees who become Assignees do not have the management or voting rights of a member, but do have the right to become a full Member, without furnishing the other Members with such documents regarding the Disposition as a Majority Interest may request (in form and substance satisfactory to a Majority Interest), including a copy of the Disposition instrument, a ratification by the Assignee of the Operating Agreement (if the Assignee is to be admitted as a Member), a legal opinion that the Disposition complies with applicable federal and state securities laws and the provisions of the Act, and a legal opinion that: (i) the Disposition will not result in the Company's termination under Section 708 of the Internal Revenue Code of 1986 (as amended from time to time, the "Code"); and (ii) the Disposition will not result in the Company no longer being a low profit limited liability Company, under the Act.

(c) In connection with any Disposition of a Membership Interest, or any portion thereof, and any admission of an Assignee as a Member, the Member making such Disposition and the Assignee shall furnish the other Members with such documents regarding the Disposition as a Majority Interest may request (in form and substance satisfactory to a Majority Interest), including a copy of the Disposition instrument, a ratification by the Assignee of this Agreement (if the Assignee is to be admitted as a Member), a legal opinion that the Disposition complies with applicable federal and state securities laws and the provisions of the *Act*, and a legal opinion that (i) the Disposition will not result in the Company's termination under *Section 708 of the Internal Revenue Code of 1986* (as amended from time to time, the "*Code*"); and (ii) the Disposition will not result in the Company no longer being a low profit limited liability Company, under the *Act*.

(d) Notwithstanding the above provision, any Member shall be allowed to assign the economic interest (i.e., a distributional interest, as defined under *§ 3072 of the Act*), in his or her Membership Interest to his or her Family Members, whether directly or by operation of law (i.e., by gift, assignment, or through a deceased Member's estate, under a validly probated Will or other estate administration proceeding, as authorized under *Title 14 of the of the Vermont Statutes Annotated*), such persons being hereinafter designated as Permitted Transferees and such transfers being designated as Permitted Transfers. Except as to an assignment to a revocable living grantor trust, where the grantor is a Member and also a trustee, such an assignment shall not include a transfer of the Member's voting or management rights in this Company, and the Assignee shall not become a member of the Company, but shall have a right to such membership admission of the transferee into this Company. In the event a sole Member makes a Permitted Transfer, then in that event, the Permitted Transferee shall become a full Member of the Company, so as not to cause dissolution of the Company.

Events triggering a purchase of a Member's Interest are contained in this Section.

(e) Events Triggering the Purchase of a Member's Interest: The occurrence of any of the following events (hereinafter "Triggering Events") shall trigger a purchase of a Member's Interest:

(1) The attachment, sequestration, imposition of a court ordered charging order, levy of execution or foreclosure upon such charging order, garnishment or other involuntary transfer or encumbrance of a Member's Interest, by statute, court order or otherwise;

(2) The insolvency of a Member, whether the proceeding is voluntary or commenced otherwise;

(3) The withdrawal of a Non-profit Member, as provided in **Section 2.05**, below; or

(4) The investment of capital in the Company, by a Non-profit Member, and such investment of capital fails to qualify as a Program Related Investment or a Qualifying Distribution by a private foundation, as those terms are defined under the *Code* and regulations there under, in which case the Non-profit Member will be deemed to have withdrawn on the date such capital investment is deemed not to qualify as a Program Related Investment or a Qualifying Distribution by a private foundation.

Deleted: ¶

All of the Member Interests of the Company owned by the Member, including a Non-profit Member (the transferring Member), including any Permitted Transferees of such Member (with respect to an Assignee's interest), shall be deemed to be offered to the Company and the other Members (non-transferring Members) under the terms and at the price set forth herein. The withdrawal of a Member who is not a Non-profit Member shall not require the repurchasing of such Member's Membership Interest.

This and the following sections contain the purchase provisions when a Member's Interest is required to be purchase on this Operating Agreement.

(f) Option to Purchase and Sell Member Interests: Upon the occurrence of any event stated in (e), above, the Company and non-transferring Members, if any, shall have an absolute right and first option to purchase from the transferring Member, or his or her personal representative, all of the Member Interests of the

transferring Member in the Company. The Company shall be given the first right of refusal. If the Company fails to exercise such first right of refusal, then in that event, the non-transferring Members shall have the second right of refusal. If the non-selling Members fail to exercise their right to purchase such transferring Member's Interest, then the Company shall be bound to purchase the Member Interests of the transferring Member, unless it is financially unable to do so. Regardless of who exercises said option, upon notice, the transferring Member will be obligated to sell such Member's Interest within the requisite time period. If the Company is legally and/or financially unable to do so, then the transferring Member may sell/transfer the Member Interests, but only on the terms and conditions offered to the Company, and the non-transferring Members as set out herein and provided further such transferee will have only the rights of an Assignee (as herein defined) and such an assignment shall not include a transfer of the Member's voting or management rights in this Company, and the transferee shall not become a Member of the Company. A transferee shall only have a right to such Membership status upon all non-transferring Members in the Company first agreeing to approve the admission of the transferee into this Company, in writing, and the transferee executing and becoming a party to this Agreement, by executing a Joinder and Adoption Agreement, as provided in **Section 2.01** above, in a form that is acceptable to the Company Manager or Managers, at which time such Member Interests shall be subject to the terms and conditions of this Company Agreement.

(g) Exercise of Option: The Company, or non-selling Members must exercise the respective options set forth above in **(4)** within thirty (30) days of receipt of notice from the transferring Member. Notice to the Company must be given in writing and sent to the Company at its principal office. Notice to the non-selling Members shall be given to them at their respective addresses as set out in the Company records, as of the date of the Triggering Event.

(h) Closing: The closing of the purchase and sale of Members' interests shall take place at the principal office of the Company, at a date designated by the Company, which may not be more than sixty (60) days following the Triggering Event.

(i) Valuation of Member Interests: The price of Member Interests of each Member to be sold, pursuant to this Agreement shall be the fair market value of the Member Interests. The fair market value shall be determined by a disinterested, qualified third party appraiser and shall be made based on the value of the Company as of the close of business of the most recent fiscal calendar quarter, preceding the event triggering the purchase of the Member Interests as set out herein. In the event that the transferring Member and the non-transferring Members cannot agree on an appraiser, each will choose an appraiser, who in turn will agree on a third, all of whom meet the requirements as herein set out. In the event the latter method is used, the parties agree to be bound by the average valuation found by the three (3) appraisers. If all agree on single appraiser the expense of the appraisal will be borne by the Company. If the alternative method

of selecting an appraisal is used, the cost of the appraisal process shall be borne equally by the transferring Member and the non-transferring Members.

(j) **Payments:** The payment of the purchase price or any part thereof (remaining after the payment of any insurance proceeds) shall be made by installment payments. Promissory notes shall be given to secure the payment of the installments. The notes shall be secured by the Member Interests in the Company. The notes shall bear interest at the then applicable federal rate and shall accelerate in the event of default. The payments shall be made in equal monthly installments over a five-year period.

2.03 Encumbrances of Membership Interests. When there is more than one Member, a Member may not pledge, mortgage, subject to a security interest or lien, or otherwise encumber (voluntarily, involuntarily or by operation of law) all or any portion of his, hers or its Membership Interest without the consent of a Majority Interest, calculated without reference to the Member desiring to make such encumbrances.

Section 2.04 authorizes the addition new Members, including Non-profit Members, by either creating and issuing additional classes of Member Interests or additional Member Interests of the same class. Each new Member becomes a Member by executing a Joinder and Adoption Agreement that evidences such Person's agreement to be bound by the terms and conditions of this Agreement and sets out the terms and conditions of such Person's acquisition of his, her or its percentage Membership Interests and recites the consideration therefore. Each new Member's interest in the L3C is made pursuant to a Subscription Agreement, subjecting the new Member to (in addition to the restriction contained in the Operating Agreement) the following restriction:

THE L3C MEMBER INTERESTS HAVE NOT, NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE L3C MEMBER INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED, OR UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER, WHICH OPINION AND COUNSEL MUST BE REASONABLY SATISFACTORY TO THE COMPANY MANAGER OF THE L3C.

In addition, such new Member takes his or her Member Interest, with the following acknowledgement:

THE L3C MEMBER'S OWNERSHIP PERCENTAGES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE OWNERSHIP PERCENTAGES ARE OFFERED AND SOLD IN RELIANCE ON EXCEPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES ACT AND THE LAWS, AND PARTICULARLY REGULATION D [enacted by the Securities and Exchange Commission effective April 15, 1982, pertaining to the offers and sales of securities without registration under the Securities Act of 1933]. THE L3C WILL NOT BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND WILL NOT FILE REPORTS, PROXY STATEMENTS AND OTHER INFORMATION WITH THE SECURITIES AND EXCHANGE COMMISSION.

2.04 Creation of Additional Membership Interests. Additional Membership Interests may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members, including Non-profit Members, at the direction of a Majority Interest, on such terms and conditions, and with such Sharing Ratios and Commitments, as a Majority Interest may determine, at the time of admission, subject to the terms of this Agreement and the *Act*. A Majority Interest may reflect the creation of any new class or group of Members, in an amendment to this Agreement that needs be executed only by a Majority Interest. Each Person, including a Non-profit Member, that is hereafter admitted to the Company as a new Member, whether pursuant to the Company's creation of a new class or group of Members, or whether such Person is admitted as an additional Member, under the present equity structure of the Company, such Person shall become a Member by executing this Agreement, via a Joinder and Adoption Agreement that evidences such Person's agreement to be bound by the terms and conditions of this Agreement and sets out the terms and conditions of such Person's acquisition of his, her or its percentage Membership Interests and recites the consideration therefore, if any.

Section 2.05 denies the right of a Member to withdraw, except in accordance with the Act. Such restriction however does not apply to Non-profit Members. They can unilaterally withdraw and get the return of their capital if they determine that the L3C is no longer pursuing its exempt purposes. A private foundation Member must have such unilateral right, in connection with its mandatory expenditure oversight duties, under federal law, to protect its exempt status. This unilateral right of withdrawal satisfies the “control” test, as set out under federal case law and IRS rules and public guidance.

2.05 Withdrawal. When there are two or more Members, and except as specifically provided herein with respect to a Non-profit Member, a Member does not have the right to withdraw from the Company, under this Agreement, except strictly in accordance with the provisions of **§3081 of the Act**; provided, however, a Member shall have the power to withdraw at any time, in violation of this Agreement or the foregoing section of the **Act**. If a Member exercises such power in violation of this Agreement and the **Act**: *(a)* such withdrawing Member shall be liable to the Company and the other Members for all monetary damages suffered by them as a result of such withdrawal; and *(b)* to the fullest extent of the **Act**, such withdrawing Member shall not have any right to receive the value of his, her or its Member Interest in the company, as of the date of such wrongful withdrawal. In no event shall the Company or any Member have the right, through specific performance or otherwise, to prevent a Member from withdrawing in violation of this Agreement or the **Act**. In the case of a Non-profit Member, such Non-profit Member may at any time unilaterally withdraw from the Company, upon ten days written notice, without the consent of the non-withdrawing Members constituting a Majority Interest, or the Company, provided such written notice is accompanied by a written consent of all the governing persons of the Non-profit Member, approving a unanimous resolution of withdrawal. Such withdrawal shall not constitute a wrongful withdrawal. Serving such written notice shall constitute a Triggering Event, pursuant to **Section 202(d)(3)** above, requiring the purchase and sale of the Non-profit Member’s interest, by the Company or other Members. The Company shall not be dissolved and the business of the Company shall continue in the event of withdrawal by a Member. In the event that a Member withdraws, such withdrawal will not require the Company or another Members to purchase the withdrawing Member’s Membership Interest, except as required by **Article 2** of this Agreement in the case of a Non-profit Member.

Section 2.06 is likewise necessary, as to Non-profit Member's access to Company books and financial records, so the private foundation Member can fulfill its fiduciary duties in connection with its mandatory expenditure oversight obligations. Denial of such member's access to these Company documents and records also triggers such member's unilateral right to withdraw.

2.06 Information. In addition to the other rights specifically set forth in this Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to *§3058 of the Act*, under the circumstances and subject to the conditions therein stated, including the Manager or Managers' right to keep confidential from Members who are not managers, for such period of time as the Manager or Managers deem reasonable, any information which the Manager or Managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which the Manager or Managers in good faith believe is not in the best interest of the Company. Provided, however, a Non-profit Member shall at all times, upon reasonable notice, have unrestricted access to all of the Company's books and records, to carry out its due diligence and exercise its ongoing expenditure oversight responsibilities with regard to its capital investment in the Company to ascertain that: (i) at all times the Company is being operated in accordance with the purposes set out in **Section 1.06**, above; and (ii) that its capital investment continues to qualify as a qualifying distribution and a Program Related Investment. If the Non-profit Member is denied such access by the Company or other Members, the Non-profit Member shall have grounds for an immediate, unilateral and unqualified withdrawal from the Company, thereby triggering the requirement that its interest be repurchased by the Company and other Members, as provided elsewhere in this Agreement.

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

2.08 Expulsion. A Member may not be expelled from the Company, except in strict accordance with the provisions of *§3081 of the Act*.

2.09 Spouses of Members. Spouses of the Members do not become Members as a result of such marital relationship and shall have no management or voting rights; however, a spouse's share shall have, by virtue of their community or quasi community property rights, an Assignee interest as prescribed herein and under the *Act*.

ARTICLE 3 CAPITAL CONTRIBUTIONS

3.01 Initial Contributions. Contemporaneously with the execution by a Member of this Agreement, such Member shall make the contributions to the capital of the

Company, consistent with the provisions of *§3051 of the Act*, as are set forth opposite such Member's signature below ("Capital Contributions"). In the case of a Person becoming a Member of the Company after the execution of this Agreement, via a Joinder and Adoption Agreement as provided for herein, such Person's Capital Contribution shall be the amount of consideration recited by such person for the acquisition of their Member Interests, in the Joinder and Adoption Agreement signed by such Person.

3.02 Subsequent Contributions. No Member, whether the current sole Member signing this Agreement or a Person who subsequently becomes Member, by executing a Joinder and Adoption Agreement, shall be required to make contributions subsequent to the Capital Contributions made in accordance with **Section 3.01**.

3.03 Return of Contributions. Except as specifically provided for herein, with regard to a Non-profit Member, a Member is not entitled to the return of any part of his, her or its Capital Contributions or to be paid interest in respect of either its capital account or its Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

3.04 Advances by Members. If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the consent of a Majority Interest may advance all or part of the needed funds to or on behalf of the Company, at such interest rate and on such other terms as such Member and a Majority Interest may agree. An advance described in this **Section 3.04** constitutes a loan from the Member to the Company and is not a Capital Contribution.

ARTICLE 4 DISTRIBUTIONS AND ALLOCATIONS

4.01 Distributions. Distributions from Net Cash Flow (as defined in this **Section 4.01**) shall be made at such time as determined by a Majority Interest, but in no event no less often than quarterly on or before the thirtieth (30th) day after the end of the fiscal quarter. Net Cash Flow for each fiscal quarter (or such shorter period for which the distribution is made) shall be distributed to the Members in proportion to their Sharing Ratios. The term "Net Cash Flow" shall mean all cash funds derived by the Company (including interest received on reserves, borrowings and capital transactions), without reduction for any noncash charges, but less cash funds used to pay current operating expenses, debt payments, capital improvements, replacements and establish reasonable reserves for future expenses and costs as determined by a Majority Interest.

4.02 Allocations. Except as may be required by *Code Section 704(b)* or *704(c)* and *Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3)*, all items of income, gain, loss, deduction and credit of the Company shall be allocated to the Members in accordance with their Sharing Ratios.

Again, this is a manger-managed L3C, under Vermont law, and since it is initially a single member L3C, the sole member is the Company Manager.

ARTICLE 5 MANAGEMENT

5.01 Management by Managers. The Company is to be manager-managed, and as of the effective date of this Agreement, the initial manager shall be the Sole Member, and he shall have absolute and sole authority to manage the Company. Any reference to "Majority Interest" contained in this Agreement shall be applicable only in the event there is more than one Member. In all other instances and until such time as there is more than one Member, the sole Member of the Company shall have the authority to take any action or to take no action as he deems to be necessary or desirable on behalf of the Company, as its Manager, and all requirements that such action or decision to take no action must be approved by a Majority Interest shall be inapplicable.

5.02 Meetings of Members. If at any time there is more than one Member, regular meetings of the Members may be held on such dates and at such times as shall be determined by Members holding among them at least a majority of all Members, regardless of their Sharing Ratios (a "Majority Interest"), with notice of the establishment of such regular meeting schedule being given to each Member that was not present at the meeting at which it was adopted. Special meetings of the Members may be called by Members holding among them at least ten percent of the Sharing Ratios of all Members, by notice thereof (specifying the place and time of such meeting) that is delivered to each other Member at least three days prior to such meeting. Neither the business to be transacted at, nor the purpose of, such special meeting need be specified in the notice (or waiver of notice) thereof. Unless otherwise expressly provided in this Agreement, at any meeting of the Members, a Majority Interest, represented either in person or by proxy, shall constitute a quorum for the transaction of business, and an act of a Majority Interest shall be the act of the Members. Each Member may, with respect to any vote, consent or approval that it is entitled to grant pursuant to this Agreement, grant or withhold such vote, consent or approval in its Sole Discretion. Except as otherwise may be required by the Articles, other provisions of this Agreement, or under the *Act*, each Member shall vote on any matter submitted to the membership for approval in proportion to the Member's percentage Interest in the Company, provided, however, Members may not cast their vote in a manner that would cause the Company to operate in any other manner than as stated in **Section 1.06**, above.

5.03 Committees of Members; Delegation of Authority to Individual Members. A Majority Interest may designate one or more committees, each of which shall be comprised of one or more of the Members, and may designate one or more of the Members as alternate members of any committee. Any such committee, to the extent provided in the resolution establishing it, shall have and may exercise all of the authority that may be exercised by a Majority Interest. Regular and special meetings of such

committee shall be held in the manner designated by a Majority Interest or, if not so designated, by such committee. A Majority Interest may dissolve any committee at any time. In addition, a Majority Interest may delegate to one or more Members such authority and duties, and assign to them such titles, as a Majority Interest may deem advisable. Any such delegation may be revoked at any time by a Majority Interest.

5.04 Compensation. The Members shall receive such compensation, if any, for their services in the management of the Company, as may be designated by a Majority Interest. In addition, the Members shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service in the management of the Company.

5.05 Provisions Applicable to all Meetings. In connection with any meeting of the Members or any committee thereof, the following provisions shall apply:

(a) **Place of Meeting.** Any such meeting shall be held at the principal place of business of the Company, unless the notice of such meeting (or resolution of the Members or committee, as applicable) specifies a different place, which need not be in the State of Texas.

(b) **Waiver of Notice Through Attendance.** Attendance of a Person at such meeting (including pursuant to Section 5.05(e)) shall constitute a waiver of notice of such meeting, except where such Person attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) **Proxies.** A Person may vote at such meeting by a written proxy executed by that Person and delivered to another Member or member of the committee, as applicable. A proxy shall be revocable unless it is stated to be irrevocable.

(d) **Action by Written Consent.** Any action required or permitted to be taken at such a meeting may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the Members or members of the committee, as applicable, having not fewer than the minimum number of Sharing Ratios or votes that would be necessary to take the action at a meeting at which all Members or members of the committee, as applicable, entitled to vote on the action were present and voted.

(e) **Meeting by Telephone.** Members or members of the committee, as applicable, may participate in and hold such meeting by means of conference telephone, videoconference or similar communications equipment by means of which all Persons participating in the meeting can hear each other.

5.06 Officers. A Majority Interest may designate one or more Persons to be officers of the Company ("Officers"), and any Officers so designated shall have such title,

authorities, duties and salaries as a Majority Interest may delegate to them. Any Officer may be removed as such, either with or without cause, by a Majority Interest.

5.07 Limitations on Liability of Members. The liability of the Manager to the Company and the other Members and the liability of the Members for the debts and obligations of the Company shall be limited to the extent, if any, set forth in the Articles and/or the *Act*.

Section 5.08 regarding Conflicts of Interest. Under 11 V.S.A. § 3059(b), a member must refrain from dealing with the Company on behalf of a party with an adverse interest and must also refrain from competing with the Company. However a traditional blanket “no conflict” provision will not work. Under these provisions of the Operating Agreement, a Member must act in good faith, when dealing with Company and must refrain from dealing with the Company on behalf of a party with an adverse interest and must also refrain from competing with the Company. Subject to the foregoing, the Company may transact business with any Member, Officer or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties

5.08 Conflicts of Interest. Subject to the other express provisions of this Agreement, each Member, Officer or affiliate thereof may engage in and possess interests in other business ventures of any and every type and description, independently or with others; provided, however, in accordance with the provisions of *subsection 3059(b) of Chapter 21 of Title 11 of the Vermont Statutes Annotated*, a Member must act in good faith, when dealing with Company and must refrain from dealing with the Company on behalf of a party with an adverse interest and must also refrain from competing with the Company. Subject to the foregoing, the Company may transact business with any Member, Officer or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

5.09 Indemnification; Reimbursement of Expenses; Insurance. To the fullest extent permitted by the *Act*: (a) the Company shall indemnify each Member who was, is or is threatened to be made a party to any threatened, pending or completed action, Suit or proceeding ("Proceeding"), any appeal therein, or any inquiry or investigation preliminary thereto, by reason of the fact that it is or was a Member and/or Managing Member; and (b) the Company shall pay or reimburse a Member for expenses incurred by it (i) in advance of the final disposition of a Proceeding to which such Member was, is or is threatened to be made a party; and (ii) in connection with its appearance as a witness or other participation in any Proceeding. The Company, by adoption of a resolution of a Majority Interest, may indemnify and advance expenses to an Officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Members under the proceeding sentence. The provisions of this **Section 5.09** shall not be exclusive of any other right under any law, provision of the Articles or this Agreement, or otherwise. The Company may purchase

and maintain insurance to protect itself and any Member, Officer, employee or agent of the Company, whether or not the Company would have the power to indemnify such Person under this **Section 5.09**.

ARTICLE 6 TAXES

6.01 Tax Returns. The Company shall prepare and timely file all federal, state and local tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver a copy of each such return to the Members on or before ten days prior to the due date of any such return, together with such additional information as may be required by the Members in order for the Members to file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

6.02 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to adopt the cash method of accounting and to keep the Company's books and records on the income tax method;
- (c) if a distribution of the Company's property as described in *Code Section 734* occurs or upon a transfer of Membership Interests as described in *Code Section 743* occurs, on request by notice from any Member, to elect, pursuant to *Code Section 754*, to adjust the basis of Company's properties;
- (d) to elect to amortize the organizational expenses of the Company ratably over a period of 60 months as permitted by *Code Section 709(b)*; and
- (e) any other election a Majority Interest may deem appropriate and in the best interests of the Members.

If there is more than one Member, neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of *subchapter K of chapter 1 of subtitle A of the Code* or any similar provisions of applicable state law and no provision of this Agreement (including **Section 1.08**) shall be construed to sanction or approve such an election. Accordingly, when there is more than one Member, this Company shall be taxed as a partnership, for federal income tax purposes, unless a Majority Interest vote to make another election.

6.03 Tax Matters Member. When there is more than one Member, a Majority Interest shall designate one Member to be the "tax matters partner" of the Company pursuant to *Code Section 6231(a)(7)* (the "Tax Matters Member"). The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each other Member to become a "notice partner" within the meaning of *Code Section 6223*. The Tax Matters Member shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Tax Matters Member shall take no action without the authorization of a Majority Interest, other than such action as may be required by applicable law. Any cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

ARTICLE 7 BOOKS, RECORDS AND BANK ACCOUNTS

7.01 Maintenance of Books. The Members shall keep or cause to be kept at the principal office of the Company complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business and minutes of the proceedings of its Members and each committee thereof. The books and records shall be maintained with respect to accounting matters in accordance with sound accounting practices, and all books and records shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

7.02 Reports. Within seventy-five (75) days after the end of each taxable year, the Members shall cause to be sent to each Member at the end of the taxable year a complete accounting of the financial affairs of the Company for the taxable year then ended.

7.03 Accounts. The Members shall establish one or more separate bank and investment accounts and arrangements for the Company, which shall be maintained in the Company's name with financial institutions and firms that a Majority Interest determine. The Members may not commingle the Company's funds with the funds of any Member.

**ARTICLE 8
WINDING UP AND TERMINATION**

8.01 Winding Up.

(a) Subject to **Section 8.01(b)**, the affairs of the Company shall be wound up on the first to occur of the following events:

(i) the expiration of the period fixed for the duration of the Company in the Articles, if any;

(ii) the unanimous consent of the Members;

(iii) the death, expulsion, withdrawal, winding up or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Company;

Vermont law requires the Company to terminate its operation as an L3C if it no longer operates in a way to maintain its status as a low profit limited liability company, however it can continue its existence as a regular LLC if it amends the Articles of Organization to reflect such new status.

(iv) the Company no longer operating in a way to maintain its status as a low profit limited liability company, under the *Act*;

Article 8. Non-Waivable Provisions under the Act. Sections 8.01(a)(v) and 8.01(a)(vi) are included to comply with 11 V.S.A. § 3003, the section of the Act that lists the non-waivable provisions.

(v) an event that makes it unlawful for all or substantially all of the business of the Company to be continued, pursuant to **Section 3101(4) of the Act**, but any cure of illegality within 90 days after notice to the Company of the event is effective retroactively to the date of the event; or

(vi) the entry of a final judicial decree pursuant to **Section 3101(5) of the Act**, requiring the winding up of the Company.

(b) If an event described in subparagraphs (i) and (iv) of **Section 8.01(a)** shall occur and there shall be at least two other Members remaining, the Company shall not be wound up, and the business of the Company shall be continued, if all of the remaining Members (calculated without reference to any Member with respect to whom such event

described in subparagraph (iii) has occurred) so agree within 90 days of the occurrence of such event. If such election is made following the occurrence of an event described in subparagraph (i) or (iv) of **Section 8.01(a)**, the Members shall promptly amend the Articles in the manner described in the *Act* and in the case of the occurrence of an event described in subparagraph (iv), the Members shall promptly amend the Articles in a manner to reflect its continued existence and operation as a regular limited liability company, under the *Act*.

(c) As used herein, the term "Bankrupt" shall mean, with respect to any Person, that (i) such Person; (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition; (C) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (D) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, winding up or similar relief under any applicable law; (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in sub-clauses (A) through (D) of this clause (i); or (F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person's or of all or any substantial part of such Person's properties; or (ii) against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any applicable law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed.

8.02 Dissolution.

(a) On the occurrence of an event described in **Section 8.01(a)**, unless an election is made to continue the business of the Company pursuant to **Section 8.01(b)**, the Members shall as liquidator or may appoint one or more Members as liquidator; provided, however, that no Member with respect to whom an event described in subparagraph (iii) of **Section 8.01(a)** has occurred shall serve as (or act with any other Person as) a liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company as provided in the *Act*. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of a Majority Interest. The costs of winding up shall be borne as a Company expense.

(b) Any assets of the Company remaining at the conclusion of the winding up process shall be distributed among the Members in accordance with their Sharing Ratios. All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination. The distribution of cash and/or property to a Member in accordance with the provisions of this **Section 8.02(b)** constitutes a complete return to the Member of its Capital Contributions and a complete

distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented to.

(c) On completion of such final distribution, the Members shall file Articles of Termination in conformity with *Section 3105 of the Act* with the Secretary of State of Vermont, cancel any other filings made pursuant to **Section 1.05**, and take such other actions as may be necessary to terminate the existence of the Company.

8.03 No Restoration of Capital Accounts. No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance that may exist from time to time in any capital or similar account maintained for such Member for any purpose.

ARTICLE 9 GENERAL PROVISIONS

9.01 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

9.02 Notices. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, (c) if to a Member, delivered to such Member at the applicable address or such other address as that Member may specify by notice to the other Members, and (d) effective only upon actual receipt by such Person. Whenever any notice is required to be given by applicable law, the Articles or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

9.03 Entire Agreement; Supersedure. This Agreement constitutes the entire agreement of the Members relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

9.04 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person on the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company.

9.05 Amendments to the Articles and Operating Agreement. The Articles and this Agreement may be amended or restated only with the unanimous approval of the Members; provided, however, that amendments of the type described in **Section 2.04** may be adopted as therein provided, by a Majority Interest.

9.06 Binding Effect. Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

9.07 Governing Law; Severability. These regulations are governed by and shall be construed in accordance with the laws of the State of Vermont (excluding its conflict of laws rules). If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by applicable law.

9.08 Construction. Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Agreement include the masculine, feminine, and neuter; (b) the word "including" means "including, without limitation."; (c) references to Articles and Sections refer to Articles and Sections of this Agreement; and (d) references to Exhibits are to the Exhibits attached to this Agreement, if any, each of which is made a part hereof for all purposes.

9.09 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the sole Member has adopted and executed this Agreement as of the date first set forth above.

MEMBER:

SINGLE MEMBER,
Sole Member

Date Signed: _____

Member's Capital Contribution*

(NOTE: The amount and description of the Member's Capital Contribution is attached hereto in **Exhibit A)*

Exhibit A
*(Attach description and amount of
Member's Capital Contribution)*

Signed for Identification:

SINGLE MEMBER,
Sole Member

Date Signed: _____