

## **Southern MLS, LLC**

**THE SHAREHOLDER INTERESTS EVIDENCED BY THIS AGREEMENT ARE NOT “SECURITIES” UNDER APPLICABLE FEDERAL OR STATE LAW. AS A RESULT, THE SHAREHOLDER INTERESTS HAVE NOT BEEN, AND WILL NOT BE, REGISTERED WITH THE SECURITIES COMMISSIONER OF ANY STATE. THE SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF SUCH SHAREHOLDER INTERESTS IS RESTRICTED. ANY UNAUTHORIZED SALE, TRANSFER, ASSIGNMENT OR DISPOSITION OF THE SHAREHOLDER INTERESTS SHALL BE VOID AB INITIO.**

**NO SHAREHOLDER MAY REGISTER ANY INTEREST IN THE COMPANY UNDER ANY FEDERAL OR STATE SECURITIES LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF ALL SHAREHOLDERS.**

**THE SHAREHOLDERS UNDERSTAND THAT SOME OF THE RESTRICTIONS INHERENT IN THIS FORM OF BUSINESS, AND SPECIFICALLY SET FORTH IN THIS AGREEMENT, MAY HAVE AN ADVERSE IMPACT ON THE FAIR MARKET VALUE OF THE SHAREHOLDERS’ INTERESTS IF A SHAREHOLDER ATTEMPTS TO SELL OR BORROW AGAINST THE SHAREHOLDERS’ INTEREST IN THE COMPANY.**

**THIS AGREEMENT SETS FORTH SOME, BUT NOT NECESSARILY ALL, OF THE MATERIAL RIGHTS AND OBLIGATIONS OF, AND PROVISIONS THAT MAY HAVE A MATERIAL EFFECT ON, BEING A SHAREHOLDER OF THE COMPANY. THE LOUISIANA LIMITED LIABILITY COMPANY ACT SETS FORTH NUMEROUS OTHER PROVISIONS THAT MAY HAVE A MATERIAL IMPACT ON A SHAREHOLDER’S INTEREST IN THE COMPANY, INCLUDING, BUT NOT BY WAY OF LIMITATION, PROVISIONS CONCERNING ADDITIONAL RIGHTS, OBLIGATIONS AND LIABILITIES THAT MAY BE ASSOCIATED WITH SUCH SHAREHOLDER INTEREST. ANY PERSON CONTEMPLATING BECOMING A SHAREHOLDER IN THE COMPANY IS CAUTIONED TO REFER TO AND BECOME FAMILIAR WITH THE ACT IN ITS ENTIRETY AND TO CONSULT LEGAL COUNSEL REGARDING ANY QUESTIONS PRESENTED THEREBY OR ADVICE SOUGHT IN CONNECTION THEREWITH.**

## Shareholder Acknowledgment

By signing this Agreement, each Shareholder agrees to the following provisions.

### Exempt from Registration

Investment in the Shareholders' Interest (*Units*) in the Company involves a high degree of risk and is suitable only for sophisticated investors. Units are being offered in reliance upon one or more exemptions from registration under the Securities Act, and any Securities Act of Louisiana.

### Shareholder's Personal Investment

The Shareholder is purchasing or assuming the original Units for the Shareholder's own investment and with no intent to distribute or resell to any other person.

### Transferability Restrictions

By this Agreement, the Company has disclosed to the Shareholders and each Shareholder acknowledges that the transferability of the Units is severely limited. Each Shareholder will bear the economic risk of investment for an indefinite period, as the Shareholders' Interests have not been registered under the Securities Act or any state securities laws and cannot be offered or sold unless subsequently registered or unless an exemption from registration is available.

### Shareholder's Principal Address

This Agreement notes each Shareholder's principal address. Each Shareholder shall notify the Company in writing within five days of any change to this address.

### Access to Facts

Each Shareholder has had and continues to have access to all material facts regarding the Units and is satisfied as to the advisability of making this investment.

### No Commission or Remuneration

No commission or other payment may be paid to any person in connection with the offer or sale of any Units.

### No Right to Registration

No Shareholder may require the Company to register any Units under federal or state securities laws at any time, or to join in any future registration.

### Hold Harmless

Each Shareholder agrees to hold the Company and its Managers, Shareholders, Shareholders' Principals, Organizers, controlling Persons (as defined in the Securities Act), and any persons affiliated with any of them or with the distribution of the Units, harmless from all expenses,

liabilities, and damages (including reasonable attorneys' fees) arising from a disposition of the Units in any manner that violates the Securities Act, any applicable state securities law, or this Agreement.

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**FIRST AMENDED OPERATING AGREEMENT  
OF  
Southern MLS, LLC**

**THIS LIMITED LIABILITY COMPANY FIRST AMENDED OPERATING AGREEMENT** (this “**Agreement**”) is entered into as of the \_\_\_\_\_ day of July, 2020, (the “**Effective Date**”) by and among Southern MLS, LLC (the “**Company**”), after majority vote of the Board of Managers, and agreement of the Shareholders, as hereinafter defined, who executed this Agreement or became parties to this Agreement and are identified on the Company records as Shareholders of the Company (the “**Parties**”). This Agreement shall supplement and replace any prior Operating Agreement of the Company.

**RECITALS:**

A. The Articles of Organization, attached hereto as **Exhibit A** and incorporated by reference, was filed and accepted by the Louisiana Secretary of State for the formation of Southern MLS, LLC (the “**Company**”) on February 12, 2019, pursuant to the provisions of the Act, as hereinafter defined.

B. The Parties wish to form a limited liability company that will, as a principal activity, operate a database compilation containing information about parcels of real property, including parcels listed for sale or rent by real estate brokerage companies that are Broker Shareholders, as hereinafter defined, of the Company.

C. The Company will be managed by its duly selected Board of Managers.

D. It is intended that the Company be operated in a manner that provides effective services, that provides reasonable reserves for the company and provides operating viability while maintaining competitive and reasonable pricing. The Shareholders understand and acknowledge that they do not have any expectation of profit from being a Shareholder of the Company, but that the company could provide remuneration to shareholders as designated by the Board of Managers.

E. It is intended that the Company will elect to be classified as a partnership for all income tax purposes.

F. The Shareholders now desire to adopt this Agreement, which sets forth, among other things, the governance of the Company, the respective rights of the Shareholders, and the relationship of the Parties hereto.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements set forth below, the Parties hereto, intending to be legally bound, agree as follows:

**ARTICLE 1**



## **DEFINITIONS**

As used in this Agreement, the terms with their initial letters capitalized, shall, unless the context otherwise requires or unless otherwise expressly provided herein, have the meanings specified below:

“**AAA**” means the American Arbitration Association.

“**AAA Rules**” means the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association then-current as of the initiation of any dispute between Shareholders or between the Company and Shareholder(s), except that where this Agreement expressly provides a term that conflicts with the AAA Rules, the provision of this Agreement shall apply.

“**Act**” means the Louisiana Limited Liability Company Act, being La. R.S. 12:1301-1369, and as amended from time to time.

“**Affiliate**” means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any other Person, with “control” meaning the power, directly or indirectly, to direct the management or policies of such Person, whether by the ownership of voting securities, by contract or otherwise.

“**Agreement**” or “**Limited Liability Company Agreement**” means this Agreement as initially executed, or as amended, modified or supplemented in writing from time to time, unless the context otherwise requires.

“**Realtor Association**” means any of the ten (10) 10 local boards and/or associations throughout the state of Louisiana that service REALTOR®.

“**Realtor Association Shareholder**” means any Realtor Association who has become a Shareholder subject to the terms and limitations provided for herein.

“**Board of Managers**” shall have the meaning set forth in **Section 7.1** herein.

“**Brokerage**” means a juridical entity licensed by a state government licensing authority to engage in the business of real estate brokerage. An Association shall not be considered a Brokerage under this Agreement.

“**Brokerage Shareholder**” means a Brokerage who has become a Shareholder.

“**Business Days**” means the days of the week Monday through Friday, excluding the public holidays set out in 5 U.S.C. § 6103, as amended.

“**Calculation Period**” means the timeframe in which the number of completed transactions are calculated for eligibility to become a shareholder and/or be eligible to be elected

to the Board of Managers

“**Cause**” means the following: (a) with respect to a Shareholder, (i) a final, non-appealable determination resulting in the loss or suspension of any real estate license issued to the Shareholder, or (ii) failure to pay any amounts due and owing to the Company and such failure continuing for a period of thirty (30) days; (b) with respect to a Manager, (i) absence from three (3) consecutive meetings of the Board of Managers unless otherwise excused by resolution of the Board of Managers, or (ii) the Manager ceasing to be an Owner or employed as an Executive Officer by the Shareholder with whom he or she was employed when elected a Manager; or (c) with respect to either a Manager or Shareholder, (i) the commission of (1) a felony, or (2) any other act or omission involving dishonesty, disloyalty or fraud with respect to the Company, (ii) a material breach of this Agreement or a duty owed the Company or the other Shareholders under the Act by such Person, (iii) engaging in wrongful conduct that adversely affects the Company’s business, or (iv) engaging in conduct relating to the Company’s business that makes it unreasonable for the Company or the Shareholders to continue to do business or associate with that Shareholder or Manager.

“**Certificate of Formation**” means the original and any amended Certificate of Formation of the Company duly filed with the appropriate authorities of the State of Louisiana as provided under the Act.

“**Chosen Courts**” shall be as defined in **Section 20.11** hereof.

“**Classes**” means one or more classes of Shareholders of the Company.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Committee**” means a committee of the Company.

“**Company**” means the limited liability company subject to this Agreement and the Certificate of Formation.

“**Company Costs**” means (1) “Company Capital Costs,” which are the costs incurred in establishing the Company and any on-going capital costs, exclusive of System Costs; and (2) “Company Operating Costs,” which are the costs incurred in operating the Company, exclusive of System Costs.

“**Company Property**” or the “**Property**” means all property, whether real or personal, tangible or intangible, now owned or hereafter acquired by the Company.

“**Completed Transaction**” means a closed residential, land or commercial sale, assignment or transfer which results in a commission payment to a Broker.

“**Confidential Information**” means any information relating to the Company or its business disclosed among the parties to this Agreement by the Company or its agents or representatives, which is or should be reasonably understood to be disclosed on a confidential basis to the receiving party, which shall include, but shall not necessarily be limited to, financial

statements and information, Shareholder or customer lists, business plans or strategies, research and development projects and computer software programs.

**“Consideration”** means payments by Shareholders to the Company for the right to own, or continue to own, a Unit, which may otherwise be referred to as initiation fees, dues, annual payments or a similar term, which will be paid in cash. Any Consideration under this Agreement is intended to be a “Contribution” as provided in accordance with Louisiana law.

**“Database”** means the database and database compilation containing the Listing Data, Public Records, and any other data or content supplied by the Shareholders.

**“Days”** means calendar days, unless otherwise specifically stated herein.

**“Dissociation”** means, with respect to a Person who was a Shareholder, the occurrence of an Event of Dissociation pursuant to which such Person ceases to be a Shareholder as provided in this Agreement.

**“Dissociation Date”** shall be as defined in **Section 16.2.1** hereof.

**“Dissociated Shareholder”** means a Person who has ceased to be a Shareholder by reason of the occurrence of an Event of Dissociation as provided in this Agreement.

**“Event of Dissociation”** means the occurrence of any of the events set forth in **Section 16.1** hereof, which give rise to the Dissociation of a Shareholder.

**“Events of Dissolution”** shall be as defined in **Section 17.1** hereof.

**“Executive Officer”** means a person who is the chief executive officer, president, executive vice president, director, manager, partner, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the Shareholder.

**“GAAP”** means generally accepted accounting standards in the United States as applicable from time to time.

**“Independent Managers”** shall be as defined in **Section 7.6** herein.

**“Intellectual Property Rights”** means any patent, trademark, service mark, trade dress, logo, trade name, copyright, mask work, trade secret, confidential information, publicity and privacy rights, contract rights prohibiting the unauthorized display, resale or redistribution of data contained in a proprietary database, or other intangible property rights.

**“Interest”** means for each Shareholder all of a Shareholder’s right, title and interest in and to the Company, including, without limitation, such Shareholder’s right to participate in the governance of the Company as provided herein.

“**Interested Person**” shall be as defined in **Section 12.1** herein.

“**Listing Data**” means the text, data and digital images, and digital content in any form now known or hereafter discovered, that real estate licensees or their unlicensed employees have collected and compiled. Listing Data includes, but is not limited to, information about (1) real property characteristics or marketability, (2) the terms and conditions upon which (a) real property is offered for sale, (b) has sold, or (c) on which other brokers and agents are invited to cooperate in the marketing of property, or (3) a real estate licensee’s contact information.

“**Local Operating Company**” means a real estate brokerage entity, the controlling interest of which is owned by a parent company, but is treated as its own distinct company and brokerage. A Local Operating Company shall not include separate branch offices of a Brokerage, or the parent company.

“**Manager**” means a representative selected to serve as an Initial Manager of the Company or selected as further provided herein to serve as a member of the Company’s Board of Managers and eligible to vote on matters to be determined by the Board of Managers.

“**Shareholders(s)**” means any Brokerage who has become a Shareholder of the Company by purchasing a Unit of Company pursuant to the provisions hereof and applicable law or any Association who has become a Shareholder of the Company by purchasing a unit of the Company pursuant to the provisions hereof, the restrictions applicable to Associations as Shareholders, and applicable law. A Shareholder is considered a Member as it pertains to Louisiana Law for Limited Liability Companies, subject to the exceptions and restrictions provided for herein.

“**Shareholder Class**” shall mean a class of Shareholders of the Company, if applicable.

“**Shareholder Sub-Class**” shall mean a sub-class of Shareholders of the Company, if applicable.

“**Multiple Listing Service**” and “**MLS**” mean a facility for the accumulation and dissemination of Listing Data (a) operated (i) principally by or on behalf of Brokers or (b) an entity governed principally by Brokers, such as a REALTOR® association or mutual benefit corporation for Brokers; and (b) the customers of which are principally Brokers and their affiliated salespeople and staff.

“**MLS Service**” shall mean the systems and services, training, data services, compliance and support provided by Company which make up the Company’s MLS option for the real estate industry.

“**Nominating Committee**” shall be as defined in **Section 7.21.2**.

“**Notice**” means a written statement containing the information required by this Agreement to be communicated to a Person and sent to such Person in accordance with the terms of this Agreement.

“**Office of the Secretary of State**” shall be as defined in **Section 2.2**.

“**Officers**” shall be as defined in **Section 7.16**.

“**Party**” means each Person that is a party to this Agreement.

“**Parties**” mean all Persons that are parties to this Agreement.

“**Person**” means any individual, company, limited liability company, corporation, unincorporated association, general or limited partnership, trust or other legal entity.

“**Prevailing Party**” means the Party whose position is substantially upheld in a final judgment rendered in any litigation, arbitration or other proceeding arising from or relating to this Agreement or any other agreement delivered in connection herewith, or if the final judgment is appealed, that Party whose position is substantially upheld by the decision of the final appellate body that considers the appeal.

“**Public Records**” means information about real estate parcels and entities related to them, including but not limited to, parcel identification numbers, property characteristics, assessed valuations, property taxes, or legal descriptions maintained by governmental entities, or derived from governmental records.

“**Software**” means computer programs, object codes, source codes, applets, and documentation related thereto, and any updates, revisions, or modifications thereof, that provide or supply any or all of the functionality of the System to Shareholders, or other persons or entities authorized to access or use the System, or any portion or component thereof.

“**Subsequent Board of Managers**” shall have the meaning set forth in **Section 7.6** hereof.

“**System**” means the following components owned, maintained, licensed, or controlled by the Company: (1) the Database, the compilation thereof, and all content contained therein; *provided, however,* that, as between the Company and the Shareholders, each Shareholder shall retain ownership of the Intellectual Property Rights, if any, in the Listing Data contributed or licensed to the System by such Shareholder; (2) the telecommunications connections and rules for access; and (3) the computer hardware and Software that provides the System functionality to Shareholders, but does not include the computer systems owned, leased or maintained by Shareholders or otherwise used by the Shareholders to access the System.

“**System Costs**” means all costs that are, will, or have been, incurred in the development and maintenance of the System, exclusive of Company Costs.

“**Task Force**” means a group established by the Board of Managers as provided herein.

“**Transfer**” means any sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other direct or indirect disposition or encumbrance on an Interest (including by operation of law) or any rights thereof. The terms “Transferee”,

“Transferred”, and other forms of the word “Transfer” shall have correlative meanings.

“Unit” means a Shareholder’s Interest.

## **ARTICLE 2**

### **FORMATION**

#### **2.1. Statutory Authority**

. The Parties hereby agree to form and operate the Company under the terms and conditions set forth herein. Except as otherwise provided herein, the rights and liabilities of the Managers and the Shareholders vis-à-vis the Company shall be governed by the Act. To the extent permitted by the Act, any provision of this Agreement inconsistent with the default provisions set out in the Act shall prevail over the terms of the Act.

#### **2.2. Filings**

. The initial organizers have caused the Articles of Organization conforming to the requirements of the Act to be executed and filed in the Office of the Secretary of State of the State of Louisiana (the “**Office of the Secretary of State**”), and the Board of Managers shall make such other filings and recordings and do such other acts and things conforming thereto as shall constitute compliance with all requirements for the formation of a limited liability company under the Act and the laws of such other states in which the Company elects to do business.

#### **2.3. Independent Counsel**

. All Shareholders acknowledge and agree that they have been afforded the right to seek such independent counsel as they deem appropriate to advise them on matters relating to the formation of the Company and the content of this Agreement.

## **ARTICLE 3**

### **NAME, OFFICES, REGISTERED AGENTS AND COMPANY RECORDS**

#### **3.1. Name**

. The name of the Company shall be Southern MLS, LLC. It shall sometimes do business as “Greater Southern MLS.” The affairs of the Company shall be conducted under the Company name or such other name as the Board of Managers may, in their discretion, select in accordance with the Act. The Officers shall execute and file with the proper offices any and all certificates required by the fictitious name or assumed name statutes of the states in which the Company elects to do business. The Company shall have the exclusive ownership of and right to use the Company name (and any other names under which the Company shall elect to conduct its affairs) as long as the Company continues to be organized in good standing under the Act, or any other statute under which the Company may be later reorganized as determined by the Board of

Managers.

### **3.2. Principal Office of the Company**

. The principal office of the Company shall be located at such place within or outside the State of Louisiana as the Board of Managers may from time to time designate. The Company may have subsidiary offices in such other place or places as may be selected from time to time by the Board of Managers.

### **3.3. Registered Office and Registered Agent**

. The Board of Managers shall select and designate a registered agent and registered office for the Company in each state in which the Company is required to maintain or appoint a registered agent. The Board of Managers may from time to time in accordance with the Act change the Company's registered agent and/or registered office.

### **3.4. Records to be Maintained**

. The Board of Managers shall at all times during the continuance of the Company keep at the Company's principal office the following information: (1) True and full information regarding the status of the business and financial condition of the limited liability company; (2) after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year; (3) A current list of the name and last known business, residence or mailing address of each member and manager; (4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed; (5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; (6) a roll of all Shareholders as they are added and subtracted from the Company; and (7) Other information regarding the affairs of the limited liability company as is just and reasonable. The above shall be subject to inspection and/or copying at the request and at the expense of any Manager or Shareholder during ordinary business hours (subject to such standards and limitations as the Board of Managers may reasonably determine from time to time).

## **ARTICLE 4**

### **PURPOSE OF COMPANY, OBJECTIVES, AND POWERS**

#### **4.1. Purpose and Authority**

. The purpose for which the Company is formed is to engage in any lawful business, purpose or activity for which limited liability companies may be formed under the Act, which is in furtherance of the Company's objective of providing the System that combines the Listing Data licensed or contributed to the Company, Public Records, and such other property and

business related information as the Board of Managers from time to time deems appropriate, and disseminating or licensing some or all of the Listing Data or other content maintained on the System to third parties, all on terms and conditions approved by the Board of Managers, and to do any and all other things determined by the Board of Managers to be necessary, desirable or incidental to the foregoing purposes.

#### **4.2. Objectives**

. The objectives of the Company are to:

(a) create a flexible ownership entity that will permit the Company to operate in an independent manner, subject to the oversight and control of the Board of Managers duly selected by the Shareholders;

(a) combine the Listing Data and other appropriate content into one Database;

(b) supply high-quality real-property information services to the Shareholders at reasonable costs;

(c) allow Shareholders to retain ownership and use of their Listing Data, subject to the licenses set forth in this Agreement;

(d) employ or otherwise engage competent management and other professional advisors to carry out the Company's operations subject to the direction of the Board of Managers; and

#### **4.3. Powers**

. Subject to the provisions of this Agreement, the Company shall have full power and authority to take any and all actions necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the purposes and objectives of the Company.

### **ARTICLE 5**

#### **TERM OF EXISTENCE**

##### **5.1. Term of Existence of the Company**

. The term of existence of the Company shall be perpetual unless the Company is dissolved in accordance with the terms of this Agreement or the Act.

### **ARTICLE 6**



## **SHAREHOLDERS, UNITS, CONSIDERATION, AND TAX STATUS**

### **6.1. Shareholders**

. The Shareholders' names, addresses, type, and amounts of Consideration paid for a Unit shall be maintained in the Company's books and records. The initial Shareholders of the Company are set forth on **Exhibit B** incorporated by reference herein and all Shareholders of the Company as of the execution of this Agreement are set forth on **Exhibit B-1** incorporated by reference herein. The Board of Managers shall have the right to cause the Company to issue or sell a Unit to any Person that satisfies the requirements to be a Shareholder on such terms and conditions as provided herein. The Board of Manager's may establish such procedures and rules as it from time to time may determine necessary or appropriate in connection with such issuance. Notwithstanding anything to the contrary in this Agreement, a Shareholder, including a Realtor Association Shareholder, must also be a paying user of the MLS Service and System, either directly or through a providing Association (or in the case of a Realtor Association Shareholder, must provide the MLS Service and System to its member brokers). In the event a Shareholder ceases to be a paying user of the MLS Service and System, the Company may retire said Shareholder's Unit.

### **6.2. Purchase of Units**

. Each Shareholder shall purchase a Unit of the Company for Consideration in an amount and in the manner as determined by the Board of Managers. The Board of Managers may from time to time determine that a Shareholder's continued ownership of a Unit shall depend upon the Shareholder's payment of additional Consideration in an amount and on terms and conditions as determined by the Board of Managers. The Company will provide at least thirty (30) days prior written notice of any requirement for the payment of additional Consideration as provided herein. Failure to pay such additional Consideration shall result in the Shareholder becoming Dissociated.

### **6.3. Units**

. In consideration for payments to the Company pursuant to **Section 6.2** above, each Shareholder shall receive one Unit. No Shareholder shall be entitled to hold, own, or acquire more than one Unit. For the avoidance of doubt, an Affiliate of a Shareholder may also be a Shareholder if that Person meets the other requirements necessary of becoming a Shareholder. Each Unit shall entitle the holder thereof to participate in the Company governance as provided herein and have and be subject to all rights, duties, liabilities and obligations in connection therewith, as provided in this Agreement, except as where expressly limited herein. A Unit shall entitle the holder thereof to one (1) vote with respect to each matter on which such Shareholder is entitled to vote as provided in this Agreement. No Shareholder (or Affiliate) shall ever be able to possess or own more than one (1) Unit at a time. In the event a Shareholder is sold to another Shareholder or a Shareholder merges into another Shareholder, the buying Shareholder or the merged Shareholder, respectively, shall only have one (1) Unit while the other Unit is retired by the Company. A Shareholder shall not have the right to access the System or its information solely by being a Shareholder, and must pay for such services as set by the Company.

#### **6.4. Certificates for Units**

. In the discretion of the Managers, the Units may be represented by certificates. The exact contents of such certificates shall be determined by the Managers. A Shareholder must execute any document of the Company evidencing Shareholder's agreement with the terms of this Agreement.

#### **6.5. Shareholder Classes**

**6.5.1. Initial Shareholders.** The Company's Initial MLS Shareholders and Broker Shareholders shall be those Shareholders listed on **Exhibit B** attached hereto and incorporated by reference herein.

##### **6.5.2. Broker Shareholders.**

(a) Shareholder In order to become a Brokerage Shareholder, one must be a Brokerage. Any Brokerage firms desiring to become a Shareholder must be actively engaged in the real estate brokerage business, and as a condition of remaining a Shareholder, must have entered into the MLS Service and System at least one (1) property for sale or rent listed with the Broker Shareholder during each calculation period as set forth in **Section 6.5.3(b)** below, unless excused by the Board of Managers.

(a) Broker Shareholder Sub-Classes. Annually, as provided herein, the Broker Shareholders shall be divided into Sub-Classes, which shall consist of Large Broker Shareholders, Mid-Sized Broker Shareholders, and Small Broker Shareholders. For the purpose of classifying Broker Shareholders within the three (3) subclasses, the Company shall within thirty (30) days of the Company's fiscal year-end calculate the total number of completed transactions entered into the Database during the previous twelve (12) months. The Broker Shareholders shall then be ranked based upon the number of completed transactions entered by each Broker Shareholder into the Database from highest to lowest, which ranking will be applicable for the remainder of the then-applicable calendar year. In its first year of operation, Southern MLS, LLC will calculate the calculation for broker sub-class based on the past 12 months of listing activity. The Broker Shareholders with the highest number of closed transactions whose aggregate number of transactions equal one third (1/3rd) of all the listings entered into the Database shall be classified as Large Broker Shareholders. The Broker Shareholders entering the second highest number of closed transactions into the Database whose aggregate number of transactions when combined with the aggregate number of listings entered by the Large Broker Shareholders equal two thirds (2/3rds) of all listings entered into the Database shall be classified as Mid-Sized Broker Shareholders. The remaining Broker Shareholders shall be classified as Small Broker Shareholders. The Board of Managers may prescribe such other measures as they may deem necessary to properly determine the Shareholders of each sub-class. Interpretation and application of this

paragraph shall be in the reasonable discretion of the Board of Managers.

(b) Local Operating Companies as Shareholders. Each Local Operating Company owned in whole or in part by a parent company but which owns its own Unit shall be treated as a separate Shareholder for the purposes of **Section 6.5.2(b)** above.

**6.5.3. Realtor Association Shareholders.** A Realtor Association Shareholder shall be considered a Shareholder for all purposes and have a single vote as a Shareholder subject to any exceptions provided for herein.

#### **6.6. Return of Unit Consideration**

. Other than as provided in **Section 17.3**, no Shareholder shall be entitled to a return of Consideration for all or any part of such Shareholder's Unit of the Company, or to receive any dividend or distribution from the Company in respect of a Unit.

**6.7. Loans From Shareholders** The Company may from time to time borrow funds from Shareholders on such terms and conditions deemed acceptable by the Board of Managers. Loans by Shareholders to the Company shall not be considered Consideration for a Unit or any other type of special or unique consideration. The amount of such loans shall be a debt of the Company to such Shareholder and shall be payable or collectable in accordance with the terms and conditions upon which such loans are made.

#### **6.8. Additional Shareholders**

. The Company shall admit additional Shareholders who are deemed by the Board of Managers to qualify as a Shareholder, *provided* that such additional Shareholders agree to become subject to this Agreement and pay any Consideration for a Unit deemed appropriate by the Board of Managers. The Shareholder shall execute documentation evidencing the foregoing, which shall be deemed accepted by the Company and the Board of Managers upon the execution of that documentation by an Officer of the Company.

#### **6.9. Federal Income Tax Matters**

. The Shareholders intend that the Company qualify to be treated as an association taxable as a partnership for, but only for, federal (and where applicable, state) income tax purposes.

**6.9.1 Tax Filings and Tax Distributions.** All decisions necessary for the filing of Federal and State Income taxes related to the Company, shall be made by the Board of Managers, with said decision to take place at least thirty (30) days prior to the due date of the Company's federal and state income tax payments for any year or calendar quarter. The decision as to whether Company shall make distributions to each Shareholder for any tax liability shall be left to the Board of Managers. The Company shall distribute K-1's, if applicable, in accordance with IRS standards for partnership distributions. Each Shareholder who holds a Unit on December 31 of each year shall be considered a Shareholder in full for that calendar year for tax

purposes.

#### **6.10. Shareholder Resignation**

. A Shareholder may resign from the Company at such time as it shall determine. The filing of a voluntary petition in bankruptcy will cause a Shareholder to cease to be a Shareholder of the Company.

### **ARTICLE 7**

#### **MANAGEMENT OF THE COMPANY**

##### **7.1. Management by the Board of Managers**

. The business and affairs of the Company shall be managed by or under the direction of its Board of Managers (the “**Board of Managers**”). The Company shall be “manager-managed” within the meaning of the Act and, except as otherwise provided in this Agreement, the Managers shall have the sole responsibility and authority to manage and control the business affairs of the Company. Except as otherwise specifically provided in this Agreement, the Managers shall have the authority to consent to and approve any action that under the Act the Shareholders would otherwise have the right to consent to or approve, in each case, without any action by the Shareholders. The Board of Managers shall manage or cause to be managed the affairs of the Company in a prudent and businesslike manner and shall devote such time to Company affairs as the Board of Managers shall, in the Board of Managers’ good-faith discretion, determine to be reasonably necessary for the conduct of such affairs; *provided, however*, that it is expressly understood and agreed that a Manager shall not be required to devote a Manager’s full time or attention to the business of the Company. In carrying out its obligations, the Board of Managers shall, or shall cause the Officers to:

- (a) obtain and maintain such public liability, hazard and other insurance as may be deemed necessary or appropriate by the Board of Managers
- (b) obtain and maintain adequate levels of director and officer liability insurance as may be deemed necessary or appropriate by the Board of Managers;
- (c) deposit all funds of the Company in one or more separate bank accounts, using such banks or trust companies as the Board of Managers may designate (withdrawals from such bank accounts to be made upon such signature or signatures of Officers of the Company as the Board of Managers shall designate);
- (d) maintain complete and accurate records of all equipment owned or leased by the Company and complete and accurate books of account;
- (e) prepare and file all tax returns;
- (f) cause to be filed such certificates and do such other acts as may be required by law to maintain the Company as a limited liability company qualified to do

business under all applicable state laws;

(g) maintain a list of all current Shareholders and past Shareholders, together with the mailing address of each Shareholder;

(h) maintain copies of the Certificate of Formation and any amendments thereto; and

(i) maintain copies of present and past documents relating to the operation and business of the Company.

No Shareholder shall have any power or authority to take any action on behalf of the Company or bind the Company. Any Shareholder who takes any action on behalf of the Company or binds the Company in violation of this **Section 7.1** shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to any such loss or expense. The terms of this paragraph supersede the limitation of liability provided for Shareholders in **Section 10.1**.

## **7.2. Illustrations of Authority of the Board of Managers**

. Rights and powers of the Board of Managers set out in Section 7.1 shall include, by way of illustration but not by way of limitation, the following:

(a) set operational policy for the Company;

(b) establish reasonable cash reserves and thereafter maintain those reserves in such amounts as the Board of Managers deem necessary to provide for reasonable future requirements of the Company, including working capital;

(c) procure temporary, permanent, conventional, or other financing or refinancing on such terms and conditions, at such rates of interest, and from such parties, including one or more Shareholders, as are deemed prudent in the judgment of the Board of Managers;

(d) authorize the Chairman or other Company Officers to execute agreements, contracts, leases, licenses and all other instruments binding the Company as the Managers deem necessary to effect the purposes of the Company and this Agreement;

(e) buy, acquire, sell, transfer, assign, convey, lease, sublet, or otherwise dispose of or deal with all or any part of the Company's properties and assets as deemed appropriate in the Board of Managers' sound judgment;

(f) perform any and all acts necessary to pay any and all organizational expenses incurred in the creation of the Company;

(g) develop strategic directions and operational plans to include short and long term goals, market research for product/service offerings, marketing strategies,

budgets, staffing needs, and timetables;

(h) purchase goods or services, including technology and software, and all services related to managing the company, including management services, at usual and customary rates prevailing in the industry, from any corporation, partnership, sole proprietorship, or other form of business enterprise;

(i) establish Company offices at such places as may be appropriate, hire Company employees and consultants, engage counsel and otherwise arrange for the facilities and personnel necessary to carry out the purposes and business of the Company;

(j) appoint a new registered agent or change the registered office of the Company as deemed appropriate from time to time;

(k) compromise, arbitrate or otherwise adjust claims in favor of or against the Company and commence or defend against litigation with respect to the Company or any assets of the Company as deemed advisable, all or any of the above matters being at the expense of the Company; and execute, acknowledge and deliver any and all instruments to effect any and all of the foregoing;

(l) determine the appropriate fees to be charged to the Shareholders for use of the System and related services; and

(m) make any and all elections for federal, state, and local tax purposes.

### **7.3. Ordinary and Customary Decisions**

. Except as otherwise provided in this Agreement, the decisions concerning the business affairs and operations of the Company shall be made (a) in the event of a meeting (as defined by the Act), by a majority vote of a quorum of the Shareholders of the Board of Managers; or (b) in the event of a written resolution without a meeting, by a majority vote of all the Managers.

### **7.4. Restrictions on Authority of Board of Managers**

. The Board of Managers shall not have the authority, without the approval of two-thirds (2/3rds) of the total number of the current Shareholders of the Board of Managers, to:

(a) sell or otherwise dispose of more than one-half of the business or assets of the Company; merge the Company into or with another entity, or acquire all, or substantially all, of the assets of another entity, or controlling interest in another entity's stock or equity interests;

(b) change the business of the Company from the Purposes and Objectives set forth in **Sections 4.1 and 4.2** hereof;

(c) enter into any transactions with any Shareholder of the Board of

Managers or an Affiliate thereof; or

(d) file on behalf of the Company any petition for relief under the federal Bankruptcy Code or any state law affording relief from creditors.

#### **7.5. Composition and Term of Initial Board of Managers**

. Both the Initial Board of Managers and Subsequent Board of Managers are being designed to ensure a balanced representation of broker shareholders from around the state representing a balanced amount of small, medium and large brokerages. Every Manager will comply with the criteria outlined by the Board of Managers to be considered as a Manager.

The Initial Board of Managers shall be the persons identified on **Exhibit C**, attached hereto and incorporated by reference herein. The Initial Board of Managers shall serve for a term of two (2) years from the Effective Date.

#### **7.6. Subsequent Board of Managers**

. Upon the expiration of the term of the Initial Board of Managers, the subsequent Board of Managers (the “**Subsequent Board of Managers**”) shall consist of persons who are Shareholders or Executive Officers of Shareholders from the following Shareholder Classes and Sub-Classes:

(a) Three (3) Managers shall be elected from the Large Broker Shareholder Sub-Class;

(b) Three (3) Managers shall be elected from the Mid-Sized Broker Shareholder Sub-Class; and

(c) Three (3) Managers shall be elected from the Small Broker Shareholder Sub-Class.

(d) 1 Productive Agent/Team Leader completing at least 20 transactions per year and at least 3 years of MLS leadership experience

(e) Appraiser

(f) The Subsequent Board of Managers may also include (1) manager (“**Independent Manager**”) who shall be approved by a majority of the total number of Board of Managers then in office. The Subsequent Board of Managers may from time to time appoint successor Independent Managers. An Independent Manager shall be an industry executive, expert, advisor or owner of an organization or entity that is not a Shareholder, but shall be committed to the purposes and objectives of the Company, and deemed by the Board of Managers to be likely to make sound, objective business decisions for the benefit of the Company and actively participate in Board of Manager meetings and activities. The Independent Managers shall have a vote or power as to the

actions of the Board of Managers.

- (g) One (1) Brokerage Shareholder Representative from Small Associations which are defined as Associations that have 1 to 1000 members.
- (h) One (1) Brokerage Shareholder Representative from Mid-Size Associations which are defined as Associations that have 1001 to 3500 members.
- (i) One (1) Brokerage Shareholder Representative from Large Associations which are defined as Associations that have above 3500 members

#### **7.7. Selection of the Board of Managers**

. The Shareholders of the Board of Managers from each Shareholder Class or Sub-Class shall be elected by all Shareholders either (a) by written ballot subject to procedures established by the Board of Managers or (b) at a meeting of such Shareholders convened in accordance with **Article 17** herein. The Board of Managers who shall serve from each Shareholder Class or Sub-Class shall be determined by plurality vote of a quorum of such Shareholder Class or Sub-Class at the meeting called for such purpose; *provided* that if such a vote results in persons being selected to serve on the Board of Managers from Shareholders of Shareholder Classes or Sub-Classes in excess of the limitations on the number of Managers from Shareholders representing the same company/brand/franchise as set forth in **Section 7.9**, then such person(s) whose serve on the Board of Managers would exceed such limitations shall not be seated as Shareholders of the Board of Managers, and the person(s) receiving the next highest number of votes whose election would not exceed the limitations in **Section 7.9** shall be deemed elected to serve on the Board of Managers.

#### **7.8. Terms of the Shareholders of the Board of Managers**

. The Shareholders of the Board of Managers elected immediately following the expiration of the one (1) year term of the Initial Board of Managers shall be as follows:

<b><u>Shareholder Class</u></b>	<b><u>No. of Managers to be Elected for a 2 Year Term</u></b>	<b><u>No. of Managers to be Elected for a 3 Year Term</u></b>
Large Broker Managers	1	2
Mid-Sized Broker Managers	2	1
Small Broker Managers	2	1
Productive Agent/Team Leader Manager	1	0
Independent Manager(s)	1	0
Appraiser	1	0
Small Association Brokerage Shareholder Representative	1	0
Mid-Size Association Brokerage Shareholder Representative	1	0
Large Association Brokerage Shareholder	1	0



Representative		
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Each Manager shall serve for his or her appointed term or until resignation, removal as provided by **Section 7.10** herein, disability or death. Managers shall not have any contractual right to their positions.

#### **7.9. Eligibility for Membership on the Board of Managers**

. Each Member of the Board of Managers shall be an Owner or Executive Officer of a Brokerage Shareholder. A Realtor Association Shareholder, its Executive Officers, Directors, or its employees shall not be eligible to serve on the Board of Managers. If an individual ceases to hold such position, he or she shall become immediately disqualified to be a Manager in that Shareholder Class, *provided* that he or she may be elected as a Manager in any Shareholder Class where he or she later becomes eligible to serve. In addition to the foregoing requirements for membership on the Board of Managers, the Board of Managers may not include more than:

(a) three (3) persons who represent the same brand even though the parties they represent are from a separate Company/Franchise/Brokerage.

#### **7.10.**

#### **7.10 Resignation or Removal of Managers**

. A Manager may resign at any time by delivering his or her written resignation to the Chairman of the Board of Managers at the Company's principal office. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any Manager shall be deemed to have automatically resigned if he or she fails to continue to meet the qualifications for the position of Manager as set forth in this Agreement. Any Manager may be removed for Cause only with the affirmative vote of a majority of the total number of Managers then in office. No Manager shall be removed at a meeting of the Board of Managers unless the notice of such meeting shall state that a purpose of the meeting is to vote upon the removal of one or more Managers named in the notice, and then only the named Manager or Managers may be removed at such meeting.

#### **7.11. Filling Vacancies on the Board of Managers**

. Any vacancy on the Board of Managers may be filled by the affirmative vote of a majority of the remaining Managers. The Manager elected to fill a vacancy shall be selected by the Board of Managers from the Shareholder Class or Sub-Class that the former Manager represented, subject to the limitations set forth in **Section 7.9**. Any individual elected to fill a vacancy pursuant to this **Section 7.11** shall take office immediately, effective on the date of election, and shall serve for the balance of the term of the Manager whose vacancy he or she is filling. In the event there are no managers or that a vacancy on the Board of Managers remains unfilled for 60 days, any Shareholder may call for a meeting to elect replacement(s) to fill the remaining term(s) of the Manager(s) whose vacancy the replacement(s) is (are) filling.

## **7.12. Compensation**

. The Shareholders of the Board of Managers shall not receive any compensation from the Company for their service as Managers pursuant to this Agreement. All Managers may be reimbursed for their reasonable expenses incurred in the performance of their duties as Managers, as determined by the Board of Managers in its reasonable discretion. The preceding sentences of this Section 7.12 notwithstanding, the Board of Managers may designate reasonable compensation for any Independent Managers by majority vote of the Managers who are not Independent Managers.

## **7.13. Standard of Care**

. The Shareholders acknowledge and agree that: (a) the Managers' obligations and duties shall be limited to those specifically set forth in this Agreement and the implied duty of good faith and fair dealing; (b) no actions taken by any Person with whom the Manager is affiliated shall be deemed a breach of any duty owed by the Manager; and (c) each Manager may engage in business ventures of any nature and description independently or with others and neither the Company nor any of the Shareholders shall have any rights in or to such independent ventures or the income or profits derived therefrom.

## **7.14. Third Party Reliance on Power of Board of Managers**

. No creditor, vendor or other Person dealing with the Company shall be required to investigate the authority of the Managers (or any Manager) or secure the approval or confirmation of any Shareholder as to any act of the Managers in connection with the conduct of the Company's business. Any Person dealing with the Company may rely upon a certificate signed by the Chairman of the Board, President/Chief Executive Officer or the Secretary as to: (i) the identity of the Managers or Shareholders; (ii) the existence or non-existence of any fact that constitutes a condition precedent to acts by the Managers or which are in any other manner germane to the affairs of the Company; (iii) the Persons who are authorized to execute and deliver any instrument or document of the Company; or (iv) any act or failure to act by the Company or any other matter whatsoever involving the Company.

## **7.15. Manager Meetings and Procedural Matters**

**7.15.1. Voting of Managers.** Unless otherwise provided in this Agreement, an action will be approved if a quorum is present and a majority of those Managers present vote in favor of a proposed action.

**7.15.2. Call of Meetings and Notice.** Except as otherwise provided in this Agreement, the meetings of the Board of Managers shall be scheduled by the Chairman of the Board, or by a written request of a majority of all Managers then in office. In either case, any meeting shall not be convened upon less than ten (10) Business Days' prior written notice, or sooner upon written waiver of such notice period by all members of the

Board of Managers. Written agendas or notices of the subject matters of meetings of the Board of Managers will be sent to the individual Managers at least five (5) Business Days in advance of a meeting. Meetings shall be held at a location specified by the Chairman of the Board.

**7.15.3. Remote Participation.** Southern MLS, LLC will hold 6 Board Meetings annually and remote participation will be allowed. Unless a Manager attends a Board of Managers meeting solely for the expressed purpose of objecting to the lack of notice or other failure to conform to the requirements of this Subsection, the Manager's presence at a meeting (either in person, telephonically or by video conference) shall constitute a waiver of any such objection. If a Manager misses two (2) of the six (6) meetings, said Manager may be removed from the Board of Managers by vote of the Board of Managers.

**7.15.4. Quorum for Meetings of Managers.** A quorum must be present to conduct business at any Board of Managers meeting. A quorum shall be a majority of the current members of the Board of Managers. The Managers present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Managers to leave less than a quorum.

**7.15.5. Voting of the Board of Managers.** Voting by the Board of Managers shall occur at a meeting of the Board of Managers or by written consent in lieu of a meeting.

**7.15.6. Actions Without a Meeting.** Any action which is required to be taken or which may be taken at a meeting of the Board of Managers of the Company, or a Committee or other subsidiary body thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken is approved and signed by two-thirds (2/3rds) of the total number of the current members of the Board of Managers, Committee or other subsidiary body, and filed with the Minutes of the proceedings of the Board of Managers, Committee or subsidiary body.

## **7.16. Officers**

. The Board of Managers shall elect one or more persons as officers of the Company (the "Officers"), including, but not limited to a Chairman of the Board, Vice Chairman, President/Chief Executive Officer, Treasurer, and Secretary. The Chairman of the Board and the Vice Chairman must be elected from among the members of the Board of Managers other than the Independent Manager(s). Any Officers so designated shall have such authority and perform such duties as the Board of Managers may, from time to time, delegate to them. The Board of Managers shall have the power to appoint and employ such other Officers as the Managers deem appropriate.

## **7.17. Officer Election and Term of Office**

. The Board of Managers shall elect the Officers at the first meeting of the Initial Board

of Managers. The Board of Managers shall establish the terms during which the Officers shall serve in their respective offices. Except as expressly provided in this Agreement, each Officer shall hold office until such Officer's successor shall have been duly elected and qualified, such Officer's death or disability, or until such Officer shall resign, be disqualified for not meeting the qualifications set forth herein or shall have been removed in the manner hereinafter provided.

#### **7.18. Officer Resignation; Removal**

. Any Officer (subject to any contract rights available to the Company, if applicable) may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board of Managers. The acceptance of a resignation shall not be necessary to make a resignation effective, unless expressly so provided in the resignation. Any Officer may be removed as such, either with or without Cause, with the approval of two-thirds (2/3rds) of the total number of the current members of the Board of Managers; *provided, however*, that such removal shall be without prejudice to the contract rights, if any, of the individual so removed. The appointment of an Officer shall not of itself create any such contract rights.

#### **7.19. Officer Vacancies**

. Except as expressly provided in this Agreement, a vacancy of any Officer position that results from the death, disability, resignation, removal, disqualification, or otherwise of such Officer, shall be filled by an individual elected by the Board of Managers as soon thereafter as is reasonably practicable, to serve for the unexpired portion of the term of the person whose vacancy is being filled.

#### **7.20. General Duties of Officers**

**For the purposes of this Section, other than Chairman of the Board and Secretary, it is understood by the Shareholders that certain of these positions may not be filled.**

**7.20.1. Chairman of the Board.** The Chairman of the Board of Managers shall, subject to the powers of the Board of Managers, be the chairperson and shall serve as chairperson during all meetings of the Board of Managers and of the Shareholders. The Chairman shall be *ex officio* a member of all committees that may, from time to time, be constituted by the Board of Managers. In addition, the Chairman of the Board shall perform all other duties and exercise such authority as from time to time may be delegated or assigned to him or her by the Board of Managers. In the absence of the Chairman of the Board, his or her duties shall be performed and his or her authority may be exercised by the Vice Chairman. In the absence of the Chairman of the Board and the Vice Chairman, the duties of the Chairman shall be performed and his or her authority may be exercised by such Officer as may have been designated as the most senior officer of the Company. The Chairman may execute any deed, mortgage, bond, contract, or other instrument that the Board of Managers has authorized to be executed, except in cases

where execution shall be expressly delegated by the Board of Managers or by this Agreement to some other officer or agent of the Company or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of Chairman and any other duties prescribed by the Board of Managers from time to time.

**7.20.2. Vice Chairman.** The Vice Chairman shall perform the duties of Chairman in the temporary absence of the Chairman. The Vice Chairman shall become Chairman in the event the office of Chairman becomes vacant (the provisions of Sections 7.17 and 7.19 notwithstanding), and shall serve until the end of the term of the former Chairman.

**7.20.3. President/Chief Executive Officer.** The President/Chief Executive Officer shall directly report to, and shall be subject to the control of, the Board of Managers. The President/Chief Executive Officer shall be the principal executive officer of the Company and have, between meetings of the Board of Managers, the primary supervisory responsibility and authority for the management of the Company, implementation of the policies of the Company, as determined by the Board of Managers, and for the overall management of the property, business and affairs of the Company. The President/Chief Executive Officer shall make all final decisions with respect to the day-to-day business matters of the Company including, without limitation, all decisions with respect to the terms of Company contracts. The President/Chief Executive Officer may sign, with the Secretary or any other proper officer of the Company thereunto authorized by the Board of Managers any deeds, mortgages, bonds, contracts, or other instruments which the Board of Managers has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Managers or by this Agreement to some other officer or agent of the Company, or shall be required by law to be otherwise signed or executed.

**7.20.4. Secretary.** The Secretary shall (a) keep the minutes of the proceedings of the Shareholders, the Board of Managers and committees of the Board of Managers in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (c) be custodian of the Company records; (d) keep a register of the post office address of each Shareholder, which shall be furnished to the Secretary by each Shareholder; and (e) in general perform all other duties assigned from time to time by the Chairman or by the Board of Managers.

**7.20.5. Treasurer.** The Treasurer shall have the custody of the Company's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in those depositories designated by the Board of Managers. The Treasurer shall disburse the funds of the Company as may be ordered by the Board of Managers, taking proper vouchers for the disbursements, and shall render to the President and Chief Executive Officer and Board of Managers, at the regular meetings of the Board of Managers or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the

Company. If required by the Board of Managers, the Treasurer shall give the Company a bond in an amount and with a surety or sureties that are satisfactory to the Board of Managers for the faithful performance of the duties of the Treasurer's office and for the restoration to the Company, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, moneys, and other property of whatever kind in the Treasurer's possession or control belonging to the Company. The Treasurer will be responsible for co-signing checks and have transparency to company's bank accounts and financials.

## **7.21. Committees**

**7.21.1. Executive Committee.** The Executive Committee of the Board of Managers shall consist of the Chairman of the Board, Vice Chairman, the President/Chief Executive Officer, and the Treasurer as voting members. The Board of Managers may appoint other Officers to the Executive Committee as it may determine advisable from time to time, *provided* that only members of the Board of Managers who are also members of the Executive Committee shall have voting rights on the Executive Committee. The Chairman of the Board shall serve as Chairman of the Executive Committee. The Board of Managers may, as it deems appropriate, delegate to the Executive Committee any of the powers of the Board of Managers, except as prohibited by law or by the terms of this Agreement.

**7.21.2. Nominating Committee.** The Board of Managers shall appoint a Nominating Committee (the "**Nominating Committee**") of three (3) members, who must be a Managers from each of Section 7.6(a), (b), or (c) , and designate the Chairman of such Committee. The members of the Nominating Committee shall be appointed to serve two (2) year terms; *provided* that any member of the Nominating Committee shall cease to serve in such capacity if he or she is no longer a member of the Board of Managers. The Nominating Committee shall establish policies for the nominations and elections of persons as Managers for all classes of the Board of Managers as found in Section 7.6 above (except Section 7.6(e) which is chosen by the Board of Managers). Such policies may include reasonable information disclosure requirements for prospective Manager candidates, and deadlines for submission of proposed nominations. Sixty (60) days prior to the date on which Shareholder Classes or Sub-Classes are to elect their respective representatives to the Board of Managers, the Nominating Committee shall prepare a slate of proposed candidates for each seat on the Board of Managers to be filled at an upcoming election. All proposed candidates shall qualify to serve as a Manager, and shall have complied with such policies and disclosure requirements as determined by the Nominating Committee. Only candidates selected by the Nominating Committee in their discretion are eligible for election to the Board of Managers.

**7.21.3. Finance Committee.** The Board of Managers shall appoint a Finance Committee of three (3) members each of whom shall be members of the Board of Managers. The members of the Finance Committee shall be appointed to serve three

(3) year terms; *provided* that any member of the Finance Committee shall cease to serve in such capacity if he or she is no longer a member of the Board of Managers. The Finance Committee shall provide input and oversight to all budgets, financial analyses, financial investments and financial reports and auditing.

**7.21.4. Customer Service Excellence Committee.** The Board of Managers shall appoint a Customer Service Excellence Committee of three (3) members each of whom shall be members of the Board of Managers. The members of the Customer Service Committee shall be appointed to serve three (3) year terms; *provided* that any member of the Customer Service Committee shall cease to serve in such capacity if he or she is no longer a member of the Board of Managers. In partnership with the President/Chief Executive Office, the Customer Service Excellence Committee shall monitor customer satisfaction and proactively solicit input and ideas from Shareholders to continue to improve the quality and relevance of the services provided. The Customer Service Excellence Committee will provide oversight to the promotion of services, training programs and participation, data compliance and fines policies and the Customer Service Excellence staff. The Board of Managers may increase the amount of members on this committee by majority vote.

**7.21.5. Other Committees.** The Board of Managers may create such other Committees, Task Forces, or other working groups as the Board deems appropriate, determine the jurisdiction of such subsidiary bodies, the method of appointment of Shareholders and Chairpersons of such bodies, the length of the terms of the Shareholders, and the duration of such bodies. The Chairperson of such bodies shall have the power to appoint sub-committees as the Chairperson deems appropriate to achieve the purposes of the body.

**7.21.6. Committee Participation and Procedures.** A meeting of a Committee, Task Force or working group may be called upon written notice of the Chairperson not less than five (5) Business Days prior to such meeting at a place and time as set forth in the meeting notice. A quorum for the conduct of business by a Committee, Task Force or working group shall be a majority of the members of the body. Each member of any Committee, Task Force or working group shall be afforded the opportunity to participate telephonically or by video conference in any meeting of such body, and if he or she does so participate, he or she shall be deemed to be present at such meeting. Unless a member of a body attends a meeting solely for the expressed purpose of objecting to the lack of notice or other conformity to the requirements of this Subsection, a member's presence at a meeting of such a body (either in person, telephonically or by video conference) shall constitute a waiver of any such objection.

**7.21.7. Term.** Unless otherwise provided herein, each member of a Committee (other than the Executive Committee) shall serve at the pleasure of the Board of Managers and can be removed by the vote of the Board of Managers or his or her earlier death, resignation, disability or performance inconsistent with the Manager duties outlined in this document.

## 7.22. **Robert's Rules of Order**

. Robert's Rules of Order, latest edition, shall be recognized as the authority governing the meetings of the Board of Managers, Committees, or any subsidiary body, in all instances wherein its provisions do not conflict with this Agreement.

## 7.23. **Indemnification**

**7.23.1. Claims by Others than the Company.** The Company shall indemnify every Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the Company), whether civil, criminal, administrative or investigative, by reason of the fact that the Person is or was a Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, manager, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with the action, suit or proceeding, if the Person acted in good faith and in a manner the Person reasonably believed to be in, or not opposed to, the best interests of the Company or, with respect to any criminal action or proceeding, had no reasonable cause to believe the Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the Person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the Company or, with respect to any criminal action or proceeding, that the Person had reasonable cause to believe that the Person's conduct was unlawful.

**7.23.2. Claims by the Company.** The Company shall indemnify every Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit, by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Person is or was a Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, manager, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of the action or suit, if the Person acted in good faith and in a manner the Person reasonably believed to be in, or not opposed to, the best interests of the Company, *provided* that no indemnification shall be made in respect of any claim, issue or matter as to which the Person shall have been adjudged to be liable to the Company, unless, and only to the extent that, the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Person is fairly and reasonably entitled to



indemnity for those expenses as the court shall deem proper.

**7.23.3. Indemnification if Successful in Defense.** To the extent that a Person entitled to indemnification by the Company hereunder has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in **Subsections 7.23.1** or **7.23.2** above, or in defense of any claim, issue or matter therein, the Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection therewith.

**7.23.4. Authorization.** Any indemnification under **Subsections 7.23.1** and **7.23.2** above (unless ordered by a court), shall be made by the Company only as authorized in the specific case, upon a determination that indemnification of the Person is proper in the circumstances because the Person has met the applicable standard of conduct set forth in either **Subsection 7.23.1** or **7.23.2** above. The determination shall be made by (i) a disinterested majority of the Managers or (ii) independent legal counsel in a written opinion.

**7.23.5. Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may, but are not required to be, paid by the Company, at the discretion of a majority of the total number of the current members of the Board of Managers, in advance of the final disposition of the action, suit or proceeding, as authorized by the Managers in the specific case, as provided in **Subsection 7.23.4** above, upon receipt of an undertaking by or on behalf of the Person to repay that amount, unless it shall ultimately be determined that the Person is entitled to be indemnified by the Company as authorized in this Section.

**7.23.6. Non-Exclusive Rights.** The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Company's Certificate of Formation, or any agreement, or otherwise, both as to action in the Person's official capacity and as to action in another capacity while holding office, and shall continue as to a Person who has ceased to hold a position subject to indemnification under this Section and shall inure to the benefit of the heirs, executors and administrators of such Person.

**7.23.7. Insurance.** Subject to the requirements of **Section 7.1(b)**, the Company may, but is not required to, purchase and maintain insurance on behalf of any Person who may be entitled to indemnification pursuant to this Section.

**7.23.8. Report to Shareholders.** If the Company has paid indemnity or has advanced expenses to a Person under this Section, the Company shall promptly report the indemnification or advance in writing to the Shareholders.

## ARTICLE 8

### OPERATING COSTS AND EXPENSES/DISTRIBUTION OF DATABASE CONTENT

## **TO THIRD PARTIES**

### **8.1. Operating Costs and Expenses**

. The Board of Managers shall determine the amounts to be charged to each Shareholder in such manner and formula as the Board deems appropriate to cover all operating costs and expenses associated with the Shareholder s' use of the System, including the costs of acquiring or leasing computer hardware, licensing the Software, administering and hosting the System using Company employees or third party consultants or vendors, generating and maintaining appropriate reserves, payment of principal and interest on any loans made to the Company, and any other expenses associated with the conduct of the Company's business as authorized by this Agreement or resolution of the Board of Managers. The amounts determined by the Board of Managers to be charged to Shareholders to cover the operating costs and expenses of the Company, build adequate cash reserves and set asides for investing in approved strategic initiatives.

### **8.2. Distribution of Database Content to Third Parties**

. The Board of Managers shall determine whether, and on what terms and conditions, the Company shall distribute or display to third parties, including the general public, the Listing Data and other content contributed or licensed to, or maintained in, the System, including, but not limited to, through licensing agreements with third party licensees and Company Members.

## **ARTICLE 9**

### **DISTRIBUTIONS**

#### **9.1. No Automatic Shareholder Payments**

. Other than as provided in **Section 17.3** the Shareholders shall not be entitled to and shall not receive any distributions, dividends or other payments by reason of being Shareholders or Unit holders. However, there is no prohibition to the payment of distributions, dividends or other payments to Shareholders if the Board of Managers decides such is prudent and shall not cause the Company to be insolvent. If the company generates excess income over expenses after covering all of the company's financial requirements, the Board of Managers can authorize a distribution to unit shareholders commensurate to the amount of revenue contributed by each brokerage based on the number of completed transactions contributed to the Company in the previous fiscal year. A Realtor Association Shareholder shall not be eligible to receive a distribution from the Company.

## **ARTICLE 10**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

#### **10.1. Limitation on Liability of Shareholder**

. Except as otherwise provided herein, the liability of each Shareholder shall be limited to

the amounts actually paid by the Shareholder as Consideration for the Unit of the Company owned by that Shareholder. Except as expressly provided to the contrary in this Agreement, or as otherwise provided in the Act or by other applicable law, a Shareholder shall not have any liability to contribute money or make loans to the Company, nor shall a Shareholder be liable for any obligations or liabilities of the Company.

### **10.2. Other Activities**

. Neither the Company nor any of the Shareholders shall have any rights by virtue of this Agreement to engage in or possess interests in other business ventures, including those engaged in the same business as that of the Company. Neither the Company nor any of the Shareholders shall have any rights by virtue of this Agreement in or to such business ventures or to the income or profits derived therefrom.

### **10.3. Good Faith and Fair Dealing**

. In discharging any duties or exercising any rights a Shareholder may have under the Act or this Agreement, the Shareholder shall comply with the obligation of good faith and fair dealing.

## **ARTICLE 11**

### **INTELLECTUAL PROPERTY RIGHTS**

#### **11.1. Each Broker Shareholder's Rights**

. Each Shareholder hereby grants to the Company a non-exclusive, perpetual (subject to **Section 17.6**), royalty free, sub-licensable, non-transferable (except in the case of a sale of the Company, wherein it will be transferable), worldwide license to include in the System the Listing Data entered by the Broker Shareholder into the System, and to permit the Company to license use of, or access to, the Broker Shareholder's Listing Data, or any derivative works created by the Company into which the Broker Shareholder's Listing Data is incorporated or utilized, in whole or in part, in conjunction with the Company's license of access to, or use of, content of the System or any portion or component thereof, on terms and conditions deemed appropriate by the Board of Managers, subject to the Broker Shareholders's right to withhold Listing Data from any particular license granted by the Company for uses unrelated to offering the service of the Company. **Company Rights**

. As between or among the Company and the Shareholders, the Company, or its third party licensor(s), claims all Intellectual Property Rights and proprietary rights in and to the Software that provides the applications and functionality available on or through the System, and any updates, revisions, or modifications to the Software, and to the manner in which the Listing Data, or any other data, text or images, in the System Database are arranged and displayed to end users. The Shareholders hereby acknowledge the Company's Intellectual Property Rights as claimed herein and agree not to contest such claims, nor assist others in doing so. Unless determined otherwise by the Board of Managers, all works specifically related to, or specifically

incorporated into, the System that are created by employees or agents of any Shareholder for use or incorporation in the System shall be deemed to be “works made for hire” as that term is defined under the United States Copyright Law, or alternatively, the Shareholder(s), and the Shareholders(s)’ employees/contractors who created such works, shall convey to the Company all Intellectual Property Rights in and to such works, and shall execute all necessary documents and instruments to effect such conveyance. All contracts entered into by the Company that include the creation of copyrightable or patentable works for the Company shall include all necessary provisions to insure that the Company owns all Intellectual Property Rights associated with such works, unless otherwise deemed appropriate by the Board of Managers.

### **11.2. No Conveyance**

. Nothing in this Agreement shall be construed to convey to one Shareholder any right in or to any trademark, service mark, trade name, or trade dress of any other Shareholder or the Company.

## **ARTICLE 12**

### **CONFLICTS OF INTEREST**

#### **12.1. Conflicts of Interest**

. No contract or other transaction between the Company and one or more of its Shareholders, Managers, Officers, or any other limited liability company, corporation, firm, association, or entity in which one or more of its Shareholders, Managers or Officers are managers, managing members, directors, or officers or are financially interested (an “**Interested Person**”) shall be either void or voidable because of such relationship or interest, provided that the Board of Managers authorizes, approves, or ratifies such contract or transaction, and:

(1) the fact of the Interested Person’s relationship or interest is disclosed or known to all members of the Board of Managers at the time the Managers authorize, approve, or ratify the contract or transaction by a vote or consent sufficient for such authorization, approval or ratification without counting the vote or consent of such Interested Person(s); and,

(2) the disinterested Managers conclude in the exercise of their reasonable business judgment that the contract or transaction is fair and reasonable to the Company at the time it is authorized, approved or ratified by the disinterested Managers.

## **ARTICLE 13**

### **RESOLUTION OF DISPUTES AMONG THE SHAREHOLDERS**

#### **13.1. Dispute among Shareholders**

. Other than with respect to any claim for injunctive relief, the process outlined in **Subsections 14.1.1** thru **14.1.3** shall apply to any dispute between or among Shareholders with

respect to the interpretation or enforcement of this Agreement.

**13.1.1. Good Faith Negotiations.** In the event of a dispute between or among the Shareholders to this Agreement concerning its interpretation or enforcement, the disputing Shareholders shall first attempt in good faith to negotiate a mutually agreeable resolution to the dispute within fifteen (15) days after one or more Shareholders notify the other Shareholder or Shareholders, in writing, that a dispute exists.

**13.1.2. Non-binding Mediation.** If the dispute cannot be resolved through negotiation within fifteen (15) days after notice of the dispute, then the Shareholders agree to submit the dispute to non-binding mediation under the AAA Rules before a mutually agreeable mediator, or if agreement on a mediator cannot be reached, then to a mediator chosen by the AAA. The complaining Shareholder shall initiate the mediation, which shall commence within sixty (60) days after notice of the dispute was first given, unless extended by mutual agreement of the disputing Shareholders. The disputing Shareholders shall share equally in the costs of the mediation, including the mediator's fees and expenses, with each Shareholder bearing its own legal fees and costs, if any, associated with the mediation. The mediation shall occur at a location agreed upon by the disputing Shareholders, and if the Shareholders cannot agree, at a location determined by the mediator.

**13.1.3. Binding Arbitration.** If the dispute cannot be resolved through mediation, the disputing Shareholders agree to submit the dispute to binding arbitration before a mutually agreeable arbitrator or arbitration panel, or if agreement on an arbitrator or panel cannot be reached, the arbitration shall be conducted by a commercial arbitrator chosen by the AAA according to the AAA Rules, except as otherwise expressly provided in this Agreement. The complaining Shareholders(s) shall initiate the arbitration, which shall commence within ninety (90) days after the conclusion of the mediation, unless the disputing Shareholders mutually agree to a different commencement date, or the rules of the arbitration services provider, or an order of the arbitrator, provide a different date. The arbitration shall occur in Baton Rouge, LA or such other site as agreed upon by the disputing Shareholder(s). The arbitrator or arbitration panel shall have the power to assess the costs of the arbitration to the non-prevailing party, as well as enter an additional award of reasonable attorney's fees and expenses to the prevailing party. No Shareholder shall be entitled to join or consolidate disputes by or against other Shareholders in any arbitration, or to include in any arbitration any dispute as a representative or Shareholder of a class, or act in any arbitration in the interest of the general public or in any private Attorney General capacity. The non-prevailing Shareholders(s) consents to personal jurisdiction of the courts located in the state in which the prevailing Shareholder(s) is located for the purposes of enforcing any arbitration award in favor of the prevailing party.

## **13.2. Injunctive Relief**

. In the event of a dispute between or among the Shareholders with respect to the

interpretation or enforcement of this Agreement for which a Shareholder does not believe money damages would be a sufficient remedy, such Shareholder shall be entitled to seek specific performance and any equitable remedy permitted under the AAA Rules (and particularly the rules for Interim Measures and Emergency Measures of Protection).

## **ARTICLE 14**

### **DISPUTES BETWEEN A SHAREHOLDER AND THE COMPANY**

#### **14.1. Disputes between the Company and a Shareholder**

. Other than with respect to any claim by the Company for injunctive relief, the following process shall apply:

**14.1.1. Good Faith Negotiations** In the event of a dispute between a Shareholder or Shareholders to this Agreement and the Company, the disputants shall first attempt in good faith to negotiate a mutually agreeable resolution to the dispute within fifteen (15) days after one or more parties notify the other party or parties, in writing, that a dispute exists.

**14.1.2. Mediation.** If the dispute cannot be resolved through negotiation within fifteen (15) days after notice of the dispute, then the parties agree to submit the dispute to non-binding mediation under the AAA Rules before a mutually agreeable mediator, or if agreement on a mediator cannot be reached, then a mediator chosen by the AAA. The complaining party shall initiate the mediation, which shall commence within sixty (60) days after notice of the dispute was first given, unless extended by mutual agreement of the disputing parties. The disputing parties shall share equally in the costs of the mediation, including the mediator's fees and expenses, with each party bearing its own legal fees and costs, if any, associated with the mediation. The mediation shall occur in a location upon which the disputing parties mutually agree, or at a location determined by the mediator.

**14.1.3. Binding Arbitration.** If the dispute cannot be resolved through mediation, the disputing parties agree to submit the dispute to binding arbitration under the AAA Rules before a mutually agreeable arbitrator or arbitration panel, or if agreement on an arbitrator or panel cannot be reached, the arbitration shall be conducted by a commercial arbitrator chosen by the AAA. The complaining party shall initiate the arbitration, which shall commence within ninety (90) days after the conclusion of the mediation, unless the disputing parties mutually agree to a different commencement date, or the rules of the arbitration services provider, or an order of the arbitrator, provide a different date. The arbitration shall occur in Baton Rouge, LA, or such other location upon which the disputing parties shall agree. The arbitrator or arbitration panel shall have the power to assess the costs of the arbitration to the non-prevailing party, as well as enter an additional award of reasonable attorney's fees and expenses to the prevailing party. No Shareholder shall be entitled to join or consolidate disputes by or against the Company in any arbitration, or to include in any arbitration any dispute as a representative or

Shareholder of a class, or act in any arbitration in the interest of the general public or in any private Attorney General capacity. The non-prevailing party consents to jurisdiction of the courts of the state in which the prevailing party is headquartered for the purpose of enforcing any arbitration award in favor of the prevailing party.

**14.2. Injunctive Relief**

. In the event of a dispute between the Company and any Shareholder, for which the Company does not believe money damages would be a sufficient remedy, the Company shall be entitled to specific performance and any equitable remedy permitted under the AAA Rules (and particularly the rules for Interim Measures and Emergency Measures of Protection).

**ARTICLE 15**

**NO TRANSFERS OF INTERESTS**

**15.1. General Restriction**

. No Shareholder shall have any right to Transfer all or any part of such Shareholder's interest in the Company. Any attempted Transfer made in contravention of this Agreement shall be null and void, and the Company need not recognize or give effect to such Transfer, in whole or in part. For the avoidance of doubt, the surviving Person of a merger or consolidation of a Shareholder with another Person shall have only one Unit even if the merging or consolidating Persons were each Shareholders prior to the merger or consolidation. The Shareholder resulting from such merger or consolidation shall have the same Shareholder Classification as held by the Shareholder prior to the merger or consolidation (or if both were Shareholders, the Shareholder Class of the surviving Shareholder) until the next determination of the Class or Sub-Class of that Shareholder or until such Shareholder's earlier Dissociation.

**ARTICLE 16**

**DISSOCIATION OF A SHAREHOLDER**

**16.1. Events of Dissociation**

. A Shareholder shall be dissociated from the Company upon the occurrence of any of the following events (each, an "**Event of Dissociation**"):

(a) The Company's having notice of the Shareholder's express will to withdraw upon the date of notice or on a later date specified by the Shareholder:

(b) A determination by the Board of Managers after written notice and an opportunity of the Shareholder to show cause why the brokerage should not be dissociated from the Company, rendered upon an application or petition by the Company, or another Shareholder, based upon the Board of Managers' findings that the Shareholder should cease to be a Shareholder for Cause. Any such determination shall be rendered by an affirmative vote of not less than two thirds (2/3rds) of the total number of the members

of the Board of Managers then in office;

(c) Dissolution of a Shareholder that is a corporation, limited liability company or partnership, or limited or general partnership and, to the extent possible, such dissolution not having been reversed within thirty (30) days of such dissolution; or

(d) A Shareholder's failure to pay any additional Consideration, or the fees or expenses assessed by the Board of Managers for use of the System during the time specified by the Board of Managers for the receipt of such payments.

(e) A Shareholder renounces ownership of its Unit and provides its intent to withdraw from the Company;

(f) A Shareholder ceases to be a paying user of the MLS Service and System, or in the case of A Realtor Association Shareholder, ceases to provide the MLS Service and System to its member brokers.

## **16.2. Consequences of a Shareholder's Dissociation**

. A Shareholders Dissociation shall not cause dissolution of the Company. Upon a Shareholder's Dissociation the following shall apply:

**16.2.1. Effective Date.** A Shareholder's dissociation shall become effective upon the earliest of the following (the "**Dissociation Date**"): (i) notice by the Company to the Shareholder of such Shareholder's Dissociation, (ii) notice by the Shareholder of its election to Dissociate from the Company, (iii) expiration of thirty (30) days after notice to the Shareholder of any amounts due to the Company from the Shareholder provided such amounts are not paid, and (iv) such Shareholder no longer meeting the requirements to be or remain a Shareholder.

**16.2.2. Cease to be a Shareholder.** As of the Dissociation Date, the Dissociated Shareholder shall cease to be a Shareholder. Any right the Dissociated Shareholder previously had to participate in the management and conduct of the Company's business shall terminate. The Dissociated Shareholder shall not have any further rights with respect to the Company and shall cease to participate in the Company, and the Company shall terminate the Dissociating Shareholder's use of the System unless other arrangements have been approved by the Board of Managers, and shall not have access to the Company's books and records with respect to any of the Company's business or affairs occurring after the Dissociation Date, except insofar as such access may be necessary to appropriately address or dispose of matters related to the period prior to the Shareholder's Dissociation.

**16.2.3. Resignation of Affiliated Managers.** In the event of a Shareholder's Dissociation, any members of the Board of Managers affiliated with such Shareholder shall be deemed to have resigned; effective as of the Dissociation Date of the Shareholder.



**16.2.4. Termination of Unit.** Upon the Dissociation of a Shareholder such Shareholder's Unit shall automatically terminate and such Unit shall cease to exist.

**16.2.5. No Redemption or Payment.** Notwithstanding anything to the contrary in the Act, in no event shall the Company or any Shareholder be obligated to redeem or purchase the interest of a Dissociating Shareholder, such interest having automatically terminated upon Dissociation. Each Shareholder acknowledges and agrees that it shall not be entitled to receive any payment for or with respect to its Unit or any refund of any yearly required payment even if the Dissociation occurs prior to the expiration of a year for which the Shareholder had paid such amounts as required in full.

## ARTICLE 17

### **DISSOLUTION AND LIQUIDATION**

#### **17.1. Events of Dissolution**

. The Company shall dissolve and commence winding up and liquidating pursuant to **Section 17.2** below upon the occurrence of any one or more of the following "**Events of Dissolution**":

- (a) upon the affirmative vote of three fourths (3/4ths) of the total number of Shareholders;
- (b) at any time there are no Shareholders;
- (c) the entry of a judicial decree as provided in La. R.S. 12:1335

#### **17.2. No Right to Cause Dissolution**

. No Shareholder shall have the right or power to cause the dissolution and winding up of the Company by court decree or otherwise.

#### **17.3. Winding Up of Affairs**

. Upon the occurrence of an Event of Dissolution for any reason , the Board of Managers shall promptly commence to wind up the affairs of the Company and shall convert all of the Company's assets to cash or cash equivalents within such reasonable period of time as may be required to receive fair value therefor. The Board of Managers may designate a Person to manage the winding up the Company's business, which Person may prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the Company's business operations, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the Company's assets as provided for herein, settle disputes by mediation or arbitration, and perform other necessary acts. The Company shall be bound by such Person's actions after dissolution that are appropriate for winding up the Company's business or would have bound the Company under the Act before dissolution if the other party to the transaction did not have notice of the dissolution. A Person who, with knowledge of the dissolution, subjects the

Company to liability by an act that is not appropriate for winding up the Company's business shall be liable to the Company for any damage caused to the Company by such actions. The assets of the Company shall be applied or distributed in liquidation in the following order of priority:

(1) in payment of debts and obligations of the Company owed to third party creditors (including Shareholders who are creditors);

(2) to the setting up of such reserves as the person charged with winding up the Company's affairs may reasonably deem necessary for any contingent liabilities or obligations of the Company, *provided* that any such reserves shall be paid over by such person to an independent escrow agent to be held by such agent or his successor for such period as such person shall deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations, and, at the expiration of such period, the balance of such reserves, if any, shall be distributed as hereinafter provided; and

(3) to the Shareholders, as repayment of their Consideration;

(4) to any third party, as the Board of Managers may determine, that is not an Affiliate of any Shareholder.

#### **17.4. No Right to Partition**

. Each Shareholder irrevocably waives any right that such brokerage may have to (a) maintain any action for partition with respect to any of the assets of the Company, (b) seek a foreclosure of such Shareholder's Units or (c) otherwise obtain a distribution of Company assets which constitutes a return of any part of such Shareholder's Consideration paid for a Unit of the Company (other than as provided in **Section 17.3**). Upon any breach of the provisions of this Section by any shareholder, the other Shareholders, in addition to all of the rights and remedies in law and in equity that they may have, shall be entitled to a decree or order restraining and enjoining such application, action or proceeding.

#### **17.5. Certificate of Cancellation**

. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the Company have been distributed as provided in **Section 17.3**, a Certificate of Cancellation shall be filed if required by the Act. Thereafter, any remaining Managers shall be trustee(s) for the Shareholders and creditors of the dissolved Company and, in that capacity shall have authority to convey or distribute any Company property discovered after dissolution and take any other action that may be necessary on behalf of and in the name of the dissolved Company.

**17.6 Revocation of Perpetual License.** In the event of the dissolution of the Company and winding up of its affairs, the perpetual license granted by Broker Shareholders pursuant to

**Section 11.1** shall immediately be revoked and terminated and shall have no further effect.

## **ARTICLE 18**

### **BOOKS AND RECORDS; BUDGETS; ACCOUNTING; AND OTHER MATTERS**

#### **18.1. Books and Records**

. The Company shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Shareholders and Managers thereof; and shall keep at its principal place of business, a record of its Shareholders, giving the names and addresses of all Shareholders and listing the class and Shareholder subclass of such Shareholder. A record of Shareholders certified by an officer shall be competent evidence in all courts. Company may keep the records provided for herein electronically.

#### **18.2. Right to Inspection**

. Subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location) established from time to time by the Board of Managers, any brokerage who is a Shareholder of record shall have the right to examine, in person or by agent, at any reasonable time or times the Company's books and records of account, minutes, and record of its Shareholders, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a Shareholder must make written request upon the Company, stating with particularity the records sought to be examined and the purpose therefore. Each Shareholder shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Shareholder's inspection and copying of the Company's books and records.

#### **18.3. Budget**

. The Board of Managers shall annually approve a budget for the Company's operations, which the Managers may amend from time to time as circumstances may require.

#### **18.4. Company Funds; Bank Accounts**

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**18.4.1. Accounts**. All funds of the Company not otherwise invested shall be deposited in the name of the Company in one or more accounts maintained in such financial institutions as the Board of Managers shall reasonably determine.

**18.4.2. No Commingling**. The funds of the Company shall not be commingled with the funds of any other Person and such funds shall not be used in any manner except for the benefit of the Company.

### **18.5. Financial Reports**

. The books and records of the Company shall be maintained in accordance with US GAAP. The accountants of the Company, who may be a certified public accounting firm selected by the Board of Managers (“Independent Accountants”), may, as per the discretion of the Board of Managers, within ninety (90) days after the end of each fiscal year of the Company prepare in accordance with US GAAP and auditing standards a financial report of the Company for such period including (a) a statement of the Company income and expenses; (b) a balance sheet and a profit and loss statement; (c) a copy of the tax returns (federal, state, and local, if any) of the Company for each fiscal year; (d) a statement of any fees or other compensation paid by the Company to any Shareholder and the services rendered by such Shareholder or person therefor; and (e) such other matters as the Board of Managers may reasonably deem material to the operations of the Company. The costs and expenses of preparing and furnishing the financial reports required by this Section in respect of all fiscal years of the Company shall be paid by the Company.

### **18.6. Reports to Shareholders**

. Within one hundred twenty (120) days after the end of each taxable year of the Company, the Board of Managers shall use reasonable efforts to cause to be sent, or to be available for download electronically, to each person who is a Shareholder at any time during the accounting year then ended: (i) an annual financial statement, prepared by the Company’s Accountant in accordance with the standards issued by the American Institute of Certified Public Accountants; and (ii) a report summarizing the fees and other remuneration paid by the Company to any Shareholder or Manager in respect of the taxable year.

### **18.7. Fiscal Year**

. The taxable and fiscal year of the Company shall be the calendar year or such other time as the Board of Managers, from time to time, shall elect.

### **18.8. Title to Company Property**

. All real and personal property acquired by the Company shall be acquired and held by the Company in its name except that the Board of Managers may direct that legal title to all or any portion of the Company’s property be acquired or held in a name other than the Company’s name. It is expressly understood and agreed that the manner of holding title to the Company’s property (or part thereof) is solely for the convenience of the Company, and that all of that property shall be treated as Company property. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets are held. The Shareholders shall have no interest with respect to the Company property except to the extent specifically provided herein.

## **ARTICLE 19**

## **CONSENTS, MEETINGS AND VOTING OF THE SHAREHOLDERS**

### **19.1. Consents**

**19.1.1. Request for Consent.** Any request for consent of the Shareholders pursuant to this Agreement shall be made by delivery of a written request to each Shareholder whose consent or approval is requested, which delivery may be by electronic means.

**19.1.2. Response.** Each Shareholder who receives a request for consent or approval shall respond by delivery by electronic means of a written consent, approval or declination to the requesting party within fifteen (15) days of the delivery of the request for consent or approval unless another time period is specified in this Agreement.

**19.1.3. Action by Consent.** Any action required to be taken at any annual or special meeting of the Shareholders, may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed, by the number of Shareholders who would be required to assent to the action if all of the Shareholders entitled to vote with respect to the subject matter thereof were present at a meeting where the vote was taken, unless action by a consent in writing signed by less than all of the Shareholders entitled to vote is permitted by another provision of this Agreement. Any action taken by written consent shall have the same force and effect as if action had been taken by the Shareholders at a meeting thereof.

### **19.2. Meetings of Shareholders**

**19.2.1. Notice.** The locations of meetings of Shareholders as required by law, this Agreement or as otherwise deemed necessary or appropriate shall be determined by the Board of Managers, and shall be stated in any proper Notice of meeting. A Notice of meeting may be sent to Shareholders by electronic means and shall state, with reasonable particularity, the purposes of the meeting and shall be sent to all Shareholders not more than sixty (60), nor less than ten (10), days before the date scheduled for the meeting. Waiver of Notice of a meeting may also be given by a Shareholder in writing.

**19.2.2. Remote Communication.** Meetings may be held virtually, through the Internet, interactive technology or remote communication, in accordance with rules established by the Board of Managers. Annual meetings shall be held in the month of July as may be authorized by the Board of Managers and set forth in the notice of meeting, for the purpose of electing Managers and for the transaction of such other business as may come before the meeting. Special meetings of one or more Shareholder Classes, for any purpose or purposes, may be called by (i) the Board of Managers pursuant to a resolution adopted by the affirmative vote of a majority of the Board of Managers then in office, or (ii) the Chairman of the Board. Special meetings of a Shareholder Class, for any purpose or purposes may be called by (i) a majority of the

Shareholders of the Board of Managers elected by such Shareholder Class or (ii) the Shareholders of that Shareholder Class holding, in the aggregate, five percent (5%) of the total outstanding Units of that Shareholder Class. Business transacted at any special meeting of the Shareholders shall be limited to the purpose or purposes stated in the notice for such meeting. The Company shall pay for the first two meetings of Shareholders per year not called by the Board of Managers or the Chairman of the Board, if any; the cost for any additional such meetings shall be the responsibility of the Shareholders calling the meeting.

**19.2.3. Shareholder List.** The Secretary of the Company shall prepare and have available for inspection by any Shareholder, at least five (5) days before every meeting of the Shareholders, a complete list of the Shareholders entitled to vote at such meeting (pursuant to **Section 19.2.9**), or any adjournment thereof, in alphabetical order, with the address of each Shareholder, which list shall be available electronically at the time and place of the meeting and shall be subject to the inspection of any Shareholder of that Shareholder Class during the entire meeting. Failure to comply with the requirements of this **Section 19.2.3** shall not affect the validity of any action taken at such meeting.

**19.2.4. Quorum.** Voting at meetings of Shareholders shall be accepted when quorum is reached. Quorum is defined at 10% of shareholders.

All Shareholders participating in a virtual meeting as authorized by the Board of Managers shall be deemed present for purposes of determining of a quorum is present. If a quorum is not present at any meeting of the Shareholders, Shareholders holding a majority of the Units present at such meeting, may adjourn the meeting, establish a new meeting date and give notice thereof to the Shareholders in accordance with the terms hereof. At such subsequent meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The Shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Shareholders to leave less than a quorum.

**19.2.5. Remote Voting.** Voting at any meeting of Shareholders shall be conducted electronically by Shareholders casting their vote individually or through a duly designated proxy at a password protected website created by the Company for such purpose at which a Shareholder or his, her or its designated proxy shall register with a unique user name and password. Any action of the Shareholders at a meeting shall be majority vote of the required quorum of the Shareholders. The Secretary of the Company shall maintain and preserve an accurate record of the voting results and all actions authorized or ratified at the meeting of the Shareholders.

**19.2.6. Meeting Chair.** The Chairman of the Board, and in his or her absence, the President/Chief Executive Officer, or in his or her absence, any Person chosen by the Board of Managers, shall call meetings of the Shareholders to order and shall act as chairperson of the meeting.

**19.2.7. Proxies.** A Shareholder may give a proxy to represent, and to vote,

its Unit at a Shareholder's meeting only to an owner or officer of the Shareholder or to another Shareholder of the same Shareholder Class.

**19.2.8. Waiver of Notice.** Wherever any notice is required to be given to any Shareholder under this Agreement or any provision of law, a waiver thereof in writing, signed at any time, whether before or after the time of meeting, by the Shareholder entitled to such notice, shall be deemed equivalent to the giving of such notice; *provided* that such waiver in respect to any matter of which notice is required under any provision of this Agreement or the Act, shall contain the same information as would have been required to be included in such notice, except for the time and place of the meeting. Attendance at a meeting by a Shareholder shall constitute a waiver of notice, except when the Shareholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**19.2.9. Record Date.** The date of which notice of a meeting of Shareholders is sent shall be the record date for the determination of the Shareholders entitled to notice of or to vote at such meeting (including any adjournment thereof). The record date for determining the Shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action to be taken or proposed to be taken is delivered to the Company.

## **ARTICLE 20**

### **GENERAL PROVISIONS**

#### **20.1. Burden and Benefit**

. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the respective parties hereto. Any Person acquiring or claiming an interest in the Company, in any manner whatsoever, shall be subject to and bound by all terms, conditions and obligations hereof to which such Person's predecessor in interest was subject or bound, without regard to whether such a Person has executed a counterpart hereof or any other document contemplated hereby. No Person, including the Managers, shall have any rights or obligations greater than those set forth herein and no Person shall acquire an Interest in the Company or become a Shareholder thereof except as permitted hereby.

#### **20.2. Applicable Law**

. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, without giving effect to the principles of conflicts of law thereof.

#### **20.3. Counterparts**

. This Agreement may be executed in counterparts, including by means of joinder

agreements executed by the Company, on the one hand, and the Shareholder, on the other hand, each of which shall be deemed to be an original and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties shall not have signed the same counterpart, and the original of this Agreement shall be a counterpart signed by all the Shareholders. The Parties acknowledge that a Brokerage may become a shareholder upon the acceptance by the Company of a joinder agreement signed such Person without any action on the part of any other Shareholder.

#### **20.4. Severability**

. If any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect (a) any other provision or part of a provision of this Agreement nor (b) this Agreement's validity, legality and enforceability in any other jurisdiction, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

#### **20.5. Entire Agreement**

. This Agreement, together with schedules and any other documents executed concurrently herewith, sets forth all (and is intended by all parties to be an integration of all) of the promises, agreements and understandings among the Parties hereto with respect to the Company, the Company business and the property of the Company, and there are no promises, agreements, or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein.

#### **20.6. Further Assurances**

. Each of the Shareholder shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

#### **20.7. Creditors**

. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Company or the Shareholders.

#### **20.8. Notice**

. Any notice, demand, consent, election offer, approval, request, or other communication required or permitted under this Agreement shall be in writing and given in the following manner:

If to the Company: by email at the email address of the Company as indicated on the Company's website for notice from Shareholders, or by personal or



generally recognized national delivery service or certified United States Mail, return receipt request, to the street address of the principal office of the Company; or

If to a Shareholder: by email at the email address of the Shareholder as indicated on the Company records, or by personal or generally recognized national delivery service or certified United States Mail, return receipt request, to the street address of the Shareholder as indicated on Company records.

A notice given by email will be deemed delivered when sent provided that notice is given promptly thereafter by another method of notice provided hereunder. A notice given personally will be deemed delivered only when acknowledged in writing by the Person to whom it is delivered. A notice given by certified U.S. mail shall be deemed delivered on the third (3rd) Business Day following deposit in the United States Mail, postage prepaid. A notice given by generally recognized national delivery service will be deemed delivered after deposit with the delivery service and expiration of the number of days that such delivery service requires for delivery to the recipient. Any Shareholder may designate substitute addresses or addressees for notices in the manner of providing notice hereunder.

#### **20.9. Amendments**

. This Agreement may be amended as approved from time to time by a two-thirds (2/3rds) vote of the total number of Shareholders.

#### **20.10. Delivery by**

Electronic signature, Facsimile or PDF. This Agreement and each other agreement or instrument entered into or in connection herewith or contemplated hereby, and any amendments hereto, to the extent signed and delivered by means of electronic signature (for e.g. DocuSign), a facsimile machine or PDF, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the originally signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto shall re-execute original forms thereof and deliver them to all other Parties, as appropriate. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or a PDF to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, PDF or electronic signature as a defense to the formation or enforceability of a contract and each Party forever waives any such defense.

#### **20.11. Jurisdiction; Waiver of Jury Trial**

. Except as otherwise provided in **Sections 13.2** and **14.2**, each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of, or related to, this Agreement exclusively in the United States District Court for the Eastern District of Louisiana or any Louisiana state court sitting in Orleans Parish, Louisiana (the “**Chosen Courts**”), and solely

in connection with claims arising under this Agreement (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto. THE PARTIES HERETO WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, THE COMPANY OR ITS BUSINESS.

**20.12** (Section Deleted)

**20.12.**

**20.13.** (Section Deleted)

**20.14. Shareholders' Representations**

. Each Shareholder hereby represents that, with respect to its Interest in the Company: (i) it has not acquired such Interest for purposes of earning any return on such Interest, nor with a view to resell or distribute the same or any part thereof, it understands that it will receive no value for its Interest in the event of resignation and/or Dissociation and (iii) no other Person/entity has any Interest in such Interest or in the rights of such Shareholder under this Agreement. Each Shareholder acknowledges that it has actual notice of (a) the provisions hereof (including the restrictions on Transfer set forth herein), and (b) all of the provisions of the Certificate of Formation.

**20.15. Set-off**

. In the event any Shareholder owes any amount to the Company, by reason of a breach of such Shareholder's obligations hereunder or otherwise, the Company may set-off and deduct the amount so owing from such Shareholder from any payments otherwise required to be made to such Shareholder.

**20.16. Agency Disclaimer**

. Nothing contained in this Agreement or in the acts taken by any Shareholder hereto shall create or be construed to create a partnership, joint venture, employee relationship, agency relationship or any other business relationship, nor shall the same make any party the agent of a Manager, the Company or of the other Shareholders other than what is contemplated in this Agreement. Nothing contained herein shall give, or is intended to give, any rights of any kind to any third party.

**20.17. Compliance with Rules, Laws and Regulations**

. The Parties shall comply with all federal, state, and local laws and regulations

applicable to their performance as described in this Agreement, however, nothing in this Agreement shall be construed as providing any party with a private right of action against another Party under any such laws and regulations that is not otherwise provided under applicable law.

#### **20.18. Incorporation of Recitals and Exhibits**

. Each of the recitals to this Agreement is by this reference incorporated into and made part of this Agreement.

#### **20.19. Interpretation**

. This Agreement and any amendments or ancillary agreements hereto shall, to the maximum extent possible, be construed in a manner that renders the terms of the Agreement, the amendments and ancillary agreements hereto consistent with each other; *provided, however*, if this Agreement, any amendments or ancillary agreements hereto cannot be interpreted in a consistent manner, then the provisions of this Agreement shall control, unless specifically stated otherwise in the amendment or ancillary agreement. Wherever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. The use of the word the words “hereof”, “herein”, and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Any references herein to a specific Section shall refer, respectively, to Sections of this Agreement. Wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”.

#### **20.20. Confidentiality**

. Each Party has made and will continue to make available to the other Parties Confidential Information. Confidential Information may be disclosed in oral, written, visual, electronic or other form. Except as otherwise expressly permitted under this Agreement or with the express prior written consent of the disclosing party, the receiving party will not disclose, transmit or otherwise disseminate in any matter whatsoever any Confidential Information of the disclosing party to any third party. The receiving party will use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the disclosing party as the receiving party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). The Parties may disclose Confidential Information to any employees, consultants, agents, subcontractors or advisors and other third parties, in each case, who have a need to know and are obligated to maintain the confidentiality of the Confidential Information upon terms similar to those contained in this Agreement or as may be necessary by reason of legal, accounting or regulatory requirements. The receiving party will be liable for any unauthorized disclosure or use of Confidential Information by any of its employees, consultants, agents, subcontractors advisors or other third parties. The receiving party will promptly report to the disclosing party any breaches in security that may materially affect the disclosing party and will specify the corrective action to be taken.

The obligations set forth in this **Section 20.20** do not apply to any Confidential Information that: (i) the receiving party possessed prior to disclosure by the disclosing party, without an obligation of confidentiality; (ii) is or becomes publicly available without breach of this Agreement by the receiving party, other than non-public customer or employee information; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is or was received by the receiving party from a third party that does not have an obligation of confidentiality to the disclosing party. If the receiving party is legally required to disclose any Confidential Information of the disclosing party in connection with any legal or regulatory proceeding, the receiving party will, if lawfully permitted to do so, endeavor to notify the disclosing party within a reasonable time prior to disclosure and to allow the disclosing party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party may disclose only that portion of that Confidential Information that it is, according to the opinion of counsel, legally required to disclose and will exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to that Confidential Information.

**20.21. No Presumption based on Drafter**

. The Parties desire that no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

**20.22. Captions and Pronouns**

. The captions and headings of the various Articles and Sections of this Agreement are intended only as a matter of reference and convenience and in no way define, limit or prescribe the scope or intent of this Agreement or any Article or Section. As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof wherever the context and facts require such construction.

## **EXHIBIT C**

### **INITIAL BOARD OF MANAGERS**

#### **Large Firms – 2**

Firms with \$300 million or more in annual transaction volume

Latter & Blum Realty - Lacey Conway

Gardner REALTORS(R) - Glenn Gardner

#### **Mid-sized Firms – 2**

Firms with \$100 million to \$299.9 million in annual transaction volume

Century 21 Bessette - Tara Demarie

Keller Williams CENLA Partners - Joy Juderman

**Small Firms - 2**

Firms with up to \$99.9 million in annual transaction volume

Webb Jay & Associates - Webb Jay

Flavin Realty - Tommy Eastman