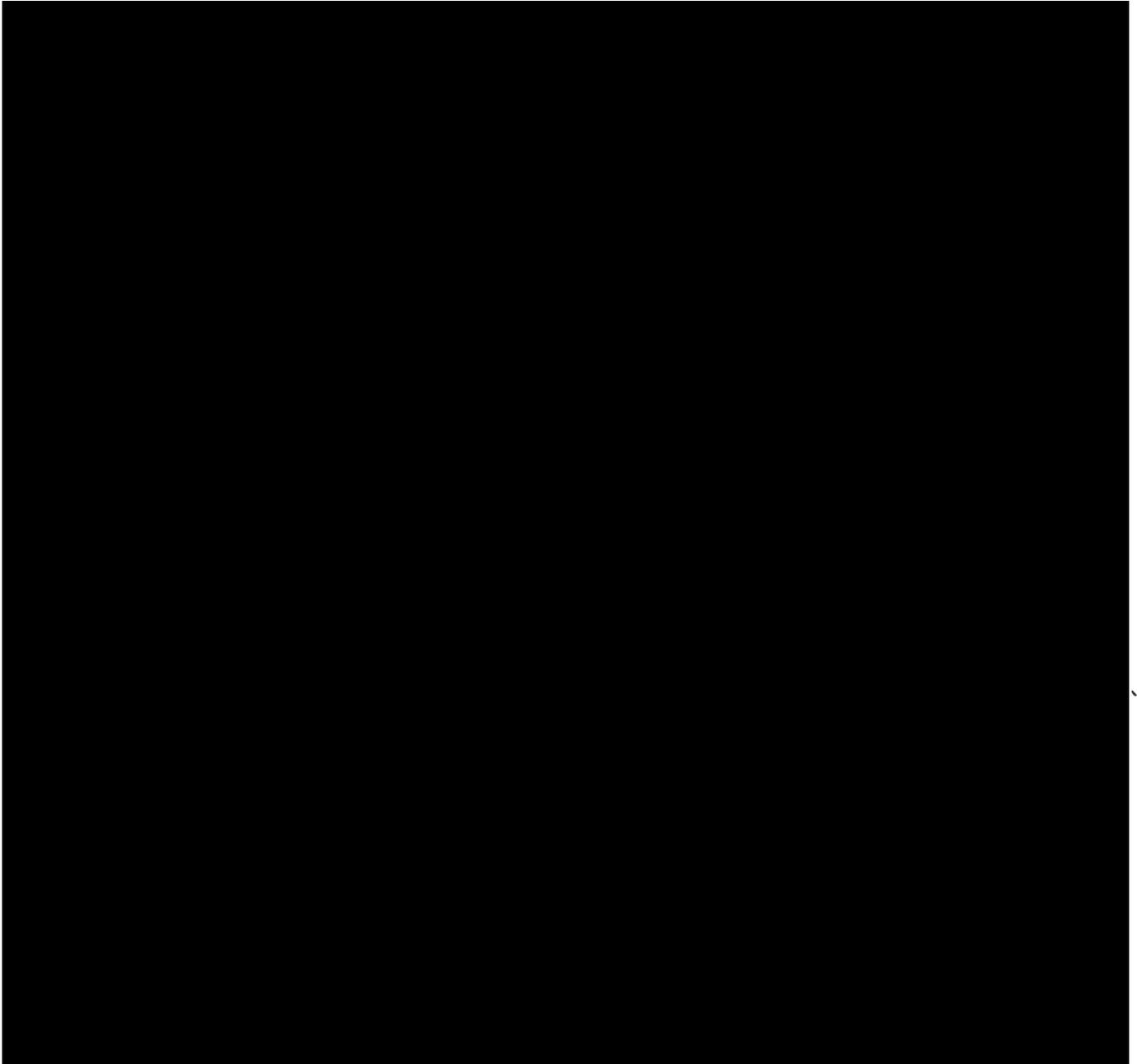


Letter of Commitment to Investment
July 19th, 2023

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

Dear City of Healdsburg Selection Committee,



Letter of Commitment to Investment - Template.docx

Final Audit Report

2023-07-27

Created:	2023-07-27
By:	Nick Caston (nwcaston@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABI-zBvGh3srQPVWerBthm0fAwe_B4wIC

"Letter of Commitment to Investment - Template.docx" History

-  Document created by Nick Caston (nwcaston@gmail.com)
2023-07-27 - 6:57:45 PM GMT- IP address: 135.180.136.10
-  Document emailed to richmcnally@gmail.com for signature
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2023-07-27 - 7:19:27 PM GMT- IP address: 104.28.123.101
-  Signer richmcnally@gmail.com entered name at signing as Rich McNally
2023-07-27 - 7:20:28 PM GMT- IP address: 166.198.34.72
-  Document e-signed by Rich McNally (richmcnally@gmail.com)
Signature Date: 2023-07-27 - 7:20:30 PM GMT - Time Source: server- IP address: 166.198.34.72
-  Agreement completed.
2023-07-27 - 7:20:30 PM GMT

Morgan Stanley

WEALTH MANAGEMENT

Bryan Gibson
Complex Risk Officer - VP

399 Park Avenue
12th Floor
New York, NY 10022

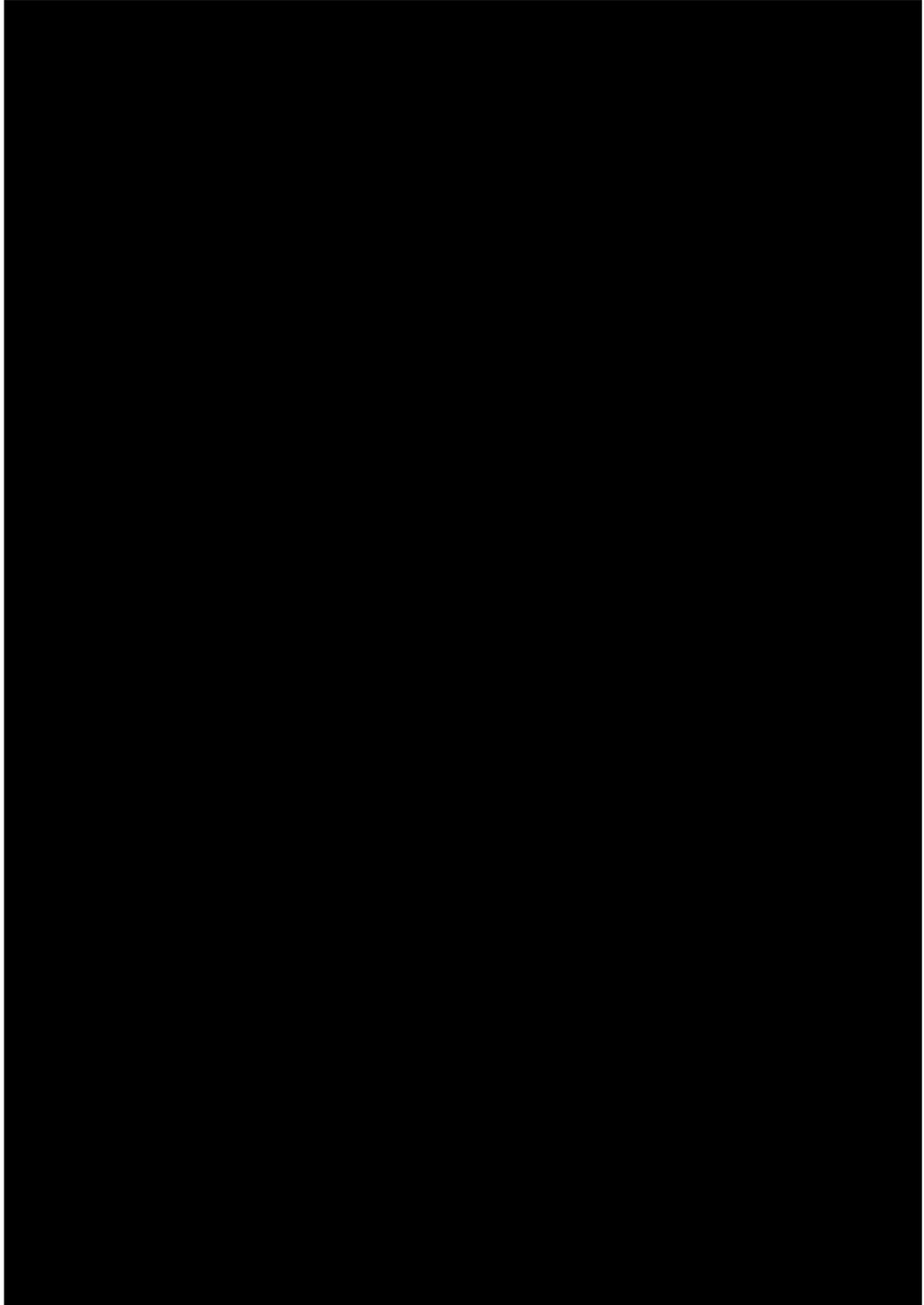
Tel: +1 212 893 7662

Bryan.gibson@morganstanley.com

www.morganstanley.com

July 20, 2023

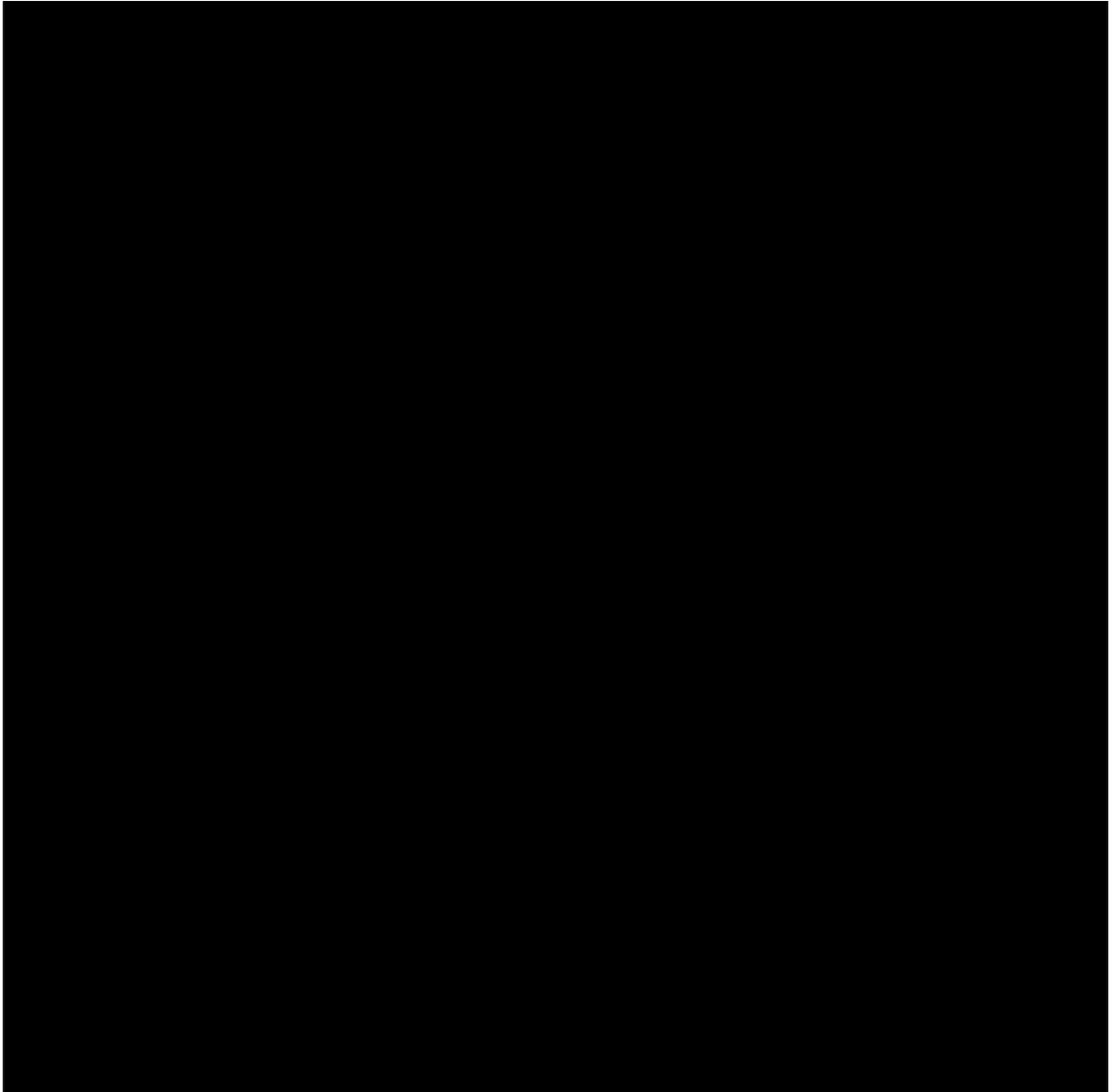
City of Healdsburg
401 Grove St
Healdsburg, CA 95448
Re: Richard McNally



Letter of Commitment to Investment
July 19, 2023

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

Dear City of Healdsburg Selection Committee,



Letter of Commitment to Investment - Ubben (1)

Final Audit Report

2023-07-19

Created:	2023-07-19
By:	Nick Caston (nwcaston@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbzpY_KcN-H6zLctEqMwy8KXrq_m87F8P

"Letter of Commitment to Investment - Ubben (1)" History

-  Document created by Nick Caston (nwcaston@gmail.com)
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-  Signer theoubben@gmail.com entered name at signing as Theo Ubben
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-  Document e-signed by Theo Ubben (theoubben@gmail.com)
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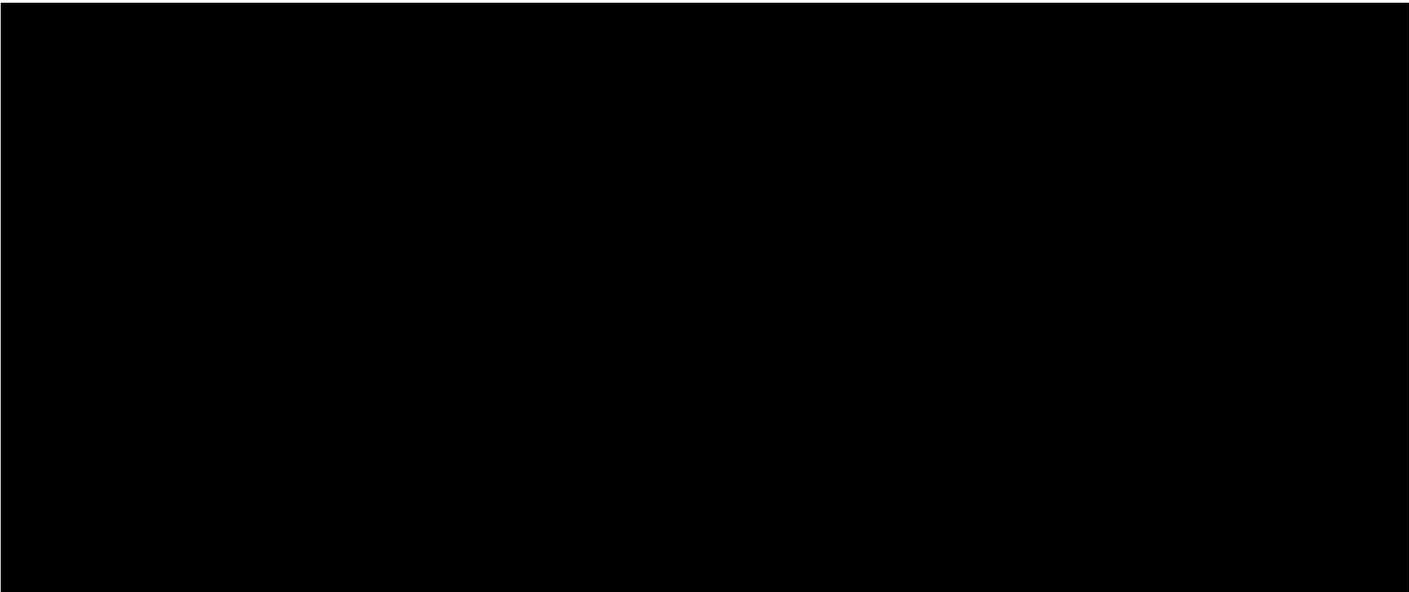
FIRST REPUBLIC PRIVATE WEALTH MANAGEMENT
It's a privilege to serve you®

Theodore Ubben

8 Octavia St, PH 3

San Francisco, CA 94102

July 17th, 2023



Sincerely,

DocuSigned by:

Justin Chamberlain

140D4C32F0D342A...

Justin Chamberlain

Client Service Manager

First Republic Investment Management

First Republic Private Wealth Management

San Francisco • Palo Alto • Los Angeles • Santa Barbara • Newport Beach • San Diego • Portland • Jackson • Palm Beach • Boston • Greenwich • New York

111 Pine Street, San Francisco, California 94111 • (415) 392-1400 Toll Free (800) 392-1400 • firstrepublic.com
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202358012518



STATE OF CALIFORNIA
Office of the Secretary of State
ARTICLES OF ORGANIZATION
CA LIMITED LIABILITY COMPANY
 California Secretary of State
 1500 11th Street
 Sacramento, California 95814
 (916) 653-3516

For Office Use Only

-FILED-

File No.: 202358012518

Date Filed: 7/5/2023

B1924-2174 07/05/2023 3:15 PM Received by California Secretary of State

Limited Liability Company Name	
Limited Liability Company Name	465 Retail LLC
Initial Street Address of Principal Office of LLC	
Principal Address	465 HEALDSBURG AVE HEALDSBURG, CA 95448
Initial Mailing Address of LLC	
Mailing Address	785 GRAVENSTEIN HWY S SEBASTOPOL, CA 95472
Attention	Eli Melrod
Agent for Service of Process	
Agent Name	Eli Melrod
Agent Address	465 RETAIL LLC HEALDSBURG, CA 95448
Purpose Statement	
The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.	
Management Structure	
The LLC will be managed by	One Manager
Additional information and signatures set forth on attached pages, if any, are incorporated herein by reference and made part of this filing.	
Electronic Signature	
<input checked="" type="checkbox"/> By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.	
<i>Habib M. Bentaleb</i>	07/05/2023
Organizer Signature	Date

**OPERATING AGREEMENT
FOR 465 RETAIL LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

This Operating Agreement (the “Agreement”) of 465 Retail LLC (the “Company”), a California limited liability company, effective as of July 7, 2023, is entered into by and among the Company and the members of the Company listed on Exhibit A (each a “Member” and collectively the “Members”) on the terms and conditions set forth below.

WHEREAS, the Company was formed as a limited liability company on July 7, 2023, by the filing of the Company’s Articles of Organization with the California Secretary of State pursuant to and in accordance with the California Revised Uniform Limited Liability Company Act, as amended from time to time;

WHEREAS, the Members desire to enter into this Agreement in order to provide for the governance of the Company and the conduct of its business and to specify each Member’s relative rights and obligations. Any new Members that are admitted to the Company as Members will be bound by the terms and provisions contained herein.

NOW, THEREFORE, incorporating the foregoing recitals and in consideration of the mutual agreements contained herein, the Members hereto agree as follows:

**ARTICLE I
DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings set forth below:

1.1 Act. Act shall mean the California Revised Uniform Limited Liability Company Act, codified in the California Corporations Code beginning at Section 17701.01 as that Code may be amended from time to time.

1.2 Agreement. Agreement shall mean this Operating Agreement.

1.3 Articles. Articles shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.4 Bankruptcy. Bankruptcy shall mean: (i) the filing of an application for a Member for, or its consent to, the appointment of a trustee, receiver, or custodian of its other assets; (ii) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (iii) the making by a Member of a general assignment for the benefit of creditors; (iv) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (v) the failure by a Member generally to

pay its debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of its inability to pay its debts as they become due.

1.5 Capital Account. Capital Account shall mean the account maintained for each Member in accordance with Article 3 of this Agreement.

1.6 Capital Contribution. Capital Contribution means with respect to any Member, the amount of money and the Gross Asset Value of any property (other than money) contributed to the Company by such Member.

1.7 Code. Code shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.8 Company. Company shall mean 465 Retail LLC, a California limited liability company.

1.9 Company Property. Company Property shall refer to and may include: common and preferred stock; notes, bonds and debentures; trust receipts and other obligations, instruments or evidences of indebtedness; choses in action; investment contracts; interests in real property, whether improved or unimproved; interests in agreements relating to contracts of insurance; and interests in personal property of all kinds, tangible or intangible (including cash and bank deposits). Title to Company Property shall be held in the name of the Company or, in the discretion of the Manager, in such other manner as may be permitted by law (*e.g.*, in the name of a nominee on behalf of the Company).

1.10 Corporations Code. Corporations Code shall mean the California Corporations Code, as amended from time to time, and the provisions of succeeding law.

1.11 Gross Asset Value. Gross Asset Value means, with respect to any item of Company Property, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any item of property contributed by a Member to the Company shall be the fair market value of such property, as mutually agreed by the contributing Member and the Company;

(b) The Gross Asset Value of any item of Company Property distributed to any Member shall be the fair market value of such item of property on the date of distribution; and

(c) The Gross Asset Value of the Company Property shall be increased or decreased to reflect adjustments to the adjusted tax basis of such property under Code Section 732, Code Section 733 or Code Section 743, subject to the limitations imposed by Code Section 755 and Regulation Section 1.704-1(b)(2)(iv)(m).

1.12 Manager(s). Manager(s) shall mean the Person or Persons either initially appointed or subsequently elected as provided herein to conduct the Company's day to day

affairs. A Manager need not be a Member. Gravenstein 116 LLC is hereby appointed to serve as the initial Manager. One or more additional Managers may be selected in accordance with Section 5.4.

1.13 Member. Member shall mean each Person who (i) is an initial signatory to this Agreement or has been admitted to the Company as a Member in accordance with Article 4 of this Agreement or is a transferee who has become a Member in accordance with Article 7; and (ii) has not dissociated.

1.14 Membership Interest. Membership Interest means an interest in the Company owned by a Member, including such Member's right (based on the Unit or Units held by such Member), as applicable, to (a) such Member's Distributive share of Net Income, Net Losses, and other items of income, gain, loss, and deduction of the Company; (b) such Member's Distributive share of the assets of the Company; (c) vote on, consent to, or otherwise participate in any decision of the Members as provided in this Agreement; and (d) any and all other benefits to which such Member may be entitled as provided in this Agreement or the Act.

1.15 Net Profits and Net Losses. Net Profits and Net Losses means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing profits or losses pursuant to this section shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing profits or losses pursuant to this section, shall be subtracted from taxable income or loss;

(c) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair market value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its fair market value;

(d) In lieu of the depreciation, amortization, and other cost recovery deduction taken into account in computing such taxable income or loss, there shall be taken into account depreciation for such fiscal year or other period, computed in accordance with subsection (c) hereof; and

(e) Notwithstanding any other provisions of this section, any items which are specially allocated pursuant to this Agreement shall not be taken into account in

computing profits or losses.

1.16 Person. Person shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust, association or any other entity.

1.17 Regulations. Regulations shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

1.18 Tax Representative. Tax Representative means a Member appointed in accordance with Article 4 of the Agreement who has all of the powers of a "partnership representative" under Section 6223 as enacted and amended by the Bipartisan Budget Act of 2015. Such powers include, but are not limited to, representing the Company before the Internal Revenue Service, making relevant elections, and binding Members to all final determinations by the Internal Revenue Service. The Tax Representative has authority over California income and franchise tax matters.

1.19 Transferable Interest. Transferable Interest shall mean the right, as originally associated with a Person's capacity as a Member, to receive distributions from the Company in accordance with this Agreement and the Act, whether or not the Person remains a Member or continues to own any part of the right.

1.20 Transferable Interest Owner. Transferable Interest Owner shall mean the owner of a Transferable Interest who is not a Member.

1.21 Transferee. Transferee shall mean a Person to which all or part of a Transferable Interest has been transferred, whether or not the transferor is a Member.

1.22 Units. Units means the Units having the privileges, preference, duties, liabilities, obligations, and rights specified with respect to the Company Units in this Agreement.

ARTICLE 2 ORGANIZATIONAL MATTERS

2.1 Formation. Pursuant to the Act, the Members have formed a California limited liability company under the Act. The Manager has caused the Articles to be filed with the Secretary of State. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 Name. The name of the Company is 465 Retail LLC.

2.3 Term. The term of the Company commenced upon the filing of the Articles and shall continue in existence perpetually, unless terminated sooner under the Act or as provided herein.

2.4 Principal Place of Business. The principal place of business of the Company shall be located at 465 Healdsburg Avenue, Healdsburg, California 95448, or at such other place as the Manager shall determine.

2.5 Purpose of Company. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act.

ARTICLE 3 CAPITAL CONTRIBUTIONS AND UNITS

3.1 Initial Capital Contributions. The initial Capital Contributions of the Members with values as agreed to by the Members are set forth on Schedule A.

3.2 Capital Accounts. A Capital Account shall be maintained for each Member in accordance with the capital accounting rules under Regulation Section 1.704-1(b)(2)(iv).

Except as otherwise provided in Regulation Section 1.704-1(b)(2)(iv), each Member's Capital Account will be determined under the following provisions:

(a) ***Increases to Capital.*** Each Member's Capital Account shall be increased by: (i) such Member's Capital Contributions; (ii) such Member's distributive share of Net Profit; (iii) any items in the nature of income or gain that are specially allocated pursuant to this Agreement; and (iv) the amount of any liabilities that are assumed by such Member or that are secured by any Company Property distributed to such Member.

(b) ***Decreases to Capital.*** Each Member's Capital Account shall be decreased by: (i) the amount of cash and the fair market value of any Company Property distributed to such Member pursuant to any provision of this Agreement; (ii) such Member's distributive share of Net Losses; (iii) any items in the nature of expenses or losses that are specially allocated pursuant to this Agreement; and (iv) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) ***Successors.*** In the event any interest in the Company is transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest; provided, however, that if a Member transfers a portion of such Member's Membership Interests and retains a portion, the Capital Account attributable to the Membership Interest of such Member shall be allocated between the Membership Interest transferred and the Membership Interest retained in pro rata proportions; and

(d) ***Adjustments.*** The Manager shall adjust the amounts increased or decreased to Capital Accounts with respect to (i) any property contributed to the Company or distributed to the Members; and (ii) any liabilities that are secured by such contributed or distributed property or that are assumed by the Company or

Members, in the event the Manager shall determine such adjustments are necessary or appropriate pursuant to Regulations Section 1.704-1(b)(2)(iv).

The foregoing provisions and any other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section I. 704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto are computed in order to comply with such Regulations, the Manager may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Member pursuant to this Agreement upon dissolution of the Company. The Manager shall make any appropriate modifications in the event unanticipated events might otherwise cause this agreement not to comply with Regulations Section 1.704-1(b) with respect to any Member, the Capital Account of which the Company establishes and maintains for such Member pursuant to this Article 3.

3.3 Withdrawal of Capital after Commencement of Company. No Member shall be entitled to withdraw any part of such Member's Capital Account or to receive any distributions from the Company, except as specifically provided in this Agreement. No Member shall have the right to receive property other than cash in return for such Member's Capital Contribution. No Member shall be entitled to receive interest with respect to such Member's Capital Contribution.

3.4 Assessments or Additional Contributions. The Company, acting by its Manager then serving, will have the authority to "call" on the Members to contribute additional capital when: (i) additional capital is reasonably needed to pay existing or anticipated expenses of operation and administration, debt service for any amounts borrowed by the Company, insurance and tax payments, the cost of acquiring, maintaining and selling Company Property; and (ii) the calls for capital are not discriminatory; that is, all Members are required to contribute capital to the extent of each Member's Membership Interest. A required contribution of capital must be made within sixty (60) days from the date the call is made. If a Member cannot, or does not, contribute capital in an amount equal to such Member's Membership Interest, other Members may pay the deficiency as an additional Capital Contribution. In each such case, the Company, acting by and through its Manager then serving, will have the authority to reallocate the Membership Interests of all Members, decreasing the Membership Interest of those who did not make a full contribution and increasing the Membership Interest of those who did make a full contribution. The reallocation of Membership Interests is to be determined by dividing the balance of each Member's Capital Account by the total of all of the Capital Accounts of all Members.

3.5 Admission of Additional Members and Additional Capital Contributions. Upon the admission of additional Members in accordance with the terms and provisions of this Agreement, the Manager may accept additional Capital Contributions from such Members and the Agreement shall be amended to set forth the Membership Interests of such additional Members. The Membership Interests allocable to the additional Members shall be that proportion which the net fair market value (as determined by the Manager) of the assets contributed by the additional Members bears to the total net fair market value (as determined by the Manager) of all of the assets of the Company, including such

contributions, at the date of contribution.

3.6 Units. The Membership Interests of the Members shall be represented by issued and outstanding Units, which may be divided into one or more types, classes, or series. Each type, class or series of Units shall have the privileges, preference, duties, liabilities, obligations, and rights, including voting rights, if any, set forth in this Agreement with respect to such type, class, or series. The Manager shall maintain a schedule of all Members, their respective mailing addresses, and the amount of Units held by them (the "Members Schedule") and shall update the Members Schedule upon the issuance or Transfer of any Units to any new or existing Member.

3.7 Authorization and Issuance of Units. The Company is hereby authorized to issue up to two hundred thousand (200,000) Units. As of the date hereof, one hundred thousand (100,000) Common Units are issued and outstanding in the amounts set forth on the Members Schedule opposite each Member's name.

ARTICLE 4 MEMBERS

4.1 Voting and Control. Except as otherwise provided in this Agreement, no Member, acting solely in the capacity as a Member, shall participate in the control, conduct or operation of the Company and no Member shall have the right or authority to act for or bind the Company.

4.2 Voting Rights. The Members shall have the right to vote only upon the following matters affecting the Company:

- (a) Admission of additional Members;
- (b) Removal and appointment of Manager(s);
- (c) Limitations on the Manager's authority;
- (d) Selection of the Tax Representative;
- (e) All actions of a Tax Representative;
- (f) Dissolution of the Company; and
- (g) Amendment of this Agreement or the Articles.

Except as otherwise specifically provided in this Agreement or the Articles, all of such matters shall require the vote or written consent of a majority of the Company's Units held by the Members. All actions of the Tax Representative require a vote of fifty-one percent (51%) of the Company's Unit holders. In the event of a failure to reach a vote of fifty-one percent (51%) in interest of the Company's Unit holders, the Tax Representative

is authorized: (i) to act in its discretion in order to meet all deadlines and filing obligations imposed by the Internal Revenue Service; and (ii) to act in such a manner that it believes will minimize the overall tax liability of the Members.

The Members shall have the foregoing right to vote only if the grant or exercise of said voting right will not adversely affect the classification of the Company as a partnership for federal or state income tax purposes or the limited liability of the Member.

4.3 Limited Liability. Except as required under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.4 Admission of Additional Members. One or more additional Members may be admitted to the Company upon the occurrence of all the following:

- (a) The vote or written consent of a majority of the Company's Units held by the Members;
- (b) The contribution of such additional Member's Capital Contribution as provided in Article 3;
- (c) The execution by such additional Member and the Manager of a joinder agreement accepting and adopting the terms and provisions of this Agreement and the Articles, in a form substantially as provided in Exhibit B; and
- (d) The payment by such additional Member of any reasonable expenses, as determined by the Manager, associated with such additional Member's admission to the Company.

4.5 Dissociations, Withdrawals or Resignations. No Member may dissociate, withdraw or resign from the Company without the written consent of a majority of the Company's Units held by the Members. Upon the dissociation, withdrawal or resignation of a Member in violation of this Agreement, the Membership Interest of such Member shall be terminated and such Membership Interest may be purchased by the Company or remaining Members as provided in Section 7.4. A Person who wrongfully dissociates is liable to the Company and to the other Members for any damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the Person to the Company or the other Members.

4.6 Expulsion. No Manager, Member or group of Members has the right or power to expel any Member, except that a Person may be expelled as a Member and thereby dissociated by the unanimous consent of the other Members if and only if any of the following applies:

- (a) It is unlawful to carry on the activities of the Company with the Person as a Member; or

(b) On application by the Company, the Person is expelled as a Member because the Person has done any of the following:

(i) Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the activities of the Company;

(ii) Willfully or persistently committed, or is willfully and persistently committing, a material breach of this Agreement or the Person's duties or obligations to the Company; or

(iii) Engaged, or is engaging, in conduct relating to the activities of the Company that makes it not reasonably practicable to carry on those activities with the Person as a Member.

4.7 Dissociation.

(a) ***Effect of Dissociation.*** When a Person is dissociated as a Member (by expulsion or otherwise), all of the following apply:

(i) The Person's right to participate as a Member in the management and conduct of the activities of the Company terminates; and

(ii) Any Membership Interest owned by the Person immediately before dissociation in the Person's capacity as a Member is owned by the Person after the dissociation solely in the capacity of a Transferable Interest Owner who is not a Member.

(b) ***No Discharge of Liabilities.*** A Person's dissociation as a Member does not of itself discharge the Person from any debt, obligation, or other liability to the Company or to the other Members that the person incurred while a Member.

(c) ***Not Entitled to Distribution.*** A Person's dissociation does not entitle the Person to a distribution.

(d) ***Right as a Transferable Interest Owner.*** Beginning on the date of dissociation, the dissociated Person shall have only the right of a Transferable Interest Owner who is not a Member with respect to that Person's Transferable Interest, and then only with respect to distributions, if any, to which such a Transferable Interest Holder is entitled under this Agreement.

(e) ***Dissociation in Violation.*** If the dissociation is in violation of this Agreement, the Company shall have the right to offset any damages for the breach of this Agreement from the amounts, if any, otherwise distributable to the dissociated Person with respect to that Person's Transferable Interest.

4.8 Transactions with the Company. A Member may, with the consent of the

Manager, lend money to and transact other business with the Company on such terms as the Member and the Manager may agree, and such loans shall be segregated in the loans payable account.

4.9 Duty of Good Faith and Fair Dealing. A Member shall discharge the duties to the Company and the other Members under the Act or under this Agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

4.10 Power of Attorney. Each Member, in accepting this Agreement, makes, constitutes and appoints the Manager, with full power of substitution, as such Member's attorney-in-fact and personal representative to sign, execute, certify, acknowledge, file and record all appropriate instruments amending this Agreement and the Articles on behalf of the Member. In particular, the Manager as attorney-in-fact may sign, acknowledge, certify, file and record on the behalf of each Member such instruments, agreements, and documents which: (i) reflect the exercise by the Manager of any of the powers granted to a Manager under this Agreement; (ii) reflect any amendments relating to this Agreement; (iii) reflect the admission or dissociation of a Member; and (iv) may otherwise be required of the Company or a Member by the laws of the State of California, federal law, or the laws of any other applicable jurisdiction. The power of attorney herein given by each Member is a durable power and will survive the disability or incapacity of the principal.

4.11 Meetings of Members.

(a) ***Voting Rights.*** The Members shall have the right to vote on the matters explicitly set forth in this Agreement; provided, however, the right to vote on matters granted by this Agreement is in lieu of the provisions of Corporations Code Section 17704.07(c)(4), and the Members shall not be entitled to vote on any other matter, nor shall the consent of the Members be required for any other decision or action except as expressly granted by the Agreement or except as required by law. On all matters on which all Members may vote, each Member shall have a vote equal to his or her percentage interest in the Company.

(b) ***Date, Time and Place of Meetings of Members; Secretary.*** Meetings of Members may be held at such date, time and place within the State of California as the Manager may fix from time to time. At any Members' meeting, the Manager shall preside at the meeting and any person may be appointed to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting, which shall be placed in the minute books of the Company.

(c) ***Power to Call Meetings.*** Unless otherwise prescribed by the Act or by the Articles, meetings of the Members may be called by the Manager, or upon written demand of a majority of the Company's Units held by the Members.

(d) ***Notice of Meeting.*** Written notice of a meeting of Members shall be sent or otherwise given to each Member in accordance with Section 4.11(e) not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

(e) ***Manner of Giving Notice.*** Notice of any meeting of Members shall be given either personally or by first-class mail or facsimile or other written communication, charges prepaid, addressed to the Member at the address of that Member appearing on the books of the Company or given by the Member to the Company for the purpose of notice. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by facsimile or other means of written communication.

(t) ***Quorum.*** The presence in person or by proxy of a majority of the Company's Units held by the Members shall constitute a quorum at a meeting of Members. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum (other than adjournment) is thereafter approved by all Members.

(g) ***Adjourned Meeting.*** Any Members' meeting, whether or not a quorum is present, may be adjourned from time to time.

(h) ***Waiver of Notice or Consent.*** The actions taken at any meeting of Members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All such waivers, consents or approvals shall be filed with the Company records or made a part of the minutes of the meeting.

(i) ***Action by Written Consent Without a Meeting.*** Any action that may be taken at a meeting of Members may be taken without a meeting, if a consent in writing setting forth the action so taken is signed and delivered to the Company within sixty (60) days of the record date for that action by the Members.

(j) ***Telephonic Participation by Member at Meetings.*** Members may participate in any Members' meeting through the use of any means of conference telephone, video conference, or similar communications equipment, as long as all Members participating can hear one another. A Member so participating is deemed to be present in person at the meeting.

ARTICLE 5

MANAGEMENT

5.1 Management of the Company by the Manager. The Company shall be manager-managed and shall be managed exclusively by the Manager and not by all of the Members. The management and conduct of the Company is vested in the Manager. **Gravenstein 116 LLC** shall serve as the initial Manager of the Company. Except as otherwise specifically provided in this Agreement, the Manager, on behalf of and for the account of the Company, shall have full authority and discretion with respect to, and shall

be responsible for, the management and conduct of the business of the Company, and shall act for the Company in all matters and shall make all decisions affecting the day-to-day business of the Company. Except as otherwise expressly provided in the Articles of Organization, this Agreement or the Act, any matter relating to the activities of the Company is decided exclusively by the Manager. The Manager shall be required to devote such time and attention as the Manager determines, in the Manager's sole discretion, to be necessary to the conduct of the day-to-day business of the Company.

(a) ***Enumerated Powers.*** Subject to Section 5.3 below, the Manager, in addition to the general powers herein conferred, shall be authorized on behalf of the Company to:

(i) Change the name and principal place of business of the Company;

(ii) Acquire, hold, improve, maintain, encumber, exchange, lease, sell and otherwise deal with the assets of the Company;

(iii) Borrow money or loan money upon such terms and conditions as the Manager deems to be appropriate and reasonable, including loans which are approved by the Manager for the payment of premiums upon policies of life insurance insuring the life of a Member and secured by such policies;

(iv) Acquire and enter into any contract of insurance which the Manager deems necessary and proper for the protection of the Company, for the conservation of its assets, or for any purpose convenient or beneficial to the Company;

(v) Compromise, arbitrate, or otherwise adjust claims in favor of or against the Company, and commence or defend litigation with respect to the Company or any assets of the Company, as the Manager may deem advisable, all or any of the above matters being at the expense of the Company;

(vi) Execute, acknowledge and deliver any and all instruments to effectuate any power of the Manager;

(vii) Open accounts and deposit funds in the name of the Company in banks or savings and loan associations; and make interim investments in a money market account and/or such debt securities as would not bring the Company within the scope of the Investment Company Act of 1940;

(viii) Adopt the cash method of accounting, or subsequently change the accounting method or methods to be used by the Company, with such Internal Revenue Service approval as may be required;

(ix) Employ agents on behalf of the Manager or Company,

specifically including, but not limited to, accountants, attorneys, investment advisors and real estate professionals, and to pay such agents such amounts as the Manager may deem reasonable and appropriate. The Manager shall have the right to authorize such agents (and to execute, if necessary, powers of attorney authorizing such agents acting pursuant to and in compliance with instructions of the Manager) to: (i) pledge, hypothecate and rehypothecate any Company Property as collateral for loans made to the Company; (ii) sign, endorse, negotiate, and transfer any note, check, draft or other instrument of the Company; (iii) do all acts necessary to effect the purchase, sale or transfer of Company Property pursuant to and in compliance with instructions of the Manager; and (iv) take any other action on behalf of the Manager or the Company herein authorized to be taken by the Manager;

(x) Sell or otherwise dispose of all, or substantially all, of the property of the Company, with or without the goodwill, outside the ordinary course of the activities of the Company;

(xi) Approve a merger of the Company with another entity or the conversion of the Company to another type of entity; and

(xii) Undertake any other act outside the ordinary course of the activities of the Company.

(b) **Third Parties.** No person dealing with the Manager or with any employee or agent authorized by the Manager shall be required to determine the authority of such employee, agent, or Manager to act on behalf of the Company, or to determine any facts or circumstances bearing on the existence of such authority.

(c) **Limitation.** Notwithstanding the foregoing or anything to the contrary stated herein, in no event shall any authority for the administration of any insurance policy be delegated to any Member or other person whose life is insured by such life insurance.

5.2 Multiple Managers. If at any time there is more than one Manager, the powers and duties of the Managers may be divided among them or shared between them, as they may agree from time to time. Notwithstanding the foregoing, the Managers must consult and agree with each other prior to taking any action on behalf of the Company although each Manager shall have the authority to act individually.

5.3 Powers of Manager. The Manager shall have the authority to cause the Company to engage in all transactions necessary for the consistent operations of the Company, in the Manager's discretion, without first obtaining the vote or written consent of the Members.

5.4 Resignation or Removal; Appointment.

(a) **Resignation.** A Manager may resign at any time by giving written

notice to the Members. The resignation of a Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. If the resigning Manager is also a Member, such resignation shall not affect the resigning Manager's rights as a Member and shall not constitute a dissociation of such Member. Upon a Member's ceasing to be a Manager for any reason, that Member is excused from performing services, and ceasing to be a Manager for any reason will have no effect, of itself, on a Member's share of capital, profits, losses, or distributions. The cost of hiring another Person, if needed, to provide services that were to have been provided by the deceased, disabled, or former Manager will be borne by the Company. The provisions of this subsection supersede the provisions of Corporations Code Section 17704.03(a).

(b) **Removal.** A Manager may be removed at any time upon the vote or written consent of a majority of the Company's Units held by the Members.

(c) **Appointment.** One or more additional or successor Managers may be appointed upon the vote or written consent of a majority of the Company's Units held by the Members. Each Manager shall serve at the pleasure of the Members, subject to the rights, if any, of the Manager under any contract of employment. The Manager need not be a Transferable Interest Owner or a natural person.

5.5 Guaranteed Payments. The Company may, by a vote of a majority of the Company's Units held by the Members, make guaranteed payments to the Manager pursuant to this section. The Manager and any of its affiliates shall be entitled to reimbursement by the Company for all expenses incurred by them in connection with the day-to-day business of the Company, or repayment of loans Manager has made to the Company.

5.6 Loans to Company. The Manager may, but is not obligated to, make other loans or advances to the Company when funds are needed by the Company, at rates and terms not to exceed those generally prevalent at the time for similar loans.

5.7 Duties of the Manager. Each Manager owes fiduciary duties to conduct the affairs of the Company in the best interests of the Company and of the Members, including the safekeeping and use of all of the assets of the Company and the use of those assets for the exclusive benefit of the Company. The fiduciary duties a Manager owes to the Company and to the Members are the duty of loyalty and the duty of care set forth below.

(a) **Duty of Loyalty.** A Manager's duty of loyalty to the Company and the Members includes all of the following:

(i) To account to the Company and to hold as trustee for it any property, profit, or benefit derived by the Manager in the conduct and winding up of the Company's business or derived from a use by the Manager of assets or information belonging to the Company;

(ii) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an

interest adverse to the Company; and

(iii) To refrain from competing with the Company in the conduct of the Company's business before the dissolution of the Company.

(b) **Authorization or Ratification.** After full disclosure to all Members of all material facts, a majority of the Company's Units held by the Members may authorize or ratify a specific act, transaction or omission by a Manager if that act, transaction or omission might otherwise violate the Manager's duty of loyalty. Any act, transaction or omission so authorized or ratified shall not be a breach of the Manager's duty of loyalty.

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

(d) **Good Faith and Fair Dealing.** A Manager shall discharge the duties to the Company and the Members under the Act or under this Agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) **No Violation.** A Manager does not violate a duty or obligation under the Act or under this Agreement merely because the Manager's conduct furthers the Manager's own interest.

5.8 Limitation of Manager's Liability. The Manager shall not be liable to the Company or any Member for any action taken, or for failure to act on behalf of the Company (even if such action or failure to act constitutes simple negligence), unless such act or omission was fraudulent, in bad faith, or constitutes gross negligence.

5.9 Limitation on Successor Manager's Liability. Insofar as state law permits, a Manager who succeeds another will be responsible only for the property and records delivered by or otherwise acquired from the preceding Manager(s), and may accept as correct the Company records and the accounting of the preceding Manager(s) without duty to audit the records or accounting or to inquire further into the administration of the predecessor and without liability for a predecessor's errors and omissions.

5.10 Indemnity. The Company shall indemnify the Manager from any liability or damage; shall defend, save harmless, and pay all judgments against the Manager incurred by reason of any act or omission or alleged act or omission in connection with the business of the Company (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Manager for such liabilities under Federal and State Securities Laws (including the Securities Act of 1933) as the law permits. All judgments against the Company or the Manager or any employees or agents of the Manager, wherein the Manager or the employees or agents of the Manager are entitled to indemnification, must first be satisfied from Company assets before the Manager or the employees or agents of the

Manager are responsible for these obligations.

5.11 No Indemnity. Notwithstanding the foregoing provision of Section 5.10, a Manager shall not be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence, including:

- (a) A breach of the Manager's duty of loyalty;
- (b) A financial benefit received by a Manager to which the Manager is not entitled;
- (c) A Manager's personal liability to the Company for the amount of a distribution that exceeded the amount that could have been distributed without violating Section 17704.05 of the Corporations Code; or
- (d) Intentional infliction of harm on the Company or a Member.

ARTICLE 6

ALLOCATIONS OF NET PROFIT AND NET LOSSES

6.1 Allocation.

(a) ***Allocations of Net Profit.*** Net Profit from operations for each fiscal year shall be allocated among the Members and Transferable Interest Owners in proportion to their Transferable Interests.

(b) ***Allocation of Net Losses.*** Net Losses from operations for each fiscal year shall be allocated among the Members and Transferable Interest Owners in proportion to their Transferable Interests.

(c) ***Limitation on Allocation of Net Losses.*** Notwithstanding the above, no allocation of Net Losses shall be made to a Member or Transferable Interest Owner to the extent that such allocation would create or increase a negative balance in that Member's or Transferable Interest Owner's Capital Account except such Net Losses as may be allocable to non-recourse debt of the Company.

(d) ***Retroactive Allocations Not Permitted.*** The Net Profit, Net Losses, and credits of the Company are allocable to a Member or Transferable Interest Owner only if they are paid or incurred by the Company during the portion of the year that such Member or Transferable Interest Owner owns a Transferable Interest in the Company. As between a Member and that Member's Transferee, the Manager may, in its discretion, allocate all Company Net Adjusted and Net Loss between such Member and its Transferee ratably on a daily basis.

6.2 Allocation of Taxable Gain from Sale of Company Property. Taxable gain from the sale or exchange of any of the Company's property (and income attributable to cancellation of indebtedness secured by Company property, which shall be treated as gain from the sale or exchange of Company property) shall be allocated by the Manager in accordance with the applicable Code and the Regulations thereunder. Any elections or other decisions relating to such allocation shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this section are solely for the purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's or Transferable Interest Owner's Capital Account or share of Net Income, Net Losses, or other items or distributions pursuant to any provision of this Agreement.

6.3 Allocation of the Net Profit and Losses and Distributions in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any fiscal year of the Company, each item of Net Profit, Net Loss, gain, deduction, or credit of the Company for such fiscal year shall be assigned pro rata to each day in the fiscal year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon its respective Membership Interest at the close of such day.

6.4 Distributions and Preferred Payments.

(a) Except as required under Section 6.4(b) and 6.4(c), the Company shall make distributions from time to time to the Members and Transferable Interest Owners in accordance with their Transferable Interests as provided in this Section 6.4. Amounts shall be distributed that, in the Manager's good faith determination through the exercise of bona fide business judgment, are not required for expenses or reasonable reserves, taking into account any foreseeable future investment opportunities. In the event of a non-pro-rata distribution, the Capital Account of the Member or Transferable Interest Owner receiving the non pro rata distribution shall be adjusted in accordance with Section 3.2. Notwithstanding any provision in this Agreement to the contrary, the Members may only determine to make or withhold a distribution if such determination is made in good faith in the exercise of a bona fide business judgment and is not made arbitrarily or in violation of Section 17704.05 of the Corporations Code. Except as otherwise provided in this Section 6.4, the Members shall make no distributions of cash or other property until the dissolution of the Company as provided under Article 8.

(b) The Company shall make distributions of Net Profit to the Members in the following priority order:

i. On a quarterly basis, cash distributions to Members in an amount of no more than fifty percent (50%) of Net Profit for personal federal and state income taxes.

ii. On a quarterly basis as determined by the Manager, if the Company maintains excess Net Profit after making all Manager guaranteed

payments as set forth at Section 5.5 and all distributions in accordance with Sections 6.4(b)(i)-(ii), prior to making any Member distributions, Company shall use 50% of that remaining balance to repay any loans until the Company has fully repaid those loans in full.

iii. After satisfaction of Sections 6.4(b)(i)-(iii), on a quarterly basis as determined by the Manager, each Member is entitled to receive cash distributions pro-rata based on the number of Units they hold from no more than 50% of the remaining excess Net Profit.

ARTICLE 7

RESTRICTIONS ON TRANSFER OF MEMBERSHIP INTERESTS

7.1 Restrictions on Transfer of Interests. No Member shall be entitled to transfer, sell, assign, encumber or in any way alienate all or any part of a Membership Interest, except with the prior written consent of a majority of the Company's Units held by the Members.

7.2 Permitted Transfer of Membership Interests. Notwithstanding Section 7.1, a Member may transfer all or any part of a Membership Interest, outright or in trust, by inter vivos or testamentary gift, to any of the following permitted transferees:

- (a) The Company or any other Member;
- (b) The trustees of a trust that the transferring Member may revoke or of which said Member is a lifetime beneficiary; or
- (c) The transferring Member's spouse, children, parent or sibling.

7.3 Death of a Member. If a Member, or a beneficiary of a trust which is a Member, dies, and as a result a Membership Interest would pass to any permissive transferee (or a trust for that transferee's benefit) described in Section 7.2, then said Membership Interest shall be transferred to said transferee or trustee; provided, however, if such Membership Interest would not pass to a permissive transferee (or a trust for the transferee's benefit) described in Section 7.2, the other Members shall then have the right to purchase the Membership Interest as provided in Section 7.4 below. If the deceased Member's Membership Interest is not passed to a permissive transferee and is not purchased by the other Members, the deceased Member's personal representative or other legal representative may exercise the rights of a Transferee and, for the purpose of settling the estate, the rights of a current Member. A deceased Member's estate may not, however, become a substitute Member except as provided in Section 4.4.

7.4 Option to Purchase. If a Member transfers a Membership Interest in violation of this Agreement, becomes bankrupt, files a petition for bankruptcy, dissociates as a Member, or if the marriage of a Member is dissolved and a Membership Interest is not awarded to the Member, the other Members (the "Remaining Members") shall have the right

to purchase the Membership Interest. If the Remaining Members elect to purchase the Membership Interest of such Member or such Member's successors in interest (the "Selling Member"), the Remaining Members shall purchase, and the Selling Member shall sell the Membership Interest as provided in this Section 7.4. If more than one Remaining Member elects to make the purchase, the Selling Member shall sell the Selling Member's Membership Interest to the Remaining Members who elect to purchase the Selling Member's Membership Interest in the proportion in which the Membership Interest of each such electing Remaining Member bears to the total interests of all Remaining Members who elect to purchase.

(a) **Purchase Price.** The purchase price for the Selling Member's Membership Interest shall be the fair market value of the Membership Interest considering the value of the assets, the liabilities and income of the Company, the marketability of the Membership Interest. For avoidance of doubt, the fair market value of the Membership Interest shall be reduced by the full amount of any Company debt outstanding at the time of the transfer. If the Company or Remaining Members and the Selling Member are unable to agree upon the fair market value of the Membership Interest, the Manager shall select a qualified independent appraiser who shall determine the fair market value of the Membership Interest. The cost of the independent appraiser shall be borne by the Selling Member. If the Company or Remaining Members disagree with the appraisal and the Remaining Members are unwilling to purchase the Selling Member's Membership Interest, Selling Member may market and/or transfer its Membership Interest to independent third parties in accordance with this Agreement, including the Remaining Members' Right of First Refusal as set forth at Section 7.6.

(b) **Notice of Intent to Purchase.** Within thirty (30) days after the Manager has notified the Remaining Members of the purchase price of the Selling Member's Membership Interest determined in accordance with Section 7.4(a), each Remaining Member shall notify the Manager in writing of his or her desire to purchase all or a portion of the Selling Member's Membership Interest. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of the Remaining Member not to purchase a portion of the Selling Member's Membership Interest.

(c) **Election to Purchase Less Than All of the Member's Membership Interest.** If any Remaining Member elects to purchase none or less than all of such Remaining Member's pro rata share of the Selling Member's Membership Interest, then the Remaining Members may elect to purchase more than their pro rata share. If the Remaining Members fail to purchase the entire Membership Interest of the Selling Member, the Company may purchase any remaining share of the Selling Member's Membership Interest under the terms of this Section 7.4.

(d) **Payment of Purchase Price.** The purchase price shall be paid by the Company or the Remaining Members, by either of the following methods, to be selected by the Company or the Remaining Members:

(i) The total purchase price shall be paid in cash; or

(ii) Ten percent (10%) of the purchase price shall be paid immediately in cash and the balance of the purchase price shall be paid in ten (10) equal annual principal installments, plus accrued interest. The unpaid principal balance shall accrue interest at the current Applicable Federal Mid Term Rate as provided in the Code for the month in which the initial ten percent (10%) payment is made, but the Company and the Remaining Members shall have the right to prepay in full or in part at any time without penalty. The obligation to pay the balance shall be evidenced by a promissory note, and if purchased by a Remaining Member, the note shall be secured by a pledge of the Membership Interest being purchased.

(e) ***Purchase Terms Varied by Agreement.*** Nothing contained in the Agreement is intended to prohibit Members from agreeing upon other terms and conditions for the purchase by the Company or any Member of the Membership Interest of any Member desiring to dissociate, in whole or in part, as a Member.

(f) ***Interest Not Purchased.*** The Selling Member may retain any portion of a Membership Interest which is not purchased. If the Selling Member is a successor in interest, unless admitted as a Member, such successor shall become a Transferable Interest Owner.

7.5 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if: (i) such transferee executes an instrument satisfactory to the Manager accepting and adopting the terms and provisions of this Agreement; (ii) such transferee pays any reasonable expenses in connection with that transferee's admission as a substitute Member; and (iii) a majority of the Company's Units held by the Members consent to the substitution, which consent may be withheld for any reason and made subject to such conditions as the Manager may determine are in the best interests of the Company.

7.6 Right of First Refusal. In the event a Member receives a bona fide third party binding offer to purchase ("Third Party Offer") all or any portion of its Membership Interest ("Transferor Interest") with such Third Party Offer containing no contingencies or subjectivities, the Company will have the option (the "First Purchase Option") to purchase any or all of the Membership Interest of such transferor pursuant to the terms of this Section.

Upon receiving a Third Party Offer, the transferor shall provide a true, correct and full copy of the terms of such Third Party Offer to the Company and Voting Members within five business days of receipt ("Transferor Notice"). Upon receipt of the Transferor Notice, the Company shall have Sixty (60) days to elect to purchase all or part of the Offered Membership Interests by delivering a written notice (the "First Purchase Option Notice") to the transferor stating that it offers to purchase such offered Interests on the terms specified in the Third Party Offer. The transferor shall recuse himself or herself from voting on whether or not the Company elects to exercise its First Purchase Option.

If the Company chooses not to elect to exercise its First Purchase Option, then each

Member shall have ten (10) days to elect to purchase the transferor's Membership Interest ("Second Purchase Option Notice") in whole, or on a pro-rata basis (based on current Membership percentages) if more than one Voting Member elects to exercise the Second Purchase Option. Each Voting Member that does not deliver a Second Purchase Option Notice during such ten (10) day period shall be deemed to have waived all of such Member's rights to purchase the Offered Membership Interests under this Section, and the transferor shall thereafter, subject to the rights of any Purchasing Member, be free to sell the Offered Interests pursuant to the Third Party Offer without any further obligation.

If the Company elects to exercise the First Purchase Option, the Company's notice of its election will fix a closing date (the "Transfer Closing Date") for the purchase, which will not be earlier than ten (10) days after the date of the notice of election.

If the Company elects to exercise the First Purchase Option, the Purchase Price will be paid on the Transfer Closing Date on terms as favorable as those in the Third Party Offer.

Any transfer made pursuant to a Third Party Offer without strict compliance with the terms, provisions, and conditions of this Agreement will be null and void and of no force and effect.

7.7 Effective Date of Permitted Transfer; Continuing Applicability of Restrictions. Any permitted transfer of all or any portion of a Membership Interest shall be effective as of the date provided in the instrument of transfer. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

7.8 Rights of an Assignee; Transfers in Violation of Agreement. If a transferee is not admitted as a Member pursuant to Section 7.5 above, or upon any transfer of a Membership Interest in violation of this Article 7, the Transferee shall have no right to vote or to exercise any rights of a Member. Such transferee shall only be entitled to become a Transferable Interest Owner and thereafter shall only receive the share of the Company's Net Profit, Net Losses and distributions of the Company's assets to which the transferor of such Transferable Interest would otherwise be entitled. The Transferable Interest of such a Transferee shall be subject to the option to purchase granted to the "Remaining Members" under Section 7.4.

ARTICLE 8

DISSOLUTION AND WINDING UP

8.1 Dissolution.

(a) **Dissolution Events.** The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- (i) The determination of the Manager to dissolve the Company;
- (ii) An election to dissolve the company made by a majority of the

Company's Unit holders;

(iii) Upon the sale of all or substantially all of the Company assets;

(iv) Upon the passage of ninety (90) consecutive days during which the Company has no Members, except on the death of a natural person who is the sole Member of the Company, the status of the Member, including a Membership Interest, may pass to the heirs, successors and assigns of the Member by will or applicable law and they may become a substituted Member pursuant to Corporations Code Section 17704.01; or

(v) Upon the entry of a decree of judicial dissolution pursuant to Section 17707.03 of the Corporations Code.

(b) **Bankruptcy of Member.** The Company shall not be dissolved upon the bankruptcy of one or more Members.

8.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the dissolution events specified in Section 8.1, the Members who have not wrongfully dissolved the Company shall execute a Certificate of Dissolution in such form as shall be prescribed by the California Secretary of State and file the Certificate as required by the Act.

8.3 Winding Up. Upon dissolution of the Company pursuant to Section 8.1 above, the Company, acting by its Manager or Members, shall continue in existence for the sole purposes of winding up its affairs, liquidating its assets, and satisfying the claims of its creditors. The Manager or Members winding up the Company shall be entitled to reasonable compensation for such services.

(a) **Distribution.** As soon as practicable after the effective date of dissolution of the Company, the Company's assets shall be distributed in the following manner and order:

(i) the claims of all creditors of the Company who are not Members shall be paid and discharged;

(ii) the claims of all creditors of the Company who are Members shall be paid and discharged; and

(iii) the remaining assets shall be distributed to the Members in accordance with Section 17707.05 of the Corporations Code; provided, however, that in no event shall any amount or any interest in any Company asset consisting of an interest in any policy of life insurance or any agreement relating to a policy of insurance (including a Split-Dollar Agreement relating to insurance on the life of any one or more of the Members) be distributed to a Member with respect to whom such policy or interest relates.

(b) **Distribution in Kind.** Whether any assets of the Company shall be liquidated through sale or shall be distributed to the interested Members in kind shall

be a matter to be determined by the Manager or the Members; provided, however, that if distribution is made in kind, in whole or in part, to the extent practicable, pro rata amounts of each asset so distributed shall be distributed to each Member, the Capital Accounts of the Members shall be adjusted to reflect each Member's proportionate share of any unrealized gain or loss in such property determined as though the Company sold such property for its then fair market value, and the amount of the distribution to any Member for purposes of this provision shall be the Member's proportionate share of the net fair market value of property distributed to such Member.

(c) **Retention of Assets.** If there is any asset which, in the sole discretion of the Manager or the Members, cannot be properly valued until sold or realized, or which cannot be liquidated without sacrificing a substantial portion of the value thereof, or which cannot properly be distributed in kind, such asset may be retained by the Company and shall not be paid or distributed until such time as the Manager or the Members shall determine to liquidate or distribute such asset, and thereafter the Manager or the Members shall, at the earliest practicable time, distribute such asset or the proceeds realized from the liquidation thereof, without interest, to the Members in accordance with their respective interests therein, except as otherwise required by Section 8.3(a)(iii) above.

(d) **Compliance with Regulations.** All payments to the Members upon the winding up and dissolution of Company shall be made strictly in accordance with the positive capital account balance limitation and other requirements of Section 1.704-1(b)(2)(ii)(d) of the Regulations.

8.4 Certificate of Cancellation. Upon the completion of the winding up of the affairs of the Company, the Manager or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a certificate of cancellation of the Articles.

(i) **No Action for Dissolution.** Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes the dissolution of the Company. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 8.1. Except where the Manager has failed to liquidate the Company as required by this Article, each Member hereby waives and renounces such Member's right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (i) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (ii) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member.

ARTICLE 9

BOOKS AND RECORDS REPORTS

9.1 Books and Records. The Manager shall keep, or cause to be kept by an agent, the books and records of the Company, which shall fully and accurately report all transactions and operations of the Company in accordance with methods used for federal income tax purposes. Such books and records, together with the original copy of the Agreement (and any amendments thereto) and an endorsed-filed copy of the Articles, shall at all times be maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives. Any Member or Transferable Interest Owner has the right to inspect and copy said books and records, provided that such inspection is made in good faith without any intent to damage the Company or any of its Members in any manner.

9.2 Tax Elections. Except for any elections under Code Sections 6221,6226 or otherwise related to the Bipartisan Budget Act of 2015, The Manager may make all of the Company's tax elections including any election to be taxed as an association taxable as a corporation consistent with the requirements of Regulations Section 301.770-3 and an election under Code Section 754.

9.3 Fiscal Year. The fiscal year of the Company shall be the calendar year.

9.4 Reports. The Manager shall cause to be filed the statement required under Corporations Code Section 17702.09.

9.5 Tax Reporting. The Manager shall cause to prepare and to file all federal, state and local income, sales, property and excise tax returns. The Manager shall cause to be prepared at least annually, at Company expense, Company information necessary for the preparation of the Members' and Transferable Interest Owners' federal and state income tax returns.

ARTICLE 10 MISCELLANEOUS

10.1 Executory Contract. This Agreement shall be construed as an Executory Contract.

10.2 Amendment of Agreement. Any amendment of the Articles or this Agreement shall require the vote or written consent of a majority of the Company's Units held by the Members.

10.3 Counterparts. This Agreement may be executed in counterparts and the counterparts taken together shall constitute one original Agreement. The Manager is authorized to attach counterparts of the signatures of all of the Members to a single copy of this Agreement.

10.4 Entire Agreement. This Agreement represents the entire understanding between the parties and may not be amended except in accordance with the terms and provisions of this Agreement.

10.5 Formation of Entities. The Company, acting by its Manager, is expressly permitted and authorized to form, participate in the formation of, and participate in the management of a trust (revocable or irrevocable of which the Company shall be a beneficiary), corporation, partnership, limited partnership, joint venture, and limited liability company, and to invest all or any part of the Company Property in one or more such entities which are intended to accomplish any one or more of the objectives of the Company, including (without limitation) the following:

(a) Providing greater protection to the assets of the Company or protection of the Company and its Members from liabilities incident to the conduct of a trade or business;

(b) Providing for the convenient management of property located in a jurisdiction other than the state in which the Company is formed; or

(c) Providing greater access to investment opportunities and to worldwide investment markets.

10.6 Gender Neutral. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter genders; and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

10.7 Independent Activities and Ventures. Each of the Members consents that any Member may, directly or indirectly, engage in or possess an interest in any other present or future business venture of any nature or description for his own account, independently or with others, including, without limitation, any other business engaged in, directly or indirectly by the Company, and neither the Company nor any Member shall have any rights in or to the interest of the Member in such independent venture or the income or profits derived therefrom. The fact that any employee or partner of a Member, or that any Member, or member of any Member's family, is employed by, or is directly or indirectly interested in or connected with, or is, any person, firm or corporation employed by the Company to render or perform a service, or from or through whom the Company may make any sale or purchase, or from whom the Company may borrow, shall not prohibit the Company from engaging in any transaction with such person, firm or corporation, or create any duty of legal justification additional to that which would exist if such person, firm or corporation was not so related to the Company, and neither the Company nor any other Member shall have any right in or to any income or profits derived from such transaction by such Member, person, firm or corporation.

10.8 Law of California. This Agreement and all amendments hereto shall be governed by the laws of the State of California.

10.9 Notices. All notices under this Agreement shall be in writing and shall be given to the Member entitled thereto by personal service or by first class mail or certified mail (return receipt requested) to the address that Member may specify in writing.

10.10 Severability. In the event any portion of this Agreement is declared by a court of

competent jurisdiction to be void, said portion shall be deemed severed from the remainder of the Agreement and the balance of the Agreement shall remain in effect.

10.11 Mediation. Should a dispute between the Parties arise from this Agreement, the aggrieved Party shall first demand that the other Party participate in non-binding mediation to attempt to informally resolve the dispute by delivering a demand to mediate to the other party. Any mediation shall be administered by JAMS and shall take place in Sonoma County, unless another location is mutually agreed to in writing by the Parties. If the non-binding mediation is unsuccessful in resolving the issue, then the Parties may proceed to arbitration. The Parties agree that this is a reasonable course of action for dispute resolution. If any Party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney's fees, even if they were otherwise entitled to such fees as the prevailing party in any such action.

10.12 Arbitration. Should non-binding mediation prove unsuccessful, then any claim or controversy of whatever nature including but not limited to the issue of arbitrability arising out of or connected with this Agreement, any provision of this Agreement, or its performance or breach, or any provision of a subcontract that is subject to this Agreement, or its performance or breach, that claim or controversy shall be settled by binding arbitration in Sonoma County (unless another location is mutually agreed to by the Parties in writing) before an arbitrator from the panel of JAMS in accordance with the JAMS rules then in effect. Judgment upon the award may be entered in any court having jurisdiction thereof.

10.13 WAIVER OF JURY TRIAL AND REMOVAL TO FEDERAL COURT. THE MEMBERS VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS CONTEMPLATED HEREBY OR TO HAVE ANY DISPUTE, CLAIM, OR CONTROVERSY HEARD IN ANY U.S. FEDERAL COURT OR FEDERAL GOVERNING BODY.

10.14 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Members.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

Gravenstein 116 LLC



Eli Melrod (Jul 29, 2023 16:35 PDT)

By: Eli Melrod
Its: CEO

EXHIBIT B

Joinder Agreement Form

Dated: _____

This Joinder to the Operating Agreement dated July 7, 2023 (the “**Operating Agreement**”) of 465 Retail LLC is executed as of the date set forth above by _____ (“**New Member**”).

WHEREAS, pursuant to the Operating Agreement of 465 Retail LLC (the “**Company**”), _____ percent (__%) of the Company’s membership interests are held by _____ (the “**Transferee Interests**”);

WHEREAS, New Member is the transferee of _____ of the Transferee Interests, representing _____ percent (__%) of the Company’s membership interests;

WHEREAS, the Manager has approved New Member as a Member of the Company; and

WHEREAS, Section 4.5 of the Operating Agreement requires any transferee of the Company’s membership interests to adopt and be bound by the Operating Agreement as a condition to becoming a member of the Company;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the New Member hereby adopts and agrees to be bound by the Operating Agreement, and their signature below shall constitute their signature to the Operating Agreement. This Joinder shall be attached to and become a part of the Operating Agreement.

IN WITNESS WHEREOF, the Joinder is executed as of the date first written above.

[NAME]

Acknowledged and accepted by:

Gravenstein 116 LLC

By: Eli Melrod
Its: CEO

SCHEDULE A

**MEMBERS, ADDRESSES, CAPITAL CONTRIBUTIONS AND MEMBERSHIP
INTERESTS OF
465 RETAIL LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

Member Name and Address	Member Capital Contribution	Number of Units
Gravenstein 116 LLC 785 Gravenstein Hwy. S. Sebastopol, CA 95472	\$	1,000,000

2023.07.25 465 Retail - OPERATING AGREEMENT

Final Audit Report

2023-07-25

Created:	2023-07-25
By:	Gerlie Castro (gcastro@rflawllp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAfJKf-CwOdKeEa0nxNOZV9AMxXwNbKRSd

"2023.07.25 465 Retail - OPERATING AGREEMENT" History

-  Document created by Gerlie Castro (gcastro@rflawllp.com)
2023-07-25 - 10:30:04 PM GMT
-  Document emailed to Eli Melrod (eli@solful.com) for signature
2023-07-25 - 10:31:17 PM GMT
-  Email viewed by Eli Melrod (eli@solful.com)
2023-07-25 - 11:35:01 PM GMT
-  Document e-signed by Eli Melrod (eli@solful.com)
Signature Date: 2023-07-25 - 11:35:15 PM GMT - Time Source: server
-  Agreement completed.
2023-07-25 - 11:35:15 PM GMT

201621810357



Secretary of State
Articles of Organization
Limited Liability Company (LLC)

LLC-1

FILED
Secretary of State
State of California
AUG 05 2016

SC/65

ICC

This Space For Office Use Only

IMPORTANT — Read Instructions before completing this form.

Filing Fee - \$70.00

Copy Fees - First plain copy free; Additional copies: First page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00

Important! LLCs may have to pay an annual minimum \$800 tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

1. Limited Liability Company Name (See Instructions – Must contain an LLC ending such as LLC or L.L.C. "LLC" will be added, if not included.)

Gravenstein 116 LLC

2. Business Addresses

a. Initial Street Address of Designated Office in California - Do not list a P.O. Box 2804 Gateway Oaks Drive, #200	City (no abbreviations) Sacramento	State CA	Zip Code 95883
b. Initial Mailing Address of LLC, if different than item 2a	City (no abbreviations)	State	Zip Code

3. Agent for Service of Process

Item 3a and 3b: If naming an individual, the agent must reside in California and Item 3a and 3b must be completed with the agent's name and complete California street address.

Item 3c: If naming a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 3c must be completed (leave Item 3a-3b blank).

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code
c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete Item 3a or 3b PARACORP INCORPORATED			

4. Management (Select only one box)

The LLC will be managed by:

One Manager

More than One Manager

All LLC Member(s)

5. Purpose Statement (Do not alter Purpose Statement)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

6. The information contained herein, including in any attachments, is true and correct.

Eli A Melrod

Eli Melrod

Organizer sign here

Print your name here



Secretary of State
Statement of Information
 (Limited Liability Company)

LLC 12

19-C82949

FILED

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

JUL 25, 2019

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IMPORTANT Read instructions before completing this form.

File fee \$20.00

Fees First page \$1.00; each attachment page \$0.50;
 Certification Fee - \$5.00 plus copy fees

1. **Limited Liability Company Name** (Enter the exact name of the LLC. If you registered in California using an alternate name, see instructions.)

GRAVENSTEIN 116 LLC

2. **12-Digit Secretary of State File Number**
 201621810357

3. **State, Reason Country or Place of Organization** (only if formed outside of California)
 CALIFORNIA

Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472
b. Mailing Address of LLC, if different than item a 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472

Managers or Members If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b Peter	Middle Name	Last Name Dickstein	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472

Service Process (Must provide either Individual or Corporation.)

DIVID - Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Peter	Middle Name	Last Name Dickstein	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472

CRPRTI - Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete Item 6a or 6b

Type of Business

a. Describe the type of business or services of the Limited Liability Company
 Retail

Chief Executive Officer, if elected or appointed

a. First Name Eli	Middle Name	Last Name Melrod	Suffix
b. Address 785 Gravenstein Hwy S	City (no abbreviations) Sebastopol	State CA	Zip Code 95472

The Information contained herein, including attachments, is true and correct.

07/25/2019

William Dolan

Agent

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address Information (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []



Secretary of State
Statement of No Change
 (Limited Liability Company)

LLC 12

21-D89232

FILED

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

JUL 31, 2021

This Space For Office Use Only

IMPORTANT [Read instructions](#) before completing this form. This form may be used only if a complete Statement of Information has been filed previously and there has been no change.

Initial fee \$20.00

Certificate fee \$1.00;
 Certification Fee - \$5.00 plus copy fee

1. Limited Liability Company Name (Enter the exact name of the LLC as it is recorded with the California Secretary of State. Note: If you registered in California using an alternate name, [see instructions](#).)

GRAVENSTEIN 116 LLC

2. 12-Digit Secretary of State File Number

201621810357

3. State, Foreign Country or Place of Organization (only if formed outside of California)

CALIFORNIA

Change Statement (Do not alter the No Change Statement. If there has been any change, please complete a Statement of Information (Form LLC-12).)

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

The information contained herein is true and correct.

07/31/2021

Lee Johnson

Controller

Date Type or Print Name of Person Completing the Form Title Signature

Return Address Information (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document, enter the name of a person or company and the mailing address. This information will become public when filed. [\(SEE INSTRUCTIONS BEFORE COMPLETING\)](#))

Name: []
 Company:
 Address:
 City/State/Zip: []



**Secretary of State
Amendment to Articles of
Organization of a
Limited Liability Company (LLC)**

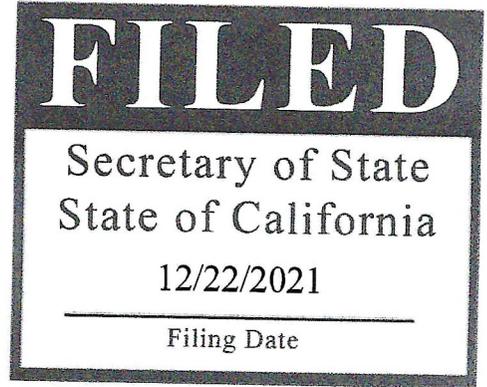
LLC-2

IMPORTANT — Read Instructions before completing this

form. Filing Fee — \$30.00

Copy Fees — First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00

Note: You must file a Statement of Information (Form LLC-12), to change the business address(es) of the LLC or to change the name or address of the LLC's manager(s) and/or agent for service of process, which can be filed online at lcbizfile.sos.ca.gov/SI.



Above Space For Office Use Only

Certified Copy I hereby certify that the following transcript of 1 page(s) is a full, true, and correct copy of the original record in the custody of the California Secretary of State's office. 12/22/2021 Certification Date

1. LLC Exact Name (Enter the exact name on file with the California Secretary of State.)

Gravenstein 116 LLC

2. LLC 12-Digit Entity (File) Number (Enter the exact 12-digit Entity (File) Number issued by the California Secretary of State.)

2	0	1	6	2	1	8	1	0	3	5	7
---	---	---	---	---	---	---	---	---	---	---	---

3. New LLC Name (If Amending) (See Instructions – List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State. The name must contain an LLC identifier such as LLC or L.L.C. "LLC" will be added, if not included.)

4. Management (If Amending) (Select **only** one box)

The LLC will be managed by:

One Manager More than One Manager All LLC Member(s)

5. Purpose Statement (Do not alter Purpose Statement.)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

6. Additional Amendment(s) set forth on attached pages, if any, are incorporated herein by reference and made part of this Form LLC-2. (All attachments should be 8½ x 11, one-sided, legible and clearly marked as an attachment to this form LLC-2.)

Signature

By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

Eli Melrod

Eli Melrod

Sign here

Print your name here



BA20231187059



STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
LIMITED LIABILITY COMPANY

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File No.: BA20231187059

Date Filed: 7/28/2023

B1992-1560 07/28/2023 9:13 AM Received by California Secretary of State

Entity Details					
Limited Liability Company Name	GRAVENSTEIN 116 LLC				
Entity No.	201621810357				
Formed In	CALIFORNIA				
Street Address of Principal Office of LLC					
Principal Address	785 GRAVENSTEIN HWY S SEBASTOPOL, CA 95472				
Mailing Address of LLC					
Mailing Address	785 GRAVENSTEIN HWY S SEBASTOPOL, CA 95472				
Attention	Lee Johnson				
Street Address of California Office of LLC					
Street Address of California Office	785 GRAVENSTEIN HWY S SEBASTOPOL, CA 95472				
Manager(s) or Member(s)					
<table border="1"> <thead> <tr> <th>Manager or Member Name</th> <th>Manager or Member Address</th> </tr> </thead> <tbody> <tr> <td>Eli Melrod</td> <td>785 Gravenstein Hwy S Sebastopol, CA 95472</td> </tr> </tbody> </table>		Manager or Member Name	Manager or Member Address	Eli Melrod	785 Gravenstein Hwy S Sebastopol, CA 95472
Manager or Member Name	Manager or Member Address				
Eli Melrod	785 Gravenstein Hwy S Sebastopol, CA 95472				
Agent for Service of Process					
Agent Name	Eli Melrod				
Agent Address	785 GRAVENSTEIN HWY S SEBASTOPOL, CA 95472				
Type of Business					
Type of Business	Gravenstein 116 LLC				
Email Notifications					
Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.				
Chief Executive Officer (CEO)					
<table border="1"> <thead> <tr> <th>CEO Name</th> <th>CEO Address</th> </tr> </thead> <tbody> <tr> <td>Eli Melrod</td> <td>785 Gravenstein Hwy S Sebastopol, CA 95472</td> </tr> </tbody> </table>		CEO Name	CEO Address	Eli Melrod	785 Gravenstein Hwy S Sebastopol, CA 95472
CEO Name	CEO Address				
Eli Melrod	785 Gravenstein Hwy S Sebastopol, CA 95472				
Labor Judgment					
No Manager or Member, as further defined by California Corporations Code section 17702.09(a)(8), has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal is pending, for the violation of any wage order or provision of the Labor Code.					

Electronic Signature

By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

Lee Johnson

07/28/2023

Signature

Date

**Third Amended and Restated
OPERATING AGREEMENT**

of

GRAVENSTEIN 116 LLC

A California Limited Liability Company

Effective as of September 15, 2022

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**THIRD AMENDED AND RESTATED
OPERATING AGREEMENT
OF
GRAVENSTEIN 116 LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

This Third Amended and Restated Operating Agreement (this “**Agreement**”) of Gravenstein 116 LLC (the “**Company**”) made effective as of September 15, 2022 (the “**Third Amended Operating Agreement Effective Date**”) by and among the Founders (as defined below) and the Persons set forth on Schedule A hereto (as amended from time to time in accordance with the terms herein).

WHEREAS, the Company was formed as a limited liability company under the laws of the State of California on August 5, 2016 pursuant to the filing of a certificate of formation of the Company with the Secretary of State of the State of California and the execution of an Operating Agreement dated August 10, 2016 (the “**Original Agreement**”), by the Company and Madrone Management and Holding Incorporated as the sole member.

WHEREAS, (i) effective February 1, 2017, the Company and its Members executed an Amended and Restated Operating Agreement which was superseded by a correction to such Amended and Restated Operating Agreement made effective as of September 1, 2016, and (ii) effective January 29, 2021, the Company and its Members entered into a Second Amended and Restated Operating Agreement to both reflect the Company’s election to be treated as a corporation, for tax purposes, and to effect the Company’s equity financing through the sale of Preferred Membership Units (as defined below), (collectively, the “**Prior A&R Operating Agreements**”).

WHEREAS, concurrently with the execution of this Agreement, the Company is issuing additional Preferred Membership Units and the Company and a Majority-In-Interest of the Members desire to amend and restate the Prior Agreements in their entirety with this Agreement to provide for certain modifications to the rights of the Preferred Membership Units.

WHEREAS, the Company also desires to accept additional Members upon their purchase of Preferred Membership Units and execution of this Agreement, following which, Schedule A hereto shall be amended to reflect their Equity Percentage.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree and hereby amend and restate the Prior Agreements in their entirety as follows:

SECTION 1

DEFINITIONS

1.1 ***Specific Definitions.*** As used in this Agreement:

“Act” shall mean the California Revised Uniform Limited Liability Company Act, Title 2.6 of the California Corporations Code starting at Section 17701, as amended.

“Agreement” shall mean this Second Amended and Restated Operating Agreement of Gravenstein 116 LLC, a California limited liability company, including all schedules, appendices, and exhibits hereto, as amended, restated or otherwise modified in accordance with the terms hereof from time to time.

“Board” means the board of directors of the Company who shall be appointed as provided in Section 4 and who has acted as provided by the Act and this Agreement.

“Capital Contribution” shall mean, for any Member, the sum of the net amount of cash and the Fair Market Value of any other property (determined as of the time of contribution and net of liabilities secured by such property that the Company assumes or to which the Company’s ownership of the property is subject) contributed by such Member to the capital of the Company.

“Cause” shall mean the occurrence of one of the following: (a) conviction of a felony of the United States or of a State; (b) determination of incompetency by a court; or (c) appointment of a guardian by a court.

“Close of Business” shall mean 5:00 p.m., local time, in the State of California.

“Common Membership Unit” shall mean an Interest in the Company, with such rights and responsibilities as are set forth in this Agreement applicable to Common Membership Units and/or any other Agreement executed in respect of the issuance of such Common Membership Units.

“Deemed Liquidation Event” shall mean a merger or consolidation of the Company with another limited liability company or other entity or a sale of all or substantially all of the assets of the Company. For purposes of clarity, “all or substantially all” shall mean more than 50% of the fair market value of the assets of the Company as determined in good faith by the Board.

“Director” shall mean a member of the Board. Each Director is hereby designated as a “manager” of the Company within the meaning of the Act.

“Dissolution” shall mean, with respect to a legal entity other than a natural person, that such entity has “dissolved” within the meaning of the partnership, corporation, limited liability company, trust or other statute under which such entity was organized.

“Equity Percentage” shall mean, for each Member, the ratio of such Member’s Membership Units to the total number of Membership Units held by all Members, as set forth on **Schedule A**, which shall be amended from time to time in accordance with this Agreement.

“Fair Market Value” shall have the meaning set forth in Section 8.3(b).

“Family Members” shall mean a natural person’s spouse, including any life partner or similar statutorily-recognized domestic partner, child (natural or adopted), or any other direct lineal descendant of such person (or his or her spouse, including any life partner or similar statutorily-recognized domestic partner).

“Fiscal Year” shall mean the period from January 1 through December 31 of each year (unless otherwise required by law).

“Founders” shall mean Peter Dickstein and Eli Melrod.

“Interest” shall mean, for each Member, the entirety of such Member’s limited liability company interest in the Company, including its rights, duties and interest in respect of the Company in such Member’s capacity as such (as distinguished from any other capacity such as employee, debtor or creditor) and shall include such Member’s right, if any, to vote on Company matters, bind the Company vis-à-vis third parties, or receive distributions as well as such Member’s obligation, if any, to provide services, make Capital Contributions or take any other action. Interests shall be evidenced in the form of Units.

“Majority-In-Interest of the Members” shall mean a group of Members whose aggregate Equity Percentages at the time of determination exceed fifty percent (50%) of the total Equity Percentages of all the Members at such time.

“Majority-In-Interest of the Preferred Members” shall mean a group of Members whose aggregate Preferred Membership Units at the time of determination exceed fifty percent (50%) of the total number of outstanding Preferred Membership Units of all the Members at such time

“Member” shall mean those Persons admitted as members of the Company as shown on **Schedule A** as such schedule may be updated from time to time, each in such Person’s capacity as a member of the Company. Except where the context requires otherwise, a reference in this Agreement to “the Members” shall mean all of the Members.

“Membership Units” shall mean the Common Membership Units and the Preferred Membership Units.

“Person” shall mean an individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture, governmental agency, or other entity, whether domestic or foreign.

“Preferred Membership Unit” shall mean an Interest in the Company, with such rights and responsibilities as are set forth in this Agreement applicable to Preferred Membership Units and/or any other Agreement executed in respect of the issuance of such Preferred Membership Units.

“Principal Office” shall have the meaning set forth in Section 2.4.

"Securities" shall mean debt, equity and synthetic securities of any type.

"State" shall mean any constituent state of the United States, as well as the District of Columbia.

"Term" shall have the meaning set forth in Section 2.2. Where not capitalized, "term" shall mean the entire period of the Company's existence, including any period of winding-up and liquidation following the Dissolution of the Company pursuant to Section 10.1.

"Termination" shall mean, with respect to a legal entity other than a natural person, that such entity has Dissolved, completed its process of winding-up and liquidation, and otherwise ceased to exist.

"Transfer" shall mean any sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation or other disposition, whether voluntary or involuntary.

"United States" shall mean The United States of America.

"Unreturned Capital Contribution" shall mean a Member's aggregate Capital Contributions reduced by the amount of cumulative distributions made pursuant to Section 10.2.

1.2 **General Usage.** The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated "Section," "Schedule," "Exhibit," or "Appendix" is to the corresponding Section, Schedule, Exhibit, or Appendix of or to this Agreement; (ii) instances of gender or entity-specific usage (e.g., "his," "her," "its," "person" or "individual") shall not be interpreted to preclude the application of any provision of this Agreement to any individual or entity; (iii) the word "or" shall not be applied in its exclusive sense; (iv) "including" shall mean "including, without limitation"; (v) references to laws, regulations and other governmental rules, as well as to contracts, agreements and other instruments, shall mean such rules and instruments as in effect at the time of determination (taking into account any amendments thereto effective at such time without regard to whether such amendments were enacted or adopted after the effective date of this Agreement) and shall include all successor rules and instruments thereto; (vi) references to any specific statute or similar codification of law shall mean such statute or other codification as construed, modified, extended or enabled by any applicable binding governmental rules or regulations; (vii) references to "law" shall mean any applicable law, whether embodied in statute, governmental rule or regulation, case law or other legally binding format; (viii) references to "\$" or "dollars" shall mean the lawful currency of the United States; (ix) references to "federal" shall be to laws, agencies or other attributes of the United States (and not to any State or locality thereof); (x) the meaning of the terms "domestic" and "foreign" shall be determined by reference to the United States; (xi) references to "days" shall mean calendar days; references to "business days" shall mean all days other than Saturdays, Sundays and days that are legal holidays in the State of California; (xii) references to months or years shall be to the actual calendar months or years at issue (taking into account the actual number of days in any such month or year); (xiii) days, business days and times of day shall be determined by reference to local time in the State of California and (xiv) the English language version of this Agreement shall govern all questions of interpretation relating to this Agreement, notwithstanding that this Agreement may have been translated into, and executed in, other languages.

SECTION 2

FORMATION

2.1 **Formation and Name.** The Members have entered into and formed the Company as a limited liability company in accordance with the Act. Eli Melrod, as an “authorized person” within the meaning of the Act, has executed, delivered and filed the Articles of Organization of the Company (the “**Articles**”) with the Secretary of State of the State of California (such filing being hereby approved and ratified in all respects). Upon the filing of the Articles with the Secretary of State of the State of California, his powers as an “authorized person” ceased, and each Director and Officer thereupon became a designated “authorized person” within the meaning of the Act. Any Director or Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. The name of the Company is “Gravenstein 116 LLC.”

2.2 **Term.** The “Term” of the Company shall continue until the Company is Dissolved pursuant to Section 10.1. Except as provided in Section 10.1, the Company shall not be Dissolved.

2.3 **Purpose and Scope.** Within the meaning and for purposes of the Act, the purpose and scope of the Company shall include any lawful action or activity permitted to a limited liability company under the Act, as determined by the Board.

2.4 **Principal Office.** The Company shall have a single “Principal Office” which shall at all times be located within the United States. The Principal Office initially shall be located at 785 Gravenstein Hwy South, Sebastopol, California 95472 and may thereafter be changed from time to time by the Board.

2.5 **Registered Office and Agent.** The Company shall maintain a registered office and agent for service of process as required by the Act. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Board shall promptly designate a replacement agent or file a notice of change of address, as the case may be, each in accordance with the Act.

2.6 **Members.** The Members of the Company are those Persons executing this Agreement and any additional Members subsequently admitted to the Company pursuant to the terms of this Agreement. Additional Persons may become Members of the Company and be issued Membership Units only if approved by and on terms approved the Board. Each Person that has been admitted as a Member shall be listed under Name and Contact Information on **Schedule A**, as such **Schedule A** may be updated from time to time by the Board.

2.7 **Names, Contact and Other Information of the Members.** Set forth below the name of each Member on **Schedule A** shall be appropriate contact information for such Member. Each Member shall promptly provide the Company with the information required to be set forth for such Member on **Schedule A** and shall thereafter promptly notify the Company of any change to such information.

2.8 **Additional Documents.** The Board shall cause to be executed, filed, recorded, published, or amended any documents, as the Board in its reasonable discretion determines to be necessary or advisable:

(x) in connection with the formation, operation, Dissolution, winding-up, or Termination of the Company pursuant to applicable law; or (y) to otherwise give effect to the terms of this Agreement. The terms and provisions of each document described in the preceding sentence shall be initially established and shall be amended as necessary to cause such terms and provisions to be consistent with the terms and provisions of this Agreement.

2.9 **Title to Property.** Title to all Company property shall be held in the name of the Company; provided, however, that publicly traded Securities, if any, may be held in “street name” or through a similar arrangement with a reputable financial institution.

SECTION 3

MEMBERS

3.1 **Members. Management of the Company.** (a) The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members’ right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of this Agreement vest in the Members.

(b) **Limited Liability.** Except as otherwise required by law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member or Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member or manager of the Company. Each Member’s liability shall be limited to the maximum extent provided in the Act.

(c) **Remuneration To Members.** No Member is entitled to remuneration for acting in the Company business except as agreed by the Board.

(d) **Indemnification.** The Company shall defend and indemnify each Member from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the Member was a party because it was a member (as that term is defined in the Act), and any and all liabilities, debts, or other obligations incurred by the Member by reason of being a member of the Company (as that term is defined in the Act), to the fullest extent provided or allowed by the Act, unless such judgments, settlements, penalties, fines, expenses, liabilities, debts, or other obligations are incurred by the Member in violation of the terms of this Agreement or as a prohibited exercise of the Member’s authority.

3.2 **Action by Members. General.** (a) In exercising their rights as provided in this Agreement or in the Act, and in exercising any other voting rights, the Members shall act collectively through meetings and/or written consents as provided in this Section 3.

(b) **Meetings.** There may be meetings of the Members at such times and places as designated by the Board.

(c) **Calling of Meeting.** Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by the Act, may be called by the Board, and shall be called by the Board at the request of Members holding at least fifty percent (50%) of the total Equity Percentages of all the Members at such time.

(d) **Place of Meetings.** The place of any meeting of the Members shall be the principal office of the Company, unless the Board designates another place, either within or outside the State of California.

(e) **Notice of Meetings.** Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) days nor more than fifty (50) days before the date of the meeting, in the manner provided for in Section 11.6, by or at the direction of the Board or the Members calling the meeting, to all Members. Such notice shall be deemed to be delivered as provided in Section 11.6.

(f) **Conduct of Meetings.** The Chair of the Board (or Executive Chair of the Board, as applicable), if there be one, shall act as chair at any meeting of the Members, shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

(g) **Voting.** At any meeting of Members, each Member shall be entitled to vote on the basis of the Equity Percentage held by such Member. Any action requiring Member approval shall be made in accordance with Sections 3.2(j) and 3.2(n).

(h) **Proxies.** At any meeting of the Members, a Member not present may vote by proxy executed in writing by the Member. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy.

(i) **Quorum.** Members representing a majority of all Membership Units entitled to vote at a meeting of Members, represented in person or proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Equity Percentages held by Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of holders of Equity Percentages whose absence would cause less than a quorum.

(j) **Manner of Acting.** For any decision requiring the approval of the Members under this Agreement, including, for example, a merger of the Company into another entity, or the sale of all or substantially all of the assets of the Company, if a quorum is present, the affirmative vote of Members holding more than fifty percent (50%) of the Equity Percentages, represented at the meeting in person or by proxy shall be the act of the Members, unless the vote of a greater or lesser percentage is required by this

Agreement or the Act. If the Act requires a greater approval, in no event shall it be construed to be more than a Majority-In-Interest of the Members.

(k) **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

(l) **Participation by Telephone or Similar Communications.** Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

(m) **Waiver of Notice.** When any notice is required to be given to a Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. A Member's attendance at any meeting in person or by proxy waives objection to lack of notice or defective notice of the meeting unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting on the ground that the meeting is not lawfully called or convened.

(n) **Action by Members Without a Meeting; Execution of Consent by Less than Unanimous Consent of Members.** Any action requiring Member consent may be taken without a meeting if one or more written consents describing such action are executed by the number of Members that would be required to take such action at a meeting of the Members. Such consents shall be delivered to the Company for inclusion in the Company's minutes. Action taken under this Section 3.2(n) shall be effective when the requisite Members have signed the consent or consents and delivered them to the Company, unless such consents specify a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of such action shall be given to those Members entitled to vote on the action who have not consented in writing. Any vote or approval of the Members under this Agreement or the Act which may be made through the use of a written consent may also be made by electronic transmission.

SECTION 4

BOARD OF DIRECTORS

4.1 **Management.** Except as otherwise provided in this Agreement, the business and affairs of the Company shall be managed by and under the direction of the Board. Unless otherwise expressly provided in this Agreement, the powers of the Company and the Board shall be exercised by or under the authority of, the Board, acting by a majority of the Directors. Accordingly, the Board shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities

customary or incident to the management of the Company's business. Unless authorized to do so by this Agreement or by the Board, no Member, Officer, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

4.2 **Responsibility of Directors; Devotion of Time.** The Board shall have those duties and responsibilities as provided for managers in the Act and/or in this Agreement. A Director is not obligated to devote all of the Director's time or business efforts to the Company. A Director shall, however, devote whatever time, effort, and skill as the Board deems appropriate for the operation of the Company.

4.3 **Election of Directors.** The Board shall be comprised of five Directors, which number may be increased or decreased by amendment to this Agreement. Each Director elected shall serve until his or her earlier resignation or removal as provided in Section 4.4 below, or until his or her death or incapacity. Any vacancies occurring on the Board shall be filled in accordance with this Section. As of the Third Amended Operating Agreement Effective Date, the members of the Board are set forth on **Appendix 1** attached hereto. Effective thirty (30) days from the Third Amended Operating Agreement Effective Date, the person identified on **Appendix 2** will be automatically appointed to the Board without any further action of the Members or the Board.

4.4 **Removal, Vacancies and Resignation. Removal.** Directors may be removed at any time for Cause; Directors may be removed at any time for any reason or no reason at all by a majority vote of a minimum of sixty percent (60%) aggregate Interest of the Members.

(b) **Vacancies.** Upon the occurrence of a vacancy occurring in the position of Director (whether by removal, resignation or otherwise), the remaining members of the Board shall select a new designee for such seat, subject to approval by a Majority-In-Interest of the Members.

(c) **Resignation.** A Director may resign at any time by delivering written notice to the Board. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

4.5 **Payment of Salary and Expenses.** Unless otherwise agreed by the Members, the Directors shall not be paid a salary for managing the Company. The Company shall pay all of its and the Board's expenses of operation. The Company shall also pay or reimburse the Directors for reasonable out-of-pocket expenses incurred by the Directors on behalf of the Company including but not limited to all expenses incurred in attending meetings of the Board.

4.6 **Limitation on Liability; Indemnification.** The Directors and Officers shall not be liable, in damages or otherwise, to the Company or to any of the Members for any act or omission performed or omitted by the Directors or Officers in connection with the performance of his or her duties hereunder, except if such act or omission results in a breach of a material provision of this Agreement or results from such Director's or Officer's fraud, gross negligence or willful misconduct. The Company shall save, indemnify, defend and hold harmless the Directors and Officers to the fullest extent permitted by law, including without limitation, from and against any and all claims or liabilities of any nature whatsoever, including, but not limited to, reasonable attorneys' fees arising out of or in connection with any action taken or omitted by any such Director or Officer, except if such act or omission results in a breach of a material provision of this Agreement or results from such Director's or Officer's fraud, gross negligence or willful misconduct. The

Directors and Officers shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any act or omission of any such Director or Officer in reliance on such advice shall in no event subject the Directors or Officers to liability to the Company or any Member. Any indemnification required to be made by the Company shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the Company may advance funds to a Director or Officer claiming indemnification under this Section 4.6 for legal expenses and other costs incurred as a result of a legal action brought against such person only if: (i) the legal action relates to the performance of duties or services by the Director or Officer on behalf of the Company; (ii) the legal action is initiated by a party other than a Member; and (iii) such Director or Officer undertakes to repay the advanced funds to the Company if it is determined that such Director or Officer is not entitled to indemnification pursuant to the terms of this Agreement.

4.7 **Calling of Meetings.** Unless otherwise prescribed by the Act, the Executive Chair of the Board, if there be one, or Chief Executive Officer (“CEO”), if there be one, or a majority of the Directors may call meetings of the Board, for any purpose or purposes.

4.8 **Place of Meetings.** The place of any meeting of the Board shall be the principal office of the Company, unless the Director(s) calling the meeting designate(s) another place, either within or outside the State of California.

4.9 **Notice of Meetings.** Notice of the time and place of meetings of the Board shall be:

- (a) delivered personally by hand, by courier or by telephone; or
- (b) sent by United States first-class mail, postage prepaid; or
- (c) sent by facsimile; or
- (d) sent by electronic mail,

directed to each Director at that Director’s address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Company’s records. If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice may be communicated to the Director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company’s principal executive office) nor the purpose of the meeting.

4.10 **Conduct of Meetings.** The Executive Chair of the Board, if there be one, shall act as chair at any meeting of the Board, shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof. The Directors may designate a Chair at any meeting of the Board, or such other time agreed by the Board.

4.11 **Voting.** At any meeting of the Board, each Director shall be entitled to cast one vote. Any action requiring the approval of the Board shall be made in accordance with Section 4.14 or Section 4.17.

4.12 **Proxies.** At any meeting of the Board, a Director not present may vote by proxy executed in writing by the Director. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy.

4.13 **Quorum.** A majority of the Directors, represented in person or by proxy, shall constitute a quorum at any meeting of the Board. In the absence of a quorum at any such meeting, a majority of Directors so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Director. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Directors during such meeting whose absence would cause less than a quorum.

4.14 **Manner of Acting.** If a quorum is present, the affirmative vote of a majority of Directors represented at the meeting in person or by proxy shall be the act of the Board, unless the vote of a greater or lesser percentage is required by this Agreement or the Act.

4.15 **Participation by Telephone or Similar Communications.** Directors may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Directors participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.16 **Waiver of Notice.** When any notice is required to be given to a Director, a waiver thereof in writing signed by the Director entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. A Director's attendance at any meeting in person or by proxy waives objection to lack of notice or defective notice of the meeting unless the Director, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting on the ground that the meeting is not lawfully called or convened.

4.17 **Action by Board Without a Meeting.** Any action requiring Board consent may be taken without a meeting if all Directors execute one or more written consents describing such action. Such consents shall be delivered to the Company for inclusion in the Company's minutes. Action taken under this Section 4.17 shall be effective when the requisite Directors have signed the consent or consents and delivered them to the Company, unless such consents specify a different effective date. Any vote or approval of the Board under this Agreement or the Act which may be made through the use of a written consent may also be made by electronic transmission.

4.18 **Limitations on Powers of the Board.**

(a) **Majority-In-Interest of the Preferred Members.** Notwithstanding anything to the contrary herein, the Company shall not, without the approval of a Majority-In-Interest of the Preferred

Members (i) create or issue any Membership Units with distribution or other rights senior in preference to the Preferred Membership Units, (ii) redeem or repurchase any Membership Units (other than pursuant to employee or consultant agreements), or (iii) make distributions on Membership Units other than in accordance with distributions made following a Deemed Liquidation Event in which the consideration received in such transaction is allocated in a manner consistent with Section 10.2(c) hereof.

(b) **Majority-In-Interest of the Members.** Notwithstanding anything to the contrary herein, the Company shall not, without the approval of a Majority-In-Interest of the Members (i) make distributions on Membership Units, or (ii) effect a Deemed Liquidation Event, or (iii) change the number of members on the Board.

4.19 **Management: Officers.**

(a) **Appointment.** The Board may appoint officers of the Company (collectively, “Officers”), who shall at all times serve at the pleasure of the Board. The Board may determine any such Officers’ respective powers, duties and compensation; provided that if the Board shall appoint a CEO, the Board shall determine the compensation for the CEO, and the Board or the CEO shall determine the compensation, if any, for all other Officers and other agents and employees of the Company. No Officer shall be prevented from receiving compensation in such capacity by reason of the fact that he or she is also a Member or Director. Unless otherwise determined by the Board or provided in this Agreement, if the title of an Officer is one commonly used for officers of a business corporation formed under the California Corporations Code, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Except in the case of death, each Officer shall hold office until his or her successor is appointed and qualified, or until such Officer’s earlier resignation or removal. Any number of offices may be held by the same person.

(b) **Qualification.** None of the Officers need be a Member or Director.

(c) **Resignation.** Any Officer may resign at any time by delivering notice to the Board. Any such resignation shall take effect at the time the notice is delivered unless the notice specifies a later effective date. Unless otherwise specified therein, acceptance of such resignation by the Company shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party.

(d) **Removal.** The Board may, with or without cause, remove any Officer or agent of the Company. An Officer empowered to appoint another Officer or assistant Officer also has the power with or without cause to remove any Officer he or she would have the power to appoint whenever in his or her judgment the best interests of the Company would be served thereby. The removal of an Officer or agent shall be without prejudice to the contract rights, if any, of the Company or the person so removed. Appointment of an Officer or agent shall not of itself create contract rights.

(e) **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, creation of a new office, or any other cause may be filled by the Board for the unexpired portion of the term or for a new term established by the Board.

(f) **Right to Rely on Directors and Officers.** Any person dealing with the Company may rely upon a certificate signed by any Director or Officer as to:

- (i) The identity of any Member, Director, or Officer;
- (ii) The existence or nonexistence of any fact or facts regarding the affairs of the Company; or
- (iii) The Officers and Directors who are authorized to execute and deliver any instrument or document on behalf of the Company.

(g) **Authority and Duties of the CEO.** Except as otherwise specifically provided by the Board or in this Agreement, the CEO shall have the authority, discretion, obligation and responsibility to manage and control the day to day affairs of the Company, including, without limitation, the power to:

- (i) Sign and execute, on behalf of the Company, any and all agreements, contracts and other instruments, including checks, promissory notes, drafts and bills of exchange, in the ordinary course of business of the Company (provided that any contract over Five Thousand U.S. Dollars (\$5,000.00) shall not be deemed to be in the ordinary course of business);
- (ii) Transfer, endorse for transfer, vote, consent or take any other action with respect to Securities held by the Company and make, execute and deliver any waiver, proxy or consent with respect to any such Security, in the ordinary course of business of the Company;
- (iii) Select, approve, hire and make determinations on retention and dismissal of employees and other agents of the Company;
- (iv) Open, maintain and close bank and other investment accounts on behalf of the Company, provided, that all decisions with respect to the Company making new investments or disposing of existing investments shall require the prior approval of the Board; and
- (v) Incur indebtedness and make other expenditures on behalf of the Company, provided that such indebtedness and other expenditures shall not equal more than Five Thousand U.S. Dollars (\$5,000.00) for any Fiscal Year, unless such other amount has been allocated for indebtedness and expenditures expressly approved by the Board in an annual budget for the Company;

4.20 **Duties and Discretion of Directors and Officers.**

To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement the Board or any Director is required to make a decision (a) in his, her, or its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Board and each Director shall be entitled to consider only such interests and factors as he, she, or it desires, including his, her, or its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (b) in his, her, or its "good faith" or under another express standard, the Board and each Director shall act under such express standard and shall not be subject to any other or different standard. To the fullest extent permitted by law, and notwithstanding any other provision of this

Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that the Board and each Director and Officer shall owe no fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

SECTION 5

CAPITALIZATION

5.1 **Capital Contributions.** (a) The Members have contributed capital to the Company in the amounts reflected in the books and records of the Company.

(b) **Additional Capital Contributions.** No Member shall be required to make any additional Capital Contribution to the Company; provided, however, a Member may make additional Capital Contributions to the Company with the written consent of the Board.

5.2 **Form of Capital Contributions.** Except to the extent set forth on **Schedule A** or provided in Section 5.7, all Capital Contributions shall be in cash.

5.3 **Limitation on Capital Contributions.** Except as specifically provided in this Section 5, no Person shall be permitted (except upon unanimous approval of each of the Directors) or required to make a contribution to the capital of the Company.

5.4 **Withdrawal and Return of Capital.** Except as provided in Section 7 and Section 10 or as otherwise agreed to by the Members, no Member shall be entitled to the return of such Member's Capital Contribution or any other distribution in respect of such Member's Interest.

5.5 **Loans to the Company.** No Member shall be required to lend any money to the Company or to guaranty any Company indebtedness.

5.6 **Interest on Capital.** No Member shall be entitled to interest on such Member's Capital Contribution.

5.7 **Return/Withholding of Certain Distributions.** A Member that receives a distribution (i) in violation of this Agreement or (ii) that is required to be returned to the Company under applicable law shall return such distribution within thirty (30) days after demand therefor by any Member. The Company may elect to withhold from any distributions otherwise payable to a Member amounts due to the Company from such Member.

Nothing in this Section 5.7 shall be applied to release any Member from (i) its obligation to make Capital Contributions or other payments specifically required under this Agreement or (ii) its obligations pursuant to any relationship between the Company and such Member acting in a capacity other than as a Member (including, for example, as a borrower, employee or independent contractor).

SECTION 6

STATUS AS A CORPORATION; WITHHOLDINGS

6.1 **Corporate Election.** The Company has elected to be treated as a C corporation for all tax purposes. The Company, and not the Members, shall report any income or loss of the Company.

6.2 **Withholding Taxes.**

(a) The Company shall withhold taxes from distributions to the Members to the extent required by law (as determined by the Board in its reasonable discretion). Except as otherwise provided in this Section 6.2, any amount so withheld by the Company with regard to a Member shall be treated for purposes of this Agreement as an amount actually distributed to such Member pursuant to Section 7.1. An amount shall be considered withheld by the Company if, and at the time, remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution to which it relates; provided, however, that an amount actually withheld from a specific distribution shall be treated as if distributed at the time such distribution. Nothing in this Section 6.2(a) shall have any bearing on amounts withheld from a Member in respect of compensation paid or payable to such Member in such Member's capacity as an employee of the Company or pursuant to a bona fide written employment agreement between such Member and the Company.

(b) If, pursuant to Section 6.2(a), an amount withheld with regard to a Member is treated for purposes of this Agreement as an amount distributed to such Member pursuant to Section 7.1, subsequent actual distributions to such Member pursuant to Section 7.1 shall be reduced as necessary to, as quickly as possible, cause the aggregate distributions to such Member over the term of the Company (including actual distributions and distributions deemed to have occurred pursuant to Section 6.2(a)) to equal the actual distributions that would have been made to such Member if Section 6.2(a) were not part of this Agreement.

(c) Each Member hereby agrees to indemnify the Company and the other Members for any liability they may incur for failure to properly withhold taxes in respect of such Member; moreover, each Member hereby agrees that neither the Company nor any other Member shall be liable for any excess taxes withheld in respect of such Member's Interest and that, in the event of over-withholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority.

SECTION 7

DISTRIBUTIONS

7.1 **Distributions.** Except as otherwise provided in this Agreement and subject to the Member approval requirements in Section 4.18, distributions prior to the Dissolution of the Company shall be made in accordance with this Section 7.1 and each Member actually receiving amounts pursuant to a specific

distribution by the Company shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Member's share under this Agreement of the total amount to be included in such distribution).

7.2 **Limitation on Distributions.** Notwithstanding any provision to the contrary in this Agreement, no distribution shall be made to a Member pursuant to this Agreement if and to the extent that such distribution would, in the Board's discretion: (i) cause the Company to be insolvent; (ii) render the Member liable for a return of such distribution under applicable law; or (iii) violate the Act or other applicable law. In addition, for clarity, in the event of a Deemed Liquidation Event to be followed by a distribution, the consideration from such Deemed Liquidation Event shall be allocated in accordance with Section 10.2(c) hereof.

SECTION 8

ADMINISTRATION

8.1 **Member Expenses.** Except as otherwise provided in this Section 8.1 or as approved by the Board, no Member shall be reimbursed for expenses incurred on behalf of, or otherwise in connection with, the Company. Any reimbursement paid by a third party for expenses actually reimbursed by the Company shall be retained by (or paid over by the recipient thereof to) the Company.

8.2 **Records and Financial Statements.** (a) The Company shall maintain true and proper books, records, reports, and accounts in which shall be entered all transactions of the Company. The Company shall also maintain all schedules to this Agreement and shall update such schedules promptly upon receipt of new information relating thereto. Such books, records, reports, accounts and schedules may be maintained as electronic records, and copies of such books, records, reports, accounts and/or schedules shall be available to any Member for inspection and copying at the Principal Office, upon at least two (2) business days' notice, during reasonable business hours; provided, however, that items of highly confidential Company information may be withheld from a Member to the extent reasonably necessary to protect Company interests as determined by the Board in its sole discretion; and provided, further, that confidential communications between the Company and its legal counsel relating to an actual or potential controversy or claim between the Company and a Member may be withheld from such Member as determined by the Board in its sole discretion.

(b) Within ninety (90) days after the end of each Fiscal Year, the Company shall furnish to each Member a statement, which need not be audited, of: (i) a balance sheet reflecting the assets and liabilities of the Company and (ii) an income statement reflecting the income or loss of the Company.

8.3 **Valuation of Company Assets. General.** (a) The Board shall make a good faith determination of the value of the Company's assets as required upon the Dissolution of the Company and whenever otherwise required by this Agreement or determined by the Board.

(b) **Binding Effect.** The value of any Company asset or Interest determined pursuant to this Section 8.3(b) shall be binding upon the Company and the Members and shall establish the "Fair Market Value" of such asset or Interest for all purposes under this Agreement.

SECTION 9

TRANSFERS; RESIGNATIONS; PARTICIPATION RIGHT

9.1 **Transfers of Interests.** A Member shall not Transfer all or any portion of his, her, or its Interest, unless the Transfer and each permitted transferee shall be approved by the Board in its sole and absolute discretion and in such event a permitted transferee must become a party to this Agreement and a Member hereunder.

9.2 **Resignation/Removal of a Member.** The Members shall not resign from the Company or otherwise cease to be a Member, except in accordance with this Section 9 at such time as a Member no longer owns any Membership Units or in connection with the dissolution of the Company.

9.3 **Founder Transfers.**

(a) **Right of First Refusal and Right of Co-Sale.**

(i) Notwithstanding the foregoing, subject to the approval of the Board and subject to the exceptions set forth in Section 9.3(b) below, if a Founder (the "**Selling Founder**") wishes to Transfer any Membership Units (the "**Offered Membership Units**"), the Selling Founder shall notify in writing the Company and the Members holding Preferred Membership Units (the "**Preferred Membership Unit Holders**") of the proposed purchaser (or purchasers), the the number of Offered Membership Units, and the proposed price and terms of sale.

(ii) The Preferred Membership Unit Holders, upon receiving the notice required in subsection (i), shall have a right to purchase all or a portion of the Offered Membership Units at the same price and on the same terms offered by the proposed purchaser. In order to exercise this right to purchase, Preferred Membership Unit Holders, on or before the thirtieth (30th) day after receiving notice from the Selling Founder, shall deliver to the Selling Founder a written election (the "**Election Notice**") to purchase so much of the available Offered Membership Units as the Preferred Membership Unit Holders desire to purchase. The written election shall specify the Offered Membership Units to be purchased, the price, and the terms of purchase. If the total Offered Membership Units that all Preferred Membership Unit Holders desire to purchase exceeds the available Offered Membership Units, then the Offered Membership Units shall be allocated to the Preferred Membership Unit Holders electing to purchase (the "**Exercising Preferred Members**") in accordance with the following formula: each Exercising Preferred

Member shall have the priority, up to the Offered Membership Units set forth in his written election, to that fraction of the available Offered Membership Units in which the numerator is the number of Preferred Membership Units owned by such Exercising Preferred Member and the denominator is the number of Preferred Membership Units owned by all Exercising Preferred Members. The available Offered Membership Units not purchased on this priority basis shall be allocated in one or more successive allocations to those Exercising Preferred Members who have indicated in their written elections that they desire to purchase more than the number of Offered Membership Units to which they have a priority right. The Offered Membership Units shall continue to be allocated proportionally using a fraction in which the numerator is the Preferred Membership Units owned by the Exercising Preferred Member and the denominator is the number of Preferred Membership Units owned by all other remaining Exercising Preferred Members.

(iii) If any of the Offered Membership Units are not purchased in accordance with subsection 9.3(a)(ii) and are thereafter to be sold to a proposed purchaser ("**Residual Membership Units**"), each respective Preferred Membership Unit Holder may elect to exercise a right of co-sale and participate on a pro rata basis in the proposed sale of the Residual Membership Units as set forth in subsection 9.3(a)(iv) below on the same proposed price and terms of sale set forth above. Each Preferred Membership Unit Holder who desires to exercise its right of co-sale (a "**Participating Member**") must give the Selling Founder written notice to that effect within ten (10) days after the deadline for delivery of the Election Notice above, and upon giving such notice such Participating Member shall be deemed to have effectively exercised a right of co-sale.

(iv) Each Participating Member may include in the proposed sale that number of such Participating Member's Preferred Membership Units equal to the product obtained by multiplying (A) the Residual Membership Units by (B) a fraction, the numerator of which is the number of Preferred Membership Units owned by such Participating Member, and the denominator of which is the number of Preferred Membership Units owned by all Participating Members. The Participating Members and the Selling Founder agree that the terms and conditions of the proposed sale under this Section 9.3(a) will be memorialized in, and governed by, a written purchase and sale agreement with the prospective purchaser with customary terms and provisions for such a transaction, and the Participating Members and the Selling Founder further covenant and agree to enter into such purchase and sale agreement as a condition precedent to any sale or transfer in accordance with this Section 9.3(a).

(v) A purchaser or purchasers of Offered Membership Units hereunder shall be admitted as a Member, subject to such purchaser or purchasers becoming a party to this Agreement. For clarity, a Transfer of Membership Units shall not change the class of such Membership Unit (i.e., Common Membership Units Transferred will continue to be Common Membership Units and Preferred Membership Units Transferred will continue to be Preferred Membership Units).

(b) **Exempt Transfers.** Notwithstanding the foregoing but subject to the approval of the Board, the right of first refusal and right of co-sale set forth in Section 9.3(a) above shall not apply to (i) a Transfer of Membership Units to Family Members for bona fide estate planning purposes or (ii) the sale by a Founder of up to twenty-five percent (25%) of the Membership Units held by such Founder as of the Third Amended Operating Agreement Effective Date.

9.4 **Participation Rights.**

(a) **General.** Each Member has the right of first refusal to purchase the Member's Equity Percentage of any new Membership Units that the Company may from time to time issue after the

Third Amended Operating Agreement Effective Date; provided, however, the Member will have no right to purchase any such new Membership Units if the Member cannot demonstrate to the Company's reasonable satisfaction that such Member is at the time of the proposed issuance of such New Membership Units an "accredited investor" as such term is defined in Regulation D of the United States Securities Act of 1933, as amended.

(b) **Procedures.** If the Company proposes to undertake an issuance of new Membership Units, it will give notice to each Member of its intention to issue new Membership Units (the "**New Membership Unit Sale Notice**"), describing the new Membership Units and the price and the general terms upon which the Company proposes to issue the new Membership Units. Each Member will have ten (10) days from the date of the New Membership Unit Sale Notice, to agree in writing to purchase such Member's Equity Percentage of such new Membership Units for the price and upon the general terms specified in the New Membership Unit Sale Notice by giving written notice to the Company and stating therein the quantity of New Membership Units to be purchased (not to exceed such Member's Equity Percentage).

(c) **Failure to Exercise.** If the Members fail to exercise in full the right of first refusal within the 10-day period, then the Company will have 120 days thereafter to sell the new Membership Units with respect to which the Members' rights of first refusal hereunder were not exercised, at a price and upon general terms not materially more favorable to the purchasers thereof than specified in the New Membership Unit Sale Notice to the Members. If the Company has not issued and sold the new Membership Units within the 120-day period, then the Company will not thereafter issue or sell any new Membership Units without again first offering those new Membership Units to the Members pursuant to this Section 9.4.

SECTION 10

DISSOLUTION AND LIQUIDATION

10.1 **Dissolving Events.** The Company shall be Dissolved upon the occurrence of any of the following events:

- (a) Permanent cessation of the Company's business as determined by the Board;
- (b) Approval of the Board and a vote to dissolve the Company by the Members whose aggregate Equity Percentages equal or exceed sixty percent (60%) of the total Equity Percentages of all the Members; or
- (c) Any other event that results in a mandatory Dissolution of the Company under the Act.

10.2 **Winding Up and Liquidation.** (a) Upon Dissolution of the Company, the Board, as a "liquidating trustee," shall promptly wind up the affairs of, liquidate and Terminate the Company. In furtherance thereof, the Board shall: (i) have all of the administrative and management rights and powers permitted to managers under the Act (including the power to bind the Company); and (ii) be reimbursed for

Company expenses it incurs. Following Dissolution, the Company shall sell or otherwise dispose of assets determined by the Board to be unsuitable for distribution to the Members, but shall engage in no other business activities except as may be necessary to preserve the value of the Company's assets during the period of winding-up and liquidation. At the conclusion of the winding-up and liquidation of the Company, the Board shall: (i) hold the books and records of the Company for not less than six years following the termination of the Company under the Act; and (ii) authorize and cause the execution, filing and recording, as necessary, of a certificate of cancellation or similar document to effect the termination of the Company under the Act and other applicable laws.

(b) Distributions to the Members in liquidation may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Members. Distributions in kind shall be valued at Fair Market Value as determined in accordance with the provisions of Section 8.3 and shall be subject to such conditions and restrictions as may be necessary or advisable to preserve the value of the property so distributed or to comply with applicable law. Each Member actually receiving amounts pursuant to a specific distribution shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Member's share of the total amount to be included in such distribution).

(c) The assets of the Company (including proceeds from the sale or other disposition of any assets during the period of winding-up and liquidation) shall be applied as follows:

(i) First, to repay any indebtedness of the Company, whether to third parties or the Members, in the order of priority required by law and to any reserves which the Board reasonably deems necessary for contingent or unforeseen liabilities or obligations of the Company (which reserves when they become unnecessary in accordance with the Act, shall be distributed in accordance with the provisions of clause (ii), below); and

(ii) Next, to the Members in the following order and priority:

(A) First, among the Members holding Preferred Membership Units, in proportion to their respective Unreturned Capital Contributions, until such Members have received cumulative distributions under Section 7 and this Section 10.2(c)(ii)(A) equal to their respective Unreturned Capital Contribution; and

(B) Second, among the Members holding Common Membership Units, in proportion to their respective Unreturned Capital Contributions, until such Members have received cumulative distributions under Section 7 and this Section 10.2(c)(ii)(B) equal to their respective Unreturned Capital Contribution; and

(C) Third, to the Members in the manner necessary so as to cause each Member to simultaneously receive cumulative distributions equal to such Member's Equity Percentage multiplied by the cumulative distributions made, following the time such Member was admitted as a Member of the Company, pursuant to Section 7 and Section 10.2(i)(ii)(A), Section 10.2(c)(ii)(B) and this Section 10.2(c)(ii)(C); and

(D) Thereafter, in proportion to the Members' respective Equity Percentages.

SECTION 11

GENERAL PROVISIONS

11.1 **Meetings.** Meetings of the Members may be called as provided in this Agreement as well as by the Board. Except as specifically provided in this Agreement, there shall be no requirement of annual or periodic meetings of the Company's members or Board.

11.2 **Entire Agreement.** This Agreement contains the entire understanding among the Members, and supersedes any prior written or oral agreement between them, with respect to the Company. There are no representations, agreements, arrangements, or understandings, oral or written, among the Members relating to the Company which are not fully expressed in this Agreement.

11.3 **Amendments and Waivers.** (a) Except as otherwise provided in this Section 11.3, any term of this Agreement may be amended, terminated or waived (either generally or in a particular instance and either retroactively or prospectively) only with the approval of the Board and a Majority-In-Interest of the Members.

(b) Notwithstanding the foregoing provisions of this Section 11.3, the Board may, without the consent of the Members, amend this Agreement to the minimum extent necessary as determined by the Board to comply with applicable law, supply a missing term or provision, or resolve an ambiguity in the existing terms and provisions of this Agreement or to preserve the economic arrangement of the Members.

(c) For the convenience of the Members, the Board is hereby authorized to execute and deliver on behalf of the Member a restated operating agreement of the Company that is identical to this Agreement as amended by all duly adopted amendments hereto.

(d) Notwithstanding the foregoing, the provisions of Section 4.18(a) and Section 10.2(c) may not be amended, modified, terminated or waived without the approval or written consent of a Majority-In-Interest of the Preferred Members.

11.4 **Counterparts; Binding upon Members.** This Agreement may be executed in any number of counterparts and, when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties have not signed the original or to the same counterpart.

11.5 **No Third Party Beneficiaries.** The provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to a right on the part of any third party to enforce or demand enforcement of a Member's Capital Contributions, obligation to return distributions, or obligation to make other payments to the Company as set forth in this Agreement.

11.6 **Notices, Consents, Elections, Etc.** Any notice given under this Agreement shall be in writing and delivered in person, via facsimile machine, via electronic mail, sent by documented overnight delivery service or mailed by certified or registered mail, postage prepaid, to the appropriate party or parties at the

addresses referenced below, or to such other address as the parties may hereinafter designate. Unless otherwise specified in this Agreement, all such notices and other written communications shall be effective (and considered received for purposes of this Agreement) (i) if delivered by hand, upon delivery, (ii) if by facsimile machine during normal business hours, upon transmission with confirmation of receipt by the receiving party's facsimile terminal, and if not sent during normal business hours, then on the next business day, (iii) if by electronic mail during normal business hours, upon transmission if sent to an electronic mail address previously provided by such party to the sender and no evidence of transmission failure is received by the sender, and if not sent during normal business hours, then on the next business day, (iv) if sent by documented overnight delivery service, on the date following the date on which such notice or other written communication is delivered to such overnight delivery service for mailing, or (v) if mailed via first-class regular mail, forty-eight (48) hours after mailing. Notices shall be sent (a) if to a Member, to the Member's address specified in this Agreement or in the Company's records; and (b) if to the Company, to the address specified in Section 2.4. For purposes of the following provisions of this Section 11.6, the term "notice" shall be deemed to include any notice, statement, report, consent or similar item required or permitted to be provided to one or more Persons under this Agreement or applicable law.

11.7 **Severability.** In the event that any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be deemed severed from the remainder of this Agreement and replaced with a valid and enforceable provision as similar in intent as reasonably possible to the provision so severed, and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

11.8 **Governing Law.** The interpretation and enforceability of this Agreement and the rights and liabilities of the Members as such shall be governed by the laws of the State of California. To the extent permitted by the Act and other applicable law, the provisions of this Agreement shall supersede any contrary provisions of the Act or other applicable law.

11.9 **Timing.** All dates and times specified in this Agreement are of the essence and shall be strictly enforced. Except as otherwise specifically provided in this Agreement, and except with regard to distributions made by the Company, all actions that occur after the Close of Business on a given day shall be deemed for purposes of this Agreement to have occurred at 9:00 a.m. on the following day. In the event that the last day for the exercise of any right or the discharge of any duty under this Agreement would otherwise be a day that is not a business day, the period for exercising such right or discharging such duty shall be extended until the Close of Business on the next succeeding business day.

11.10 **Status Under the Act.** This Agreement is the "operating agreement" of the Company within the meaning of the Act.

11.11 **LLC Continuation.** As set forth in Section 2.1, the Members hereby continue the Company as a limited liability company under the Act.

11.12 **Miscellaneous.** This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties. Each Member hereby specifically consents to the selection of all other Members admitted to the Company pursuant to the terms of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have first executed this Third Amended and Restated Operating Agreement of Gravenstein 116 LLC, a California limited liability company, as of the date first above written.

BOARD OF DIRECTORS:

DocuSigned by:

Eli Melrod

A74C9C466FD8414...

Eli Melrod
Date: 9/14/2022

DocuSigned by:

Peter Dickstein

9DE17B239296435...

Peter Dickstein
Date: 9/15/2022

DocuSigned by:

Rich McNally

0962EB521C9144D...

Rich McNally
Date: 9/18/2022

FOUNDERS AND MEMBERS:

DocuSigned by:

Eli Melrod

A74C9C466FD8414...

Eli Melrod
Date: 9/14/2022

DocuSigned by:

Peter Dickstein

9DE17B239296435...

Peter Dickstein
Date: 9/15/2022

IN WITNESS WHEREOF, the parties have first executed this Third Amended and Restated Operating Agreement of Gravenstein 116 LLC, a California limited liability company, as of the date first above written.

MEMBER:

By: 
Name: Theo Ulbber
Title: Board Member
Date: 9/23/22

**THIRD AMENDED AND RESTATED
OPERATING AGREEMENT**

SCHEDULE A

MEMBER INFORMATION

(Inserted following this page)

APPENDIX 1

Board of Directors

The members of the Board of Directors immediately following the Third Amended Operating Agreement Effective Date are as follows:

1. Peter Dickstein (Executive Chairman)
2. Eli Melrod
3. Rich McNally
4. Vacant
5. Vacant

APPENDIX 2

Appointment of Additional Member to the Board of Directors

Effective thirty (30) days following the Third Amended Operating Agreement Effective Date, the following person shall be appointed as an additional member to the Board without any further action by the Members or the Board:

Theo Ubben