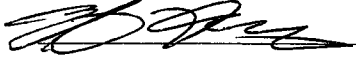



**CERTIFICATE OF BORROWER**  
(Peach Basket, LLC)

Effective as of September 27, 2019.

**THE UNDERSIGNED** hereby certifies as follows:

1. We are the duly elected, qualified and acting Managers of Peach Basket, LLC, an Iowa limited liability company ("**Borrower**"). We have personal knowledge of the facts certified in this Certificate and the authority to execute this Certificate on behalf of Borrower.
2. We understand this Certificate is given in connection with a commercial mortgage loan ("**Loan**") that the Borrower is borrowing from Arbor Commercial Funding I, LLC, a New York limited liability company ("**Lender**"), and we make this Certification knowing that Lender will rely on it in closing the Loan.
3. The Borrower is a limited liability company formed and organized under the laws of the State of Iowa. A copy of the Certificate of Good Standing for the Borrower issued by the Iowa Secretary of State is attached hereto as Exhibit A.
4. Attached hereto as Exhibit B is a true, correct and complete copy of the Borrower's Articles of Organization, as amended through the date hereof.
5. Attached hereto as Exhibit C is a true, correct and complete copy of the Borrower's Operating Agreement, as amended through the date hereof.
6. Attached hereto as Exhibit D is a copy of certain resolutions which have been duly adopted by the members of the Borrower with respect to the Borrower's authority to borrow the Loan and grant security and indemnities with respect to the Loan, which resolutions remain in full force and effect as of the date hereof and have not been amended, rescinded or impaired in any way.
7. The Borrower's Tax Identification Number is 46-4645065 and the Borrower's State Identification Number is 471702.
8. The Borrower's principal office is located at: 604 Clay Street, Cedar Falls, Iowa 50613.
9. The persons listed below have authority, without the consent or approval of any other person or entity, to execute and deliver on behalf of the Borrower all of the agreements, instruments and certificates to be executed by Borrower in connection with the Loan, on such terms and conditions as any one of them deem necessary or appropriate; each currently holds the title set forth opposite his/her name; and the signature of each such person (whether applied manually or by facsimile) appearing below, opposite his/her name, is his/her genuine signature:


NAME	TITLE	SIGNATURE
Brent Dahlstrom	Manager, as shown below	
Jason Conder	Manager, as shown below	

IN WITNESS WHEREOF, I have executed this Certificate as of the date first listed above.

**BORROWER:**

Peach Basket, LLC,  
an Iowa limited liability company

By:   
Brent Dahlstrom  
Its: Manager

By:   
Jason Conder  
Its: Manager

**EXHIBIT A**  
Certificate of Good Standing  
(Iowa)

IOWA SECRETARY OF STATE  
PAUL D. PATE



CERTIFICATE OF EXISTENCE

Issue Date: 9/12/2019

Name: PEACH BASKET, LLC (489DLC - 471702)

Date of Incorporation: 1/22/2014

Duration: PERPETUAL

I, Paul D. Pate, Secretary of State of the State of Iowa, custodian of the records of incorporations, certify the following for the limited liability company named on this certificate:

- a. The entity is in existence and duly incorporated under the laws of Iowa.
- b. All fees, taxes and penalties required under the Revised Uniform Limited Liability Company Act and other laws due the Secretary of State have been paid.
- c. The most recent biennial report required has been filed with the Secretary of State.
- d. The Secretary of State has not administratively dissolved the limited liability company.
- e. The Secretary of State has not filed either a statement of dissolution or statement of termination.

Certificate ID: **CS177548**

To validate certificates visit:

[sos.iowa.gov/ValidateCertificate](https://sos.iowa.gov/ValidateCertificate)

A handwritten signature in black ink that reads "Paul D. Pate".

Paul D. Pate, Iowa Secretary of State

**EXHIBIT B**  
Articles of Organization

489DLC-471702  
PEACH BASKET, LLC  
AMY KNOLL  
BEECHER LAW FIRM  
PO BOX 178  
WATERLOO, IA 50704



\* W 0 0 8 9 1 2 5 5 \*

# IOWA

No: W00891255  
Date: 01/23/2014

## SECRETARY OF STATE

489DLC-471702  
PEACH BASKET, LLC

### ACKNOWLEDGEMENT OF DOCUMENT FILED

The Secretary of State acknowledges receipt of the following document:

Certificate of Organization

The document was filed on Jan 22 2014 8:13AM, to be effective as of Jan 22 2014 8:13AM.

The amount of \$50.00 was received in full payment of the filing fee.



  
MATT SCHULTZ SECRETARY OF STATE



081518 CORP \$50.00 WAIVE 2 1/22/14

**CERTIFICATE OF ORGANIZATION**

OF

471702

**PEACH BASKET, LLC**

**TO THE SECRETARY OF STATE OF THE STATE OF IOWA:**

Pursuant to Section 201 of the Revised Uniform Limited Liability Company Act, the undersigned adopts the following Certificate of Organization for the Company:

**ARTICLE I  
NAME**

The name of the Limited Liability Company is Peach Basket, LLC (the "Company").

**ARTICLE II  
INITIAL REGISTERED AGENT AND REGISTERED OFFICE**

The street address of the Company's initial registered office in Iowa is 620 Lafayette Street, Waterloo, Iowa 50703, and the initial registered agent is Eric W. Johnson.

**ARTICLE III  
PURPOSE AND POWER**

The Company shall be formed for any lawful purposes and shall have unlimited power to engage in and to do any lawful act concerning any and all lawful businesses for which companies may be organized under the Revised Uniform Limited Liability Company Act.

**ARTICLE IV  
MANAGEMENT BY MANAGERS**

The business and affairs of the Company shall be governed by Managers elected by the Members in the manner described in the Company's Operating Agreement. No Member's action nor any other person's action shall bind the Company except as authorized by the Operating Agreement.



## ARTICLE V NON-LIABILITY AND INDEMNIFICATION

A. A Manager of this Company shall not be personally liable to the Company or its Members for monetary damages for breach of fiduciary duty as a Manager, except for liability (i) for any breach of the Manager's duty of loyalty to the Company or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) for a transaction from which the Manager derived an improper personal benefit or a wrongful distribution in violation the Revised Uniform Limited Liability Company Act.

B. Each person who is or was a Manager of the Company (and the heirs, executors, personal representatives, administrators, or successors of such person) who was or is made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a Manager of the Company or is or was serving at the request of the Company as a Manager, director, officer, partner, trustee, employee or agent of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise ("Indemnitee"), shall be indemnified and held harmless by the Company to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended. In addition to the indemnification conferred in this Article, the Indemnitee shall also be entitled to have paid directly by the Company the expenses reasonably incurred in defending any such proceeding against such Indemnitee in advance of its final disposition, to the fullest extent authorized by applicable law, as the same exists or may hereafter be amended. The right to indemnification conferred in this Article shall be a contract right.

C. The Company may, by action of the Managers, provide indemnification to such of the officers, employees and agents of the Company to such extent and to such effect as the Managers shall determine to be appropriate and authorized by applicable law.

D. The rights and authority conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Organization or Operating Agreement of the Company, agreement, vote of Members or disinterested Managers, or otherwise.

E. Any repeal or amendment of this Article by the Members of the Company shall not adversely affect any right or protection of a Manager or officer existing at the time of such repeal or amendment.

## ARTICLE VI UNITS OF EQUITY OWNERSHIP

A. Authorized Units of Equity Ownership. The maximum number of Units of equity ownership Units Peach Basket, LLC, is authorized to have outstanding is 1,000,000 Units, all of which shall be identical Units.

B. **First Lien.** The Company shall have a first lien upon the Units of any Member for any debt or liability owing by such Member to the Company.

C. **Restrictions on Disposition of Units.** No Member of this Company shall sell, transfer, convey, pledge, give, distribute or encumber any Unit or Units in the Company without first securing the written approval of Members of the Company owning a majority of the then-issued and outstanding membership Units of the Company or without following any alternative procedure for disposition of Units as set forth in the Operating Agreement of the Company. However, nothing contained herein shall prevent distribution by operation of law, of such unit or Units, provided that in such case a transferee shall be bound by the provisions contained in this Section the same as an original Member.

D. **Right to Redeem Units.** Without regard to any other power to purchase Units of the Company as permitted by law, the Company may purchase outstanding Units in an amount not to exceed its capital, paid-in surplus and retained earnings.

E. **Transfer of Units of Indebted Member.** If a Member shall be indebted to the Company, the Company may refuse to consent to a transfer of his or her Units until such indebtedness is paid, provided a copy of this section or the substance thereof is written or printed upon the Certificates representing such Units.

Effective this 20<sup>th</sup> day of January, 2014

  
Eric W. Johnson, Organizer

FILED  
IOWA  
SECRETARY OF STATE

1-22-14  
8:13 A  
W891255



**WAIVER OF NOTICE**

We, the undersigned, being a quorum of the Members of Peach Basket, LLC, do hereby waive notice of the foregoing organizational meeting of the Members of said Company held January 20, 2014, and hereby ratify and confirm the actions taken thereat.

Members

  
Brent Dahlstrom

  
Jason Conder

**EXHIBIT C**  
Operating Agreement

**RESTATED OPERATING AGREEMENT**

**OF**

**PEACH BASKET, LLC**

**(an Iowa limited liability company)**

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## ARTICLE I DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein);

(A) "Adjusted Capital Account" with respect to any Member, shall mean the Member's capital account as adjusted by the items described in Sections 1.704-1T(b)(4)(iv)(f), 1.704-1T(b)(4)(iv)(h)(5) and 1.704-1T(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

(B) "Capital Account" as of any given date shall mean the capital contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VII.

(C) "Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" shall mean the initial contribution to the Capital of the Company pursuant to this Operating Agreement.

(D) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(E) "Company" shall refer to Peach Basket, LLC.

(F) "Distributable Cash" shall mean all cash, receipts and funds received by the Company operations, less the sum of the following to the extent paid or set aside by the Company: (1) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (2) all cash expenditures incurred incident to the normal operation of the Company's business; (3) such cash reserves as the Manager deems reasonably necessary to the proper operation of the Company's business.

(G) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

(H) "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

(I) "Initial Member" shall mean the initial Members of the Company whose names and signatures appear on the signature page hereof.

(J) "Interest" shall mean the proportion that a Member's Units bears to the aggregate outstanding Units of all Members.

(K) "Iowa Act" shall mean the Revised Uniform Limited Liability Company Act at Chapter 489 of the Code of Iowa, as amended from time to time.

(L) "Manager" shall mean one or more Managers elected by the Members pursuant to this Operating Agreement and the Iowa Act. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(M) "Member" shall mean each of the initial Members, additional Members and substituted Members who are, as of a given time, a Member of the Company.

(N) "Net Profits" shall mean, for each fiscal year, the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the cash method of accounting and as reported, separately or in the aggregate, as appropriate, on the Company's information tax return filed for federal income tax purposes, plus any income exempt from federal income tax under the Code.

(O) "Net Losses" shall mean, for each fiscal year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the cash method of accounting and as reported, separately or in the aggregate, as appropriate, on the Company's information tax return filed for federal income tax purposes, plus any expenditures not deductible in computing its taxable income and not properly chargeable to Capital Account under the Code.

(P) "Operating Agreement" shall mean this restated operating agreement as originally executed and as amended from time to time. This restated operating agreement supercedes the operating agreement entered into between the Members dated January 20, 2014, and said operating agreement shall be null and void and of no further force and effect.

(Q) "Organization Expenses" shall mean those expenses incurred in connection with the formation of the Company.

(R) "Person" shall mean any individual or entity, and the heirs, executors, administrators legal representatives, successors, and assigns of such "Person" where the context so admits.

(S) "Regulatory Allocations" shall mean the allocations pursuant to Sections 8.1(B), (C), (D), and (E) of this Agreement.

(T) "Reserves" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(U) "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 Operating Agreement, whether or not the person remains a Member or continues to own any part of the right.

(V) "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.

(W) "Treasury Regulations" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.

(X) "Units" shall mean the capital Units issued by the Company to its Members, in exchange for contributions, which represent the Member's interest in the Company.

## ARTICLE II FORMATION OF COMPANY

2.1 Formation. The parties to this Agreement have agreed to the formation and are Members of Peach Basket, LLC, a limited liability company organized under the provisions of the Iowa Act. A Certificate of Organization has been filed with the Iowa Secretary of State. The Managers may take such further actions as they deem necessary to permit the Company to conduct business as a limited liability company in any other jurisdiction.

2.2 Principal Office. The principal office of the Company shall be . The Company may locate its places of business and registered office at any other place or places as the Manager may from time to time deem advisable.

2.3 Registered Office and Registered Agent. The Company's registered office shall be at the office of its registered agent at 620 Lafayette Street, Waterloo, IA 50703. The name of its initial registered agent at such address shall be Eric W. Johnson.

2.4 Purpose of the Company. Company desires to obtain a loan from Arbor Commercial Funding I, LLC ("Lender") in the principal amount of \$1,625,000 as evidenced by promissory note from Company to Lender ("Indebtedness"), secured by a first lien mortgage on the multifamily housing project located at 1008, 1014, and 1024 Leavitt Street, Waterloo, IA ("Mortgaged Property"). Capitalized terms not defined herein shall have the meanings attributed to them in the documents evidencing, securing or otherwise relating to the Indebtedness. Until the Indebtedness is fully paid, Company:

(A) shall not acquire or lease any real property, personal property, or assets other than the Mortgaged Property;

(B) shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(C) shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(D) shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Company's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(E) shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, or other agreement or instrument to which Company is a party or by which Company is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(i) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts (a) to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or (b) for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property or otherwise approved by Lender) so long as such trade payables (1) are not evidenced by a promissory note, (2) are payable within 60 days of the date incurred, and (3) as of any date, do not exceed, in the aggregate, 2% of the original principal balance of the Mortgage Loan; provided however, that otherwise compliant outstanding trade payables may exceed 2% up to an aggregate amount of 4% of the original principal balance of the Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed 90 consecutive days;

(ii) if the Security Instrument grants a lien on a leasehold estate, Company's obligations as lessee under the ground lease creating such leasehold estate; and

(iii) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents.

(F) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension, and Modification Agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(G) shall not make loans or advances to any other Person;

(H) shall not enter into, or become a party to, any transaction with any Company Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Company Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party; or

(I) shall not Divide.

**ARTICLE III  
NAMES AND ADDRESSES OF INITIAL MEMBERS**

The names and addresses of the initial Members, their Capital Contribution, and their number of Units is attached hereto as Schedule A.

**ARTICLE IV  
RIGHTS AND DUTIES OF MANAGERS**

4.1 Management by Managers. The Company is manager-managed by Managers appointed by the affirmative vote of the Members holding at least a majority of the Units. The Managers shall have power and authority as a group, to conduct the Company's business and the management of its affairs.

Each Manager has equal rights in the management and conduct of the activities of the Company. A difference arising among Managers as to a matter in the ordinary course of the activities of the Company may be decided by a majority of the Managers. The Managers may adopt such rules and regulations for the conduct of their meetings and the management of the Company not inconsistent with this Operating Agreement and the Iowa Act. However, the Managers must receive the prior affirmative vote of the Members holding at least a majority of the Units to do any of the following:

- (A) The sale, exchange or other disposition (other than the mortgage, pledge or other grant of security interest) of all or substantially all the assets of the Company;
- (B) The merger, conversion, consolidation or any other reorganization of the Company;
- (C) The voluntary dissolution or winding up of the Company;
- (D) The amendment of the Certificate of Organization or this Operating Agreement;
- (E) To approve salaries and other compensation to Managers;
- (F) The transfer of Units in accordance with Article IX and the admission or new or substitute Members;
- (G) The redemption of any Units of the Company;
- (H) Take any action that would dilute any Member's Interest in the Company;
- (I) The borrowing of money and/or the refinancing or extension of existing indebtedness and the granting of security interests in the Company's assets;
- (J) The expenditures of Company funds in excess of \$10,000 in any single transaction;

(K) To enter into contracts or agreements, whether oral or written, or taking any type of action whatsoever in which the Manager has an interest that is either adverse to the Company or has interest that is different from the interests of the Members or other Manager(s). This has to do with "self-interested transactions" which mean a transaction between the Company and a Manager or Member, or a transaction that benefits an individual Manager or Member, directly or indirectly, to a greater extent that it benefits the other Manager(s) or Members; or

(L) Undertake any other act outside the ordinary course of the Company's business.

4.2 Number, Initial Managers, Tenure and Qualifications. The initial number of Managers of the Company shall be 2. The number may be changed from time to time by the affirmative vote of Members holding at least a majority of the Units, but in no instance shall there be less than one Manager.

Managers shall be elected by the affirmative vote of the Members holding at least a majority of the Units. Managers need not be residents of the State of Iowa or Members of the Company. Each Manager shall hold office until his or her death, resignation, or removal. A person need not be a Member to be a Manager, but the dissociation of a Member who is also a Manager removes the person as a Manager. If a person who is both a Manager and a Member ceases to be a Manager, that cessation does not by itself dissociate the person as a Member.

A Manager may resign upon 30 days prior written notice to the other Managers. The Members may elect a new Manager to replace the resigning Manager at a meeting called for that purpose within 30 days of delivery of the notice of resignation by such Manager.

A Manager may be removed as a Manager at any time with or without cause by the affirmative vote of the Members holding at least a majority of the Units.

4.3 Officers. The Managers may appoint themselves or other individuals (whether or not employees or Members of the Company) as officers of the Company, which may include, but shall not be limited to, any one or more of the following: (1) a President; (2) one or more Vice Presidents; (3) a Secretary; and (4) a Treasurer.

The Managers may delegate their day-to-day management responsibilities to any such officers, as determined by the Managers from time to time, and such officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Managers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation formed under the Iowa Business Corporation Act, the assignment of such title shall constitute the delegation to such individual of the authority and duties that are normally associated with that office and that are set forth in the contract or resolution appointing such officer or officers, subject, however, to any specific delegation of authority and duties or specific restriction on the authority and duties as may be made under or set forth in any such contract or resolution. In all events, the officers shall be subject to the direction and control of the Managers. Such delegation by the Managers shall not cause any Manager to cease to be a Member or Manager of the Company.

If the Managers determine to appoint one or more officers for the Company, each such officer shall hold office until his or her death, resignation, or removal.

An officer may resign at any time by delivering notice to the Managers. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. Any officer may be removed by the Managers at any time, with or without cause, but such right of removal shall be without prejudice to and subject to the contract rights, if any, of the person so removed.

4.4 Fiduciary Duties. The Managers and officers owe to the Company and the Members the fiduciary duties of loyalty and care stated in subsections (A) and (B).

(A) The duty of loyalty of a Manager or officer includes all of the following duties:

(i) To account to the Company and to hold as trustee for it any property, profit, or benefit derived by the Manager or officer regarding any of the following:

- (1) In the conduct or winding up of the Company's activities;
- (2) From a use by the Manager or officer of the Company's property; and
- (3) From the appropriation of a Company opportunity.

(ii) To refrain from dealing with the Company in the conduct or winding up of the Company's activities as or on behalf of a person having an interest adverse to the Company.

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

(B) A Manager or officer shall discharge his or her duties under this Agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(C) All of the Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(D) A Manager or officer satisfies the duty of care in subsection (B) if all of the following apply:

(i) The Manager or officer is not interested in the subject matter of the business judgment;

(ii) The Manager or officer is informed with respect to the subject of the business judgment to the extent the Manager or officer reasonably believes to be appropriate in the circumstances; and

(iii) A Member does not have any fiduciary duty to the Company or to any other Member solely by reason of being a Member.

4.5 Managers Have No Exclusive Duty to Company. A Manager shall not be required to manage the Company as his sole and exclusive function and he (or any Manager) may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom.

4.6 Statement of Authority. The Managers may be authorized on behalf of the Company to deliver to the Iowa Secretary of State for filing a Statement of Authority. The Statement of Authority may provide with respect to any Manager or officer, the authority, or limitations on the authority, of all persons holding the position to do any of the following:

(A) Execute an instrument transferring real property held in the name of the Company; and

(B) Enter into other transactions on behalf of, or otherwise act for or bind, the Company.

4.7 Use of Professionals. In exercising their powers, the Managers may rely upon and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, or document believed by them to be genuine and to have been signed or prepared by another Manager, Member, officer or employee of the Company, or by any other person (including legal counsel, accountants, and other experts), as to matters the Managers reasonably believe such person is a competent and reliable source for the information. Reliance on any opinion of an independent counsel, accountant or expert whom the Managers reasonably believe is a competent and reliable source for the information shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the Managers in good faith and in accordance with such opinion.

4.8 Indemnity of the Managers. The Managers shall be indemnified by the Company to the extent provided in the Company's Certificate of Organization.

4.9 Voting. Each Manager shall be entitled to one vote on all matters.

4.10 Meetings of Managers.

(A) Quorum. A quorum for shall consist of a majority of the number of Managers. If a quorum is present, the affirmative vote of a majority of the Managers represented at the meeting and entitled to vote on the subject matter shall be the act of the Managers, unless the vote of a greater number is required by the Iowa Act, the Certificate of Organization, or by this Operating Agreement. If less than a majority of the Managers are represented at a meeting, a majority of the Managers so represented may adjourn the meeting from time to time.



(B) Regular Meetings. Regular meetings of the Managers shall be held at such place and at such times as the Managers may, from time to time, decide. No notice shall be required for any regular meeting of the Managers.

(C) Special Meetings. Special meetings of the Managers, for any purpose, may be called from time to time by the Managers or by a majority vote of the Members. Written notice indicating the date, time, place, and purpose of any special meeting shall be delivered to each Member and Manager not less than 2 days before the date of the meeting.

(D) Place of Meetings. The Managers may designate any place as the place of any Manager meeting. If the Managers do not designate the place for any Manager meeting, such Manager meeting shall be held at the Company's principal office.

(E) Meeting of All Managers. Subject to subsection (F), if every Manager is present at any meeting, even without notice, the meeting shall be valid and Managers may take any lawful action at such meeting.

(F) Waiver.

(i) A Manager may waive any notice required by this Agreement before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Manager entitled to the notice, and be delivered to the other Managers.

(ii) A Manager's attendance at a meeting: (1) waives objection to lack of notice or defective notice of the meeting, unless the Manager at the beginning of the meeting or promptly upon the Manager's arrival objects to holding the meeting or transacting business at the meeting, and (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Manager objects to considering the matter when it is presented.

(G) Action by Managers Without a Meeting. Any action required or permitted to be taken at a Manager meeting may be taken without a meeting and without notice if the action is taken by all Managers and if each Manager signs a written consent describing the action to be taken and files such consent with the Company records. Action taken under this subsection shall be effective when all Managers entitled to vote have signed the consent, unless the consent specifies a different effective date.

(H) Participation By Other Means. Managers may participate in any Manager meeting by any means of communication that allows all Managers participating therein to simultaneously hear each other. Participating in such a meeting shall constitute attendance at such meeting.

4.11 Expenses and Salary. The Managers shall be reimbursed by the Company for their reasonable expenses incurred in connection with the performance of their duties and may receive such other compensation as determined by the Members from time to time.

**ARTICLE V  
RIGHTS AND OBLIGATIONS OF MEMBERS**

5.1 Limitation of Liability. No Member shall be personally liable for any debts or losses of the Company beyond his or her respective Capital Contribution, except as provided in Section VIII herein.

5.2 List of Members. Upon written request of any Member, the Managers shall provide a list showing the names, addresses and interests of all Members in the Company.

5.3 Company Books. The Managers shall maintain and preserve at the principal office of the Company relevant Company documents including, but not limited to (1) a current list of the full name and last known business address of each Member and Manager (2) a copy of the Certificate of Organization and all articles of amendment thereto (3) copies of the Company's federal, state and local income tax returns and reports, if any, for the 3 most recent years, and (4) copies of the Operating Agreement and of any financial statements for the 3 most recent years. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

5.4 Priority and Return of Capital. No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

5.5 Withdrawal of a Member. A Member does not have the power or right to withdraw from the Company.

**ARTICLE VI  
MEETINGS OF MEMBERS**

6.1 Voting. Each Member shall be entitled to one vote for each Unit held.

6.2 Meetings.

(A) An annual meeting of the Members, for the election of Managers and for the transaction of such other business as may properly come before the meeting shall be held at the Company's principal office at 1:00 p.m. local time in the month of April each year.

(B) Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Manager or by any Member or Members holding at least 10% of the outstanding Units.

6.3 Place of Meetings. The Members may designate any place either within or outside the State of Iowa, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company.

6.4 Notice of Meeting. Except as provided in Section 6.12, written notice stating the place, date and hour of the meeting and the purposes for which the meeting is called shall be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered as provided in Section 12.1.

6.5 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of Iowa, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

6.6 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, or in order to make a determination of Members for any other purpose, 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 has been made as provided in this Section, such determination shall apply to adjournment thereof.

6.7 Quorum. A quorum shall consist of at least a majority of the Units. If a quorum is present, the affirmative vote of a majority of the Units represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless the vote of a greater number or voting by classes is required by the Iowa Act, the Certificate of Organization, or by this Operating Agreement. If less than a quorum is present at the meeting, a majority of the Units so represented may adjourn the meeting from time to time.

6.8 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

6.9 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 6.8 is effective when all Members entitled to vote have signed the consent, unless the consent specifies 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.

6.10 Participation By Other Means. Members may participate in any Member meeting by any means of communication method that allows all Members participating therein to simultaneously hear each other. Participating in such a meeting shall constitute attendance at such meeting.

6.11 Member Representative. In the event a Member is an entity, that Member shall designate in writing to the Company the name of one natural person who is authorized to act as the representative of that Member, with legal authority to vote and otherwise act on behalf of such Member. A Member may change the identity of the Member's representative at any time and from time to time, in the Member's sole discretion, but shall provide written notice thereof to the Managers.

6.12 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

## **ARTICLE VII CONTRIBUTIONS TO THE COMPANY, CAPITAL UNITS AND CAPITAL ACCOUNTS**

7.1 Capital Contributions. Each Member shall contribute such amount as is set forth Schedule A attached hereto, as its Capital Contribution. No subsequent Capital Contributions shall be required of any Member.

7.2 Capital Units. Each Member's Interest in the capital of the Company shall be represented by Units of Membership interests. An unlimited number of Units are hereby authorized. The initial Members shall receive the number of Units set forth on Schedule A attached hereto. Subject to the provisions of Section 10.1, additional Members shall receive the number of Units determined by the Managers. The number of Units issued to an additional Member, and the Capital Contribution for such Units, shall be within the sole discretion of the Managers.

7.3 Capital Accounts.

(A) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); and (3) the amount of Net Profits allocated to such Member. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); and (3) the amount of Net Losses allocated to such Member.

(B) In the event of a permitted sale or exchange of an Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest.

(C) The manner in which Capital Accounts are to be maintained pursuant to this Section is intended, and shall be construed so as, to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder, or in the event there exists any inconsistency, the Code and Treasury Regulations shall control.

(D) Upon liquidation of the Company (or any Member's interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within 60) days of the end of the taxable year (or, if later, within 90) days after the date of the liquidation).

7.4 No Demand of Member Capital. A Member shall not be entitled to demand or receive from the Company the liquidation of his or her interest in the Company until Company is dissolved in accordance with the provisions hereof or other applicable provisions of the Iowa Act.

## ARTICLE VIII ALLOCATIONS AND INCOME TAX

### 8.1 Allocations of Profits and Losses from Operations.

(A) Except as may be required by Section 704(c) of the Code, the Net Profits and Net Losses of the Company for each Fiscal Year shall be allocated among the Members in proportion to their Interests in the Company. Any credit available for income tax purposes shall be allocated among the Members in like fashion.

(B) Notwithstanding paragraph (A), above, no loss shall be allocated to a Member if such allocation would cause such Member's Adjusted Capital Account to become negative or to increase the negative balance thereof.

(C) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1T(b)(2)(iii)(d)(5) or (6) of the Treasury Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balance of the Adjusted Capital Account of such Member as possible, provided that an allocation pursuant to this Section 8.1(C) shall only be made if and to the extent such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section 8.1 have been made as if this Section 8.1(C) were not in the Agreement.

(D) In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (1) the amount such Member is obligated to restore pursuant to any provision of this Agreement, if any, and (2) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-1T(b)(4)(iv)(f) and 1.704-1T(b)(4)(iv)(h)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 8.1 have been made as if Sections 8.1(C) and 8.1(D) hereof were not in this Agreement.

(E) To the extent an adjustment to the adjusted tax basis of any Company asset purchase to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1T(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Member in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(F) Notwithstanding any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 8.1(F) shall only be made with respect to allocations pursuant to Section 8.1(E) hereof to the extent the Manager reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the parties to this Agreement.

(G) The Manager shall have reasonable discretion, with respect to each Fiscal Year, to (1) apply the provisions of Section 8.1(F) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, and (2) divide all allocations pursuant to Section 8.1(F) hereof among the Members in a manner that is likely to minimize such economic distortions.

8.2 Distributions. All distributions of cash or other property shall be made to the Members pro rata in proportion to the respective interest of the Members on the record date of such distribution. Except as provided in Section 8.3, all distributions of Distributable Cash and property shall be made in such amounts and at such times as determined by the Managers. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 8.2.

8.3 Limitation Upon Distributions. No distribution shall be declared and paid if, after the distribution is made: (1) the Company would be unable to pay its debts as they become due in

the usual course of business, or (2) the Company's total assets would be less than the sum of its total liabilities.

8.4 Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis under the cash method of accounting.

8.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

8.6 Loans to Company. Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, with the exception that no Member shall make secured or unsecured loans to the Company during the term of the Company's loan with Fannie Mae.

8.7 Returns and Other Elections. The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

8.8 Partnership Representative.

(A) Appointment; Resignation. The Members hereby appoint Brent Dahlstrom as the "partnership representative" as provided in Code Section 6223(a) ("Partnership Representative"). The Partnership Representative shall resign if he or she is no longer a Member of the Company. In the event of the resignation of the Partnership Representative, Members holding at least a majority of the Units then outstanding shall select a replacement Partnership Representative.

(B) Tax Examinations and Audits. The Partnership Representative shall promptly notify the Members of the commencement of any tax audit of the Company, upon receipt of a tax assessment and upon the receipt of a notice of final partnership administrative adjustment or final partnership adjustment, and shall keep the other Members reasonably informed of the status of any tax audit or resulting administrative or judicial proceeding. Without the consent of Members holding at least a majority of the outstanding Units, the Partnership Representative shall not extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency or enter into any settlement agreement relating to items of income, gain, loss or deduction of the Company with any taxing authority.

(C) BBA Elections. The Partnership Representative on behalf of the Company shall annually elect out of the partnership audit procedures enacted under Section 1101 of the BBA (the "BBA Procedures") for tax years beginning on or after January 1, 2018 pursuant to Code

Section 6221(b). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within 45 days of any notice of final partnership adjustment, the Company shall elect the alternative procedure under Code Section 6226, and furnish to the Internal Revenue Service and each Member (including former Members) during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment.

(D) **Tax Returns and Tax Deficiencies.** Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member or former Member (including penalties, additions to tax or interest imposed with respect to such taxes, and any taxes imposed pursuant to Code Section 6226, as amended by the BBA) shall be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

(E) **Income Tax Elections.** Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided that the Partnership Representative shall make an election under Code Section 754, if requested in writing by another Member.

(F) **Survival.** The obligations of each Member or former Member under this Section shall survive the transfer or redemption by such Member of their Interest, the termination of this Agreement, or the dissolution of the Company.

## **ARTICLE IX TRANSFERABILITY**

9.1 **Restriction on Transfer of Units.** Any transfer that violates the terms of this Agreement, shall be null and void from the beginning and shall not be binding upon or recognized by the Members or the Company.

9.2 **Right of First Refusal.** No Member shall transfer any Units unless the Member desiring to make the transfer ("Transferor") shall have first offered to sell such Units ("Subject Units") to the Company, by delivering a written notice to Company at least 30 days in advance of the intended transfer (the "Transferor's Notice"). The Transferor's Notice shall contain all the terms of the intended transfer, including the name and address of the prospective transferee, the purchase price and other terms and conditions of payment, the date on or about which the intended transfer is to be made, and the number of Subject Units to be transferred.

The Company shall, within 30 days after receipt of the Transferor's Notice by Transferor, notify the Transferor in writing whether or not Company desires to purchase the Subject Units, on the same terms and conditions as offered by the prospective transferee. Failure to so notify



the Transferor within such 30-day period shall be deemed a rejection of the offer. In the event Company notifies the Transferor of its acceptance of the offer of sale of the Subject Units, the closing of the purchase shall occur in accordance with this Section.

Upon receipt of written notice from Company that it does not desire to purchase the Subject Units offered for sale in the Transferor's Notice, or upon lapse of the 30-day period following Company's receipt of the Transferor's Notice of intent to transfer the Subject Units with no action taken thereon by the Company, whichever event shall occur first, the Subject Units shall be offered for sale to the Members other than the Transferor ("Remaining Members") by delivering to the Remaining Members notice of the Company's refusal to purchase the Subject Units and a copy of the Transferor's Notice. The Transferor's Notice shall contain all of the terms of the intended transfer, including the purchase price and other terms and conditions of payment, the date on or about which the intended transfer is to be made, and the number of Subject Units to be transferred.

Upon receipt of the Transferor's Notice, each of the Remaining Members shall have the right and option to purchase the Subject Units on the same terms and conditions as the Company. Each Remaining Member shall have the right and option to purchase the portion of the Subject Units offered for sale equal to the ratio of the number of Units owned by the Remaining Member prior to receipt of the Transferor's Notice to the total Units owned by the Remaining Member, excluding the Subject Units. Each Remaining Member electing to purchase some or all of the Subject Units ("Purchasing Member"), shall within 30 days after receipt of the Transferor's Notice from Transferor, notify Transferor in writing whether or not they desire to purchase some or all of the Subject Units. Failure to notify Transferor within such 30-day period shall be deemed a rejection of the offer. In the event the Remaining Members notify Transferor of their acceptance of the offer of sale of the Subject Units, the close of the purchase shall occur in accordance with this Section.

Upon receipt of written notice from the Remaining Members that they do not desire to purchase the Subject Units offered for sale to the Remaining Members in the Transferor's Notice, or upon lapse of the 30-day period following the Remaining Members' receipt of the Transferor's Notice of intent to transfer the Subject Units with no action taken thereon by the Remaining Members, whichever event shall occur first, the Subject Units may be transferred by the Transferor under the terms and conditions as outlined in the Transferor's Notice.

The purchase price per Unit for the Subject Units shall be the price per Unit offered to be paid by the prospective transferee described in the Transferor's Notice, and shall be paid in cash or, if so provided in the offer of the prospective transferee, cash plus deferred payments of cash in the same proportions, and with the same terms of deferred payment as set forth therein.

The closing of any purchase under this Section shall take place at the office of the Company or such other location as shall be mutually agreeable, and the purchase price shall be paid at the closing. In the case of Company's purchase of the Subject Units, the closing of the purchase shall take place on a business day designated by the Transferor within 60 days after the

Transferor's receipt of notice from Company that it will purchase the Subject Units. In the case of the Remaining Members' purchase of all or part of the Subject Units, the closing of the purchase shall take place on a business day designated by the Transferor within 60 days after the Transferor's receipt of notice from the Remaining Members that the Remaining Members will purchase the Subject Units. At the closing, the Transferor shall deliver to Company or the Remaining Members, as applicable, the certificates evidencing the Subject Units to be conveyed, duly endorsed and in negotiable form with all the required documentary stamps affixed thereto.

If a sale or other disposition to an outside party is effected in compliance with the provisions of this Section, the Members shall be deemed to have approved the purchaser's right to participate in the management of the business and affairs of the Company, and to become a Member of the Company.

9.3 Death of a Member. Upon the death of a Member, the deceased Member's Units shall automatically be transferable to the estate of the deceased Member, and shall not trigger a right of first refusal as further discussed in Section 9.2 above.

## **ARTICLE X DISSOCIATION**

10.1 Dissociation Events. A Member is dissociated from the Company when one or more of the following events occur:

(A) The Company has actual notice of the Member's express will to dissociate, but, if the Member specified a withdrawal date later than the date the Company received actual notice, on that later date;

(B) The Member is expelled from the Company pursuant to Section 10.4;

(C) On application by the Company, the Member is expelled as a Member by judicial order because the Member:

(i) Has engaged, or is engaging in, wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the Company's activities;

(ii) Has willfully or persistently committed, or is willfully and persistently committing, a material breach of this Agreement; or

(iii) Has engaged in, or is engaging, in conduct relating to Company's activities which makes it not reasonably practicable to carry on the activities with the Member associated with Company;

(D) In the case of a Member who is an individual, the person dies;

(E) In the case of a person who is a trust or is acting as a Member by virtue of being a trustee of a trust, the trust's entire Transferable Interest in the Company is distributed;

(F) In the case of a person who is an estate or is acting as a Member by virtue of being a personal representative of an estate, the estate's entire Transferable Interest in the Company is distributed;

(G) In the case of a Member who is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the Member;

(H) The Company participates in a merger and the Company is not the surviving entity or as a result of the merger the Member ceases to be a Member;

(I) The Company participates in a conversion under the Iowa Act;

(J) The Company participates in a domestication under the Iowa Act, if, as a result of the domestication, the person ceases to be a Member; or

(K) The Company terminates.

10.2 Wrongful Dissociation. A Member who wrongfully dissociates from the Company is liable to the Company and, subject to Iowa Act § 489.901, to the other Members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the Member to the Company or other Members. The Member's dissociation from the Company is wrongful if the dissociation occurs before the termination of Company and any of the following apply:

(A) The Member withdraws by express will;

(B) The Member is expelled by judicial order pursuant to Section 10.1(C); or

(C) In the case of a Member who is not a trust other than a business trust, an estate, or an individual, the Member is expelled or otherwise dissociated as a Member because it willfully dissolved or terminated.

10.3 Effect of Dissociation. A Member's dissociation from the Company does not of itself discharge the person from any debt, obligation, or other liability to the Company or other Members which the dissociated Member incurred while a Member. When a Member dissociates from Company:

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

(B) Subject to Iowa Act § 489.504 and the terms of any merger, conversion or domestication to which the Company is a party, any Transferable Interest owned by the person immediately before dissociation in the person's capacity as Member is owned by the person solely as a Transferee.

10.4 Expulsion. A Member may be expelled by the affirmative vote of the Members holding at least a majority of the Units if:

(A) It is unlawful to carry on the Company's activities with the Member associated with Company;

(B) There has been a transfer of all of the Member's Transferable Interest in the Company, other than a transfer for security purposes or a charging order in effect under Iowa Act §489.503 which has not been foreclosed;

(C) The Member is a corporation and, within 90 days after the Company notifies Member that it will be expelled as a Member because Member has filed a certificate of dissolution or the equivalent, its articles or charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its articles or charter or right to conduct business has not been reinstated;

(D) The Member is a limited liability company or partnership that has been dissolved and whose business is being wound up; or

(E) A Member fails to make a required Capital Contribution.

## ARTICLE XI DISSOLUTION AND TERMINATION

11.1 Events Causing Dissolution. The Company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(A) The consent of the affirmative vote of the Members holding at least a majority of the Units;

(B) The passage of 90 consecutive days during which the Company has no Members;

(C) On application by a Member, the entry by a district court of an order dissolving the Company on the grounds that the conduct of all or substantially all of the Company's activities is unlawful; or it is not reasonably practicable to carry on the Company's activities in conformity with its Certificate and this Agreement certificate; or

(D) On application by a Member or Transferee, the entry by a district court of an order dissolving the Company on the grounds that the Managers in control of the Company have acted, are acting, or will act in a manner that is illegal or fraudulent; or have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant. In a proceeding brought under this subsection (D), the court may order a remedy other than dissolution.

11.2 Distribution of Assets in Winding Up Company.

(A) In winding up its activities, the Company must apply its assets to discharge its obligations to creditors, including Members who are creditors.

(B) After the Company complies with subsection (A), any surplus must be distributed in the following order, subject to any charging order in effect under Iowa Act § 489.503:

(i) To each person owning a Transferable Interest that reflects Capital Contributions made by a Member and not previously returned, an amount equal to the value of the unreturned Capital Contributions; and

(ii) To each person owning a Transferable Interest in proportion to their respective ownership interests in the Company.

(C) If the Company does not have sufficient surplus to comply with subsection (B)(i), any surplus must be distributed among the owners of Transferable Interests in proportion to the value of their respective unreturned Capital Contributions.

(D) All distributions made under subsections (B) and (C) must be paid in money.

11.3 Business After Dissolution. After dissolution, the Company shall not engage in any business except that necessary to wind up the Company's affairs pursuant to Iowa Act § 489.702 and to protect the value of and distribute the Company's assets.

11.4 Net Profits and Net Losses During Winding Up. Net Profits and Net Losses earned or incurred during the course of the winding up of the Company shall be credited or debited to the Members in the same proportion as before dissolution.

11.5 Management of the Company After Dissolution. The Managers shall continue to manage the Company after dissolution.

11.6 Winding Up. Upon dissolution each Member shall look solely to the assets of the Company for the return of its Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return to the Capital Account of each Member, such Member shall have no recourse against other Members, in their capacity as such. Further, no Member shall be required to restore any deficit in his, her

or its Capital Account and such deficit shall not be treated as an asset of the Company. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Managers, who are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Managers deem necessary or appropriate to sell.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

12.1 Notices. Any notice under this Agreement shall be in writing and shall be delivered in person, by overnight air courier service, sent via electronic transmission, or by United States certified mail, postage prepaid.

Delivery of notice shall be deemed to occur (i) on the date of delivery when delivered in person, (ii) 1 business day following deposit for overnight delivery to an overnight air courier service which guarantees next day deliver, (iii) if delivered via electronic transmission, such notice shall be deemed to have been given at the time the notice is transmitted via email to the Member's email address on file, and as long as a receipt for the sent electronic transmission is retained by the party sending said notice, or (iv) 3 business days following the date of deposit if mailed by United States certified mail, postage prepaid. Notice sent by electronic transmission that is returned to the sender shall be deemed valid, and notice sent by certified mail that is refused shall also still be deemed valid. All parties shall give the other prompt notice of any change in address or email address, and until such notice any party may rely on the most recent addresses and email addresses furnished. Neither party shall designate more than two addresses, including email addresses, to receive notices.

12.2 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained in accordance with generally accepted accounting principles as provided in Section 8.4. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours.

12.3 Application of Iowa Law. This Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Iowa, and specifically the Iowa Act.

12.4 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

12.5 Amendments. Any amendment to this Operating Agreement or the Certificate of Organization shall become effective only after such time as it has been approved by the affirmative vote of the Members holding at least a majority of the Units.

12.6 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

12.7 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa.

12.8 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

12.9 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

12.10 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.11 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.12 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

12.13 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

12.14. Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

CERTIFICATE

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, constitutes the Operating Agreement of Peach Basket, LLC adopted by the Members of the Company as of September 20, 2019.

  
Brent Dahlstrom

  
Jason Conder



**SCHEDULE A**

<u>Member Name &amp; Address</u>	<u>Share of Initial Capital Contribution</u>	<u>No. of Units</u>
Brent Dahlstrom PO Box 128 Cedar Falls, IA 50613		500
Jason Conder		500

**EXHIBIT D**  
Resolutions

4844139v1

**WAIVER OF NOTICE OF SPECIAL MEETING OF  
MEMBERS OF  
PEACH BASKET, LLC**

We, the undersigned, being the Members of Peach Basket, LLC, an Iowa limited liability company, hereby waive all notice of and consent and agree that a special meeting of the Members shall be held on the 20<sup>th</sup> day of September, 2019.

Dated September 20, 2019.



Brent Dahlstrom



Jason Conder

Being the Members of said Company.

**MINUTES OF THE SPECIAL MEETING OF  
MEMBERS OF  
PEACH BASKET, LLC**

The special meeting of the Members was held on September 2, 2019, at the office of the Company, in the City of Waterloo, Iowa. Present were the following Members, being the owners of 100% of the outstanding units, and constituting a quorum, namely:

<u>In Person:</u>	<u>MEMBERS</u>	<u>NO. OF UNITS</u>
	Brent Dahlstrom	500
	Jason Conder	500
		<hr/>
	Total number of units represented:	1,000

Upon motion duly made and unanimously carried, Brent Dahlstrom was chosen as Chairman of the meeting and Jason Conder was chosen as Secretary.

**1. RESOLUTION REGARDING RESTATED OPERATING AGREEMENT**

The Chairman stated that the Operating Agreement of the Company needed to be reviewed and amended. The Chairman then presented a Restated Operating Agreement, prepared by Eric W. Johnson, the Company's attorney. After careful review of the document and upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that the Company approves and ratifies the Restated Operating Agreement of even date herewith, a copy of which is attached hereto.


**2. RESOLUTION REGARDING LOAN**

At such meeting discussion was held regarding the Company obtaining a loan in the amount of \$1,625,000 from Arbor Commercial Funding I, LLC. After discussion regarding the same, the following resolutions were unanimously adopted;


RESOLVED, that the Company shall obtain a loan in the amount of \$1,625,000 from Arbor Commercial Funding I, LLC.

FURTHER RESOLVED, that Brent Dahlstrom and Jason Conder, as Managers of the Company, are authorized to execute any and all documentation to effectuate the same.

A general discussion then ensued on the affairs of the Company, after which the meeting was adjourned.

  
\_\_\_\_\_  
Jason Conder, Secretary

ATTEST:

  
\_\_\_\_\_  
Brent Dahlstrom, Chairman