

**CONTRA COSTA COUNTY  
FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
**REIMBURSEMENT AGREEMENT**

1. PARTIES. Effective \_\_\_\_\_, the Contra Costa County Flood Control and Water Conservation District, a public body corporate and politic (hereinafter called "DISTRICT"), and LSK Holdings, LLC (hereinafter called "DEVELOPER"), mutually agree as follows:
2. INTRODUCTION.
  - A. DEVELOPER has constructed off-site storm drain improvements, which are part of Subdivision 9191 (said development) within Drainage Area 56. Said development is within the jurisdiction of the City of Oakley (hereinafter called "CITY"). CITY's conditions of approval for said development require installation by DEVELOPER of a portion of the drainage facilities shown on the adopted Drainage Plan for Drainage Area 56.
  - B. The cost to install these facilities exceeds the amount of drainage fee required by the drainage fee ordinance for said drainage area, Ordinance No. 2002-24.
  - C. DISTRICT has adopted a Drainage Area Credit and Reimbursement Policy for said drainage area.
  - D. Since DISTRICT has an effective Drainage Plan and a Drainage Area Credit and Reimbursement Policy for said drainage area, the DEVELOPER has requested that the DISTRICT enter into this agreement with the DEVELOPER, pursuant to said policy.
3. TERMS. DISTRICT shall reimburse DEVELOPER for eligible costs exceeding the amount of fees required by said ordinance, in accordance with the terms of this agreement and the DISTRICT's above-mentioned Drainage Plan and the Drainage Area Credit and Reimbursement Policy for said drainage area, which policy is attached as Exhibit "A," and made a part hereof by this reference.

4. ELIGIBLE COSTS. The items eligible for reimbursement and their agreed upon final costs are outlined on Exhibit "B", attached hereto and incorporated herein by this reference.
5. CONFORMANCE TO PLANS AND SPECIFICATIONS. The drainage facilities covered by this agreement have been installed in conformance with the plans and specifications prepared by DEVELOPER and reviewed by the DISTRICT, and accepted as complete by the CITY
6. HOLD HARMLESS. DEVELOPER shall defend, indemnify, save and hold DISTRICT, its governing body, officers, agents and employees absolutely free, clear, and harmless from any claims, actions, or costs arising from any property and/or rights acquisition necessary hereunder, or arising from any and all damage to property, injury to persons, including death, or any other type of liability arising as a result of DEVELOPER's installation of the drainage facilities required by the conditions of approval for said development.
7. NON-RESPONSIBILITY OF DISTRICT. The installation of drainage facilities covered by this agreement is the sole responsibility of DEVELOPER. DISTRICT assumes no responsibility whatsoever for construction procedures and methods utilized by DEVELOPER in constructing the drainage facilities.
8. PAYMENT. Payment terms are set forth in Exhibit "A", except that the first payment shall not be made until the DEVELOPER submits to DISTRICT acceptable evidence that DEVELOPER has paid for installation of the drainage facilities covered by this agreement.
9. TERMINATION. This agreement shall remain in effect either (1) for the time as provided in Section V.B. of Exhibit "A" or (2) until DEVELOPER has been reimbursed for the total eligible reimbursement amount, whichever first occurs. Non-submittal of the acceptable evidence of payment required by Section 9 shall not result in an extension of the termination date. The obligations contained in Sections 7 and 8 will survive termination of this Agreement.
10. NO OTHER RECOURSE AGAINST DISTRICT.
  - A. This agreement constitutes the total statement of rights between DISTRICT and DEVELOPER concerning payment or reimbursement for costs of installing the drainage facilities exceeding the required drainage fees.
  - B. If, after the expiration of the time described in Section V.B. of Exhibit "A", DEVELOPER has not received the total reimbursement amount, DEVELOPER shall have no right to further reimbursement by DISTRICT from any drainage fees thereafter collected by the DISTRICT, or from any other source of DISTRICT funding.

CONTRA COSTA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

By \_\_\_\_\_  
Chair of the Board of Supervisors, as governing body of  
the Contra Costa County Flood Control and Water  
Conservation District

ATTEST:  
David Twa, Clerk of the Board of Supervisors and  
County Administrator

By \_\_\_\_\_  
Deputy Clerk

RECOMMENDED FOR APPROVAL:  
Julia R. Bueren  
Chief Engineer

By \_\_\_\_\_

APPROVED AS TO FORM:  
Silvano B. Marchesi  
County Counsel


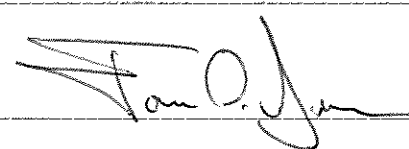
By  \_\_\_\_\_  
Deputy

Exhibit "A" - Drainage Area Credit and  
Reimbursement Policy  
Exhibit "B" - Calculation of Reimbursement  
Amount

DEVELOPER\*  
LSK Holdings, LLC

A California Limited Liability Company

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: James C. Donovan

Title: Manager

And By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Taxpayer I.D. # 26-0736704

\* If DEVELOPER is a corporation, two officers must sign. The first must be the chairman of the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code § 313; Civ. Code § 1190.) If DEVELOPER is a limited liability company, DEVELOPER shall sign in the manner required of corporations, or by two managers, or by one manager, pursuant to the articles of organization (see Corp. Code §§ 17151, 17154, 17157.) If DEVELOPER is a partnership, any authorized partner may sign. Signatures by DEVELOPER must be notarized.

see attached

State of California _____	
County of _____	
On _____ DATE	before me _____ NAME, TITLE OF OFFICER -E.G., "JANE DOE, NOTARY PUBLIC"
personally appeared _____ NAME(S) SIGNER(S)	
in the capacity as _____ INDIVIDUAL, GENERAL PARTNER, CORPORATE OFFICER - E.G. , VICE PRESIDENT	
who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.	
" He/She/They also acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.	
WITNESS my hand and official seal,	
_____ Signature of Notary	

#### SIGNATURE REQUIREMENTS

Signatures required on documents must comply with the following to be acceptable to Contra Costa County.

- I. FOR ALL SIGNATURES - The name and interest of the signer should be typed or printed in the space provided. The name must be signed exactly as it is typed or printed.
- II. SIGNATURES FOR INDIVIDUALS - The name must be signed exactly as it is printed or typed. The signer's interest in the property must be stated.
- III. SIGNATURES FOR PARTNERSHIPS - Signing party must be either a general partner or be authorized in writing to have the authority to sign for and bind the partnership.
- IV. SIGNATURES FOR CORPORATIONS

Documents should be signed by two officers, one from each of the following two groups:

GROUP 1. (a) The Chair of the Board  
(b) The President  
(c) Any Vice-President

GROUP 2. (a) The Secretary  
(b) An Assistant Secretary  
(c) The Chief Financial Officer  
(d) The Assistant Treasurer

If signatures of officers from each of the above two groups do not appear on the instrument, a certified copy of a resolution of the Board of Directors authorizing the person signing the instrument to execute instruments of the type in question is required. A currently valid power of attorney, notarized, will suffice.

Notarization of only one corporate signature or signatures from only one group, must contain the following phrase:

"...and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors."

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On February 25, 2009  
Date

before me,

Here Insert Name and Title of the Officer

personally appeared

James C. Donovan  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Karen K. Piona

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer — Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer — Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## EXHIBIT "A"

### DRAINAGE AREA CREDIT AND REIMBURSEMENT POLICY

Adopted June, 1989  
Revised December 1999

The following policy adopted by the Board of Supervisors, as the governing body of the Contra Costa County Flood Control and Water Conservation District, shall be used to determine credits and reimbursements as provided for in various Drainage Area Fee Ordinances.

#### I. Definitions:

1. Drainage Area Plan: The engineering plan, which shows and lists the size, length, and location of drainage facilities adopted for a Drainage Area.
2. Drainage Area Fee Ordinance: An ordinance adopted for a Drainage Area specifying the drainage fee necessary to complete construction of the planned facilities.
3. Drainage Area Fee Obligation: The drainage fee due on a development as determined from the Drainage Fee Ordinance.
4. Eligible Costs: The cost of installing drainage facilities, which are part of the Drainage Area Plan.
5. In-tract Drainage Facilities: Drainage facilities required within the limits of the development.
6. Off-tract Drainage Facilities: Drainage facilities required outside the limits of the development.
7. Credit: When a Drainage Fee Ordinance allows construction of drainage facilities in lieu of the payment of drainage fees, the eligible construction costs may be applied as a credit against the drainage area fee obligation.
8. Reimbursement: Payment to the developer for the eligible cost of installing drainage area facilities in excess of the drainage area fee obligation.

- II. GENERAL: Installation of drainage facilities required as a condition of property development can be very costly, and in many cases benefits other properties within the watershed. A Drainage Fee Ordinance spreads the costs of the drainage facilities to all of the benefiting properties and ensures, through a system of fees, credits, and reimbursements, equitable financial participation.

The drainage fee ordinance creates a fee obligation on all properties within the Drainage Area. The ordinance becomes operative upon a request to develop or improve a parcel of land. The drainage area fee obligation is limited to the fee due and is payable either in the form of cash or the installation of a portion of the drainage facilities shown on the adopted drainage plan.

When a condition of development requires the construction of drainage facilities with a cost in excess of the drainage fee obligation imposed by the fee ordinance, a portion of the excess cost may be eligible for reimbursement.

III. Eligible Costs: A portion of the cost to install drainage facilities shown on the adopted drainage area plan may be eligible for credit against the required drainage fees and for reimbursement of costs in excess of the drainage fee obligation. Credit or reimbursement shall be limited to the following eligible costs:

1. Actual in-tract and off-tract construction costs plus a fixed amount of 7 percent of the in-tract construction cost and 14 percent of the off-tract construction cost for allowance of miscellaneous developer's costs, including contract preparation, engineering, bonding, etc. Construction costs do not include utility relocations or the acquisition of rights of way.
2. Actual public agency project inspection fees for only those drainage area facilities shown on the adopted drainage plan.
3. Actual off-tract utility relocation costs.
4. Actual off-tract right of way acquisition costs needed for the installation of drainage area facilities, provided the developer does not have a beneficial interest in the off-tract property.

The determination of construction cost will be based on at least three independent bids. The developer shall submit said bids to the District for review and concurrence. Upon District concurrence with the bids, the lowest bid shall be the basis for determination of the credit and reimbursement amount.

The District reserves the right to reject the developer's bids or any other proposed value of said eligible costs and to calculate said costs and the fixed markups using then current prices.

If the developer elects to install a more costly drainage system than shown on the adopted drainage area plan, the District reserves the right to calculate said eligible costs using the then current prices for only the facilities shown on the adopted plan.

IV. Credit: The developer may apply as a credit toward the drainage fee obligation the eligible costs to construct drainage area facilities.

V. Reimbursement:

- A. Where the amount of said eligible costs exceed the drainage fee due, the developer, upon entering into a reimbursement agreement with the District, shall be eligible for a percentage reimbursement on the amount of the eligible costs determined by Section III above, in excess of the drainage fee due as follows:

Off-tract work:	100% (One hundred percent)
In-tract work :	50% (Fifty percent)



Prior to the application of the above percentages, the eligible costs in excess of the drainage fee due shall be prorated between off-tract work and in-tract work in the same proportion as the total eligible costs for off-tract work and in-tract work are to the total eligible costs.

B. The reimbursement shall be subject to the following limitations:

1. Reimbursements shall be paid only from drainage fees collected pursuant to a Drainage Fee Ordinance.
2. If more than one reimbursement agreement is in effect in a Drainage Area, the reimbursement payment to each agreement shall be based on the ratio of each agreement's original amount to the total original amount of all outstanding reimbursement agreements.
3. The District reserves the right to utilize not more than 80 percent of the drainage fees collected annually, on a fiscal year basis, for the purpose of making reimbursement payments.
4. Reimbursement payments shall be made quarterly, except that, during any quarter the District reserves the right not to make said payments if the amount of available funds to be disbursed is less than \$5000.00.
5. Reimbursement agreements shall remain in effect for a base period of ten years (forty quarters). The first quarter shall be the one following the quarter in which the first reimbursement payment is made. The developer shall forfeit any outstanding balance owed at the end of the ten years if 80% or more of the money has been reimbursed. If at the end of the ten years, less than 80% of the money has been reimbursed, the agreement shall be extended for five years. If after a period of five years the developer has not been reimbursed 80% of the amount due, the agreement shall be extended for another period of five years. Any remaining balance owed after twenty years shall be forfeited.
6. Reimbursement agreements executed subsequent to a government loan(s) shall have payments "calculated" using the pro-rata basis of paragraph B.2. above. However, in order to accelerate repayment of the government loan(s), the "calculated" payment shall be applied to repayment of the government loan(s), rather than be disbursed to the subsequent reimbursement agreement(s). Upon full repayment of the government loan(s), reimbursement payments shall commence to the subsequent reimbursement agreement(s). The 40 quarter time limit for a subsequent reimbursement agreement shall not start until the date the first payment is made to the reimbursement agreement.

VI. Applicability: Upon adoption by a drainage area, this policy shall be the basis for all subsequent reimbursement agreements in that drainage area. This policy will not alter any reimbursement agreement executed pursuant to a different policy.

**EXHIBIT "B"**

Drainage Area: 56  
 Development: Subdivision 9191  
 Developer: LSK Holdings, LLC  
 3020 I Street, Ste 200  
 Sacramento, CA 95816  
 Attn: Jim Donovan  
 Site Location: Line F that runs along Neroly Road in Oakley  
 Assessor's Parcel Number:

**Off-Tract Construction Costs: Line F**

Item No.	Description	Quantity	Unit	Unit Price	Total Cost
1	Mobilization	1	LS	\$ 90,860.00	\$ 90,860
1	30" Storm Drain	2210	LF	\$ 291.55	\$ 644,326
2	24" Storm Drain	1105	LF	\$ 233.24	\$ 257,730
3	18" Storm Drain (abandon and construct)	16	LF	\$ 174.93	\$ 2,799
4	Type II Manhole	10	EA	\$ 4,770.93	\$ 47,709
5	Type I Manhole	4	EA	\$ 3,377.18	\$ 13,509
9	Sawcut Break & Remove	10583	SF	\$ 0.72	\$ 7,620
10	Erosion and Sedimentation	1	LS	\$ 34,487.64	\$ 34,488
11	Asphalt Paving	5600	SF	\$ 7.77	\$ 43,512
12	Curbs & Gutters & Sidewalks	80	SF	\$ 130.68	\$ 10,454
13	Striping	1	LS	\$ 3,564.00	\$ 3,564
21	Change Order 1 - Water Line Crossing	1	EA	\$ 2,919.00	\$ 2,919
22	Change Order 2 - Asphalt Paving	1	EA	\$ 15,502.00	\$ 15,502

Subtotal \$ 1,174,991  
 Engineering (14% of Subtotal) \$ 164,499  
 Inspection \$ 36,339  
 Off-Tract Cost Subtotal \$ 1,375,829

**SUMMARY:**

Off-Tract Cost Subtotal	\$ 1,375,829.20
<b>Total Construction Cost</b>	<b>\$ 1,375,829.20</b>

**FEE OBLIGATION /CONSTRUCTION CREDIT:**

	DA 56
Fee Obligation	\$ (96,354.00)
Fee Paid/Credit	\$ -
Total Construction Cost	\$ 1,375,829.20
Subtotal	\$ 1,279,475.20

**REIMBURSEMENT - PRORATED:**

	DA 56
In-Tract Reimbursement (In-Tract% x Subtotal x 50%)	\$ -
Off-Tract Reimbursement (Off-Tract% x Subtotal x 100%)	\$ 1,279,475.20
Total Reimbursement (In-Tract Reimbursement + Off-Tract Reimbursement)	\$ 1,279,475.20

<b>TOTAL REIMBURSEMENT (ROUNDED)</b>	<b>\$ 1,279,475</b>
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TR JK:jk  
1/13/2009

**OPERATING AGREEMENT  
FOR  
LSK HOLDINGS, LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY**

This Operating Agreement (this "Agreement") is made as of August 16, 2007, by and among the parties listed on the signature pages hereof collectively referred to as the "Members" or individually as a "Managing Member" or "Member", with reference to the following facts:

A. The Members have filed Articles of Organization (the "Articles") for LSK Holdings, LLC (the "Company"), a limited liability company under the laws of the State of California, with the California Secretary of State.

B. The Members desire to adopt and approve an operating agreement for the Company under the Beverly-Killea Limited Liability Company Act (the "Act").

NOW, THEREFORE, the Members by this Agreement set forth the operating agreement for the Company upon the terms and subject to the conditions of this Agreement.

**ARTICLE I  
ORGANIZATIONAL MATTERS**

1.1 Name. The name of the Company shall be "LSK Holdings, LLC." The Company may conduct business under that name or any other name approved by the Members.

1.2 Term. The Company's existence commenced as of the date of the filing of the Articles and shall continue until dissolved pursuant to the provisions of this Agreement.

1.3 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California as required by the Act. The principal office of the Company shall be at 1415 40<sup>th</sup> Street, Sacramento, CA 95819 or such other location as the Members may determine. The registered agent shall be as stated in the Articles or as otherwise determined by the Members.

1.4 Business of the Company. Notwithstanding the Company's purpose described in the Articles, the Company shall not engage in any business other than the following without the consent of all of the Members:

- (a) the business of Real Estate Acquisition and Development; and
- (b) such other activities directly related to the foregoing business as may be necessary or advisable in the reasonable opinion of the Managing Member to further such business.

1.5 Member and Manager Information. The name, address, and Percentage Interest of each Member and Managing Member are set forth in Exhibit A. A Member may change his or her address in the Company's books and records upon notice thereof to the Manager.

## ARTICLE II CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contributions. Upon the formation of the Company, James C. and Brandi A. Donovan shall contribute to the Company all of their right, title and interest in and to that certain real property described on the attached Exhibit B. The Members agree that such property has a net fair market value of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00). James C. and Brandi A. Donovan shall receive a credit to his and her Capital Account equal to such net fair market value.

2.2 Additional Capital Contributions. No Member shall be required to make any additional capital contributions to the Company. Additional contributions to the Company's capital shall be made only with the unanimous consent of the Members. Except as provided in this Agreement, no Member may withdraw his or her capital contribution.

2.3 Capital Accounts. The Company shall establish an individual capital account ("Capital Account") for each Member. The Company shall determine and maintain each Capital Account in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv). Upon a valid transfer of a Member's interest in the Company ("Membership Interest") in accordance with Article VI, such Member's Capital Account shall carry over to the new owner.

2.4 No Interest. The Company shall not pay any interest on capital contributions.

## ARTICLE III MEMBERS

3.1 Admission of Additional Members. Additional Members may be admitted with the approval of all Members. Additional Members will participate in the Company's Net Profits, Net Losses, and distributions on such terms as the Members determine. The Members shall amend Exhibit A on the admission of an additional Member to set forth such Member's name and capital contribution. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the method of accounting at the close of each fiscal year employed on the Company's information tax return filed for federal income tax purposes.

3.2 Withdrawals or Resignations. No Member may withdraw, retire or resign from the Company.

3.3 Payments to Members. Except as specified in this Agreement no Member or person or entity controlled by, controlling or under common control with the Member (each such person or entity is defined as an "Affiliate"), is entitled to remuneration for services rendered or goods provided to the Company. However, the Company shall reimburse the Managing Member and their Affiliates for organizational expenses (including, without limitation, legal and accounting fees and costs) incurred to form the Company, prepare the Articles and this Agreement and, as approved by the Members, for the actual cost of goods and materials used by the Company.

## ARTICLE IV MANAGEMENT

4.1 Management and Powers. The business, property and affairs of the Company shall be managed exclusively by the Managing Member (Manager). Except for situations in which the approval of the Members is expressly required by this Agreement, the Manager shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs 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, property and affairs. The Manager is authorized to endorse checks, drafts, and other evidence of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts, and may sign all checks, drafts, and other instruments obligating the Company to pay money, and may sign contracts and obligations on behalf of the Company.

The Manager shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Corporations Code Section 17003.

4.2 Managing Member. James C. Donovan shall be the Managing Member.

4.3 Member Approval. No annual or regular Member meetings are required. However, if such meetings are held, such meetings shall be noticed, held and conducted pursuant to the Act. In any instance in which the Members' approval is required under this Agreement, such approval may be obtained in any manner permitted by the Act. Unless otherwise provided in this Agreement, Member approval shall mean the unanimous approval of Members.

4.4 Devotion of Time. The Managing Member shall devote whatever time or effort as he deems appropriate for the furtherance of the Company's business.

4.5 Fiduciary Duties. The only fiduciary duties the Manager owes to the Company and the other Members are the duty of loyalty and the duty of care set forth in subsections (i) and (ii) below:

(i) A Member's duty of loyalty to the Company and the other Members is limited to the following:

(a) To account to the Company and hold as trustee for the Company any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business or derived from any use by the Member of Company property, including the appropriation of a Company opportunity, without the consent of the other Members;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company business as or on behalf of a party having an interest adverse to the Company without the consent of the other Members; and

(c) Except as otherwise provided in this Agreement, to refrain from competing with the Company in the conduct of Company business before the Company's dissolution without the other Members' consent.

(ii) A Member's duty of care to the Company and the other Members in the conduct and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law by the Member.

## ARTICLE V ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

5.1 Tax Allocations. All items of Company income, gain, loss or deduction shall be allocated for federal, state and local income tax purposes to the Members, pro rata, in accordance with their respective Percentage Interests.

5.2 Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution that results in a deficit balance in that Member's Capital Account, there shall be allocated to that

Member items of Company income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible.

5.3 Distribution of Assets by the Company. Subject to applicable law and any limitations contained elsewhere in this Agreement, Members holding a majority of the Membership Interests may elect from time to time to cause the Company to make distributions. Distributions shall be first to the Members in proportion to their unreturned capital contributions until each Member has recovered his or her capital contributions, and then to the Members in proportion to their Membership Interests.

## ARTICLE VI TRANSFER AND ASSIGNMENT OF INTERESTS

6.1 Transfer and Assignment of Interests. No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest (collectively, "transfer") except with the prior approval of all Members, which approval may be given or withheld in the sole discretion of the Members.

6.2 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if (a) Member consent is given in accordance with Section 6.1, (b) such person executes an instrument satisfactory to the Members accepting and adopting the terms and provisions of this Agreement, and (c) such person pays any reasonable expenses in connection with his or her admission as a new Member. The admission of a substitute Member shall not release the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

6.3 Transfers in Violation of this Agreement and Transfers of Partial Membership Interests. Upon a transfer in violation of this Article VI, the transferee shall have no right to vote or participate in the Company's management or to exercise any Member rights. Such transferee shall only be entitled to receive the share of Net Profits, Net Losses and distributions of the Company's assets to which the transferor would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the remaining Members, a transfer in violation of this Article VI would cause the Company's termination under the Code, in the sole discretion of the remaining Members, the transfer shall be null and void.

## ARTICLE VII ACCOUNTING, RECORDS, REPORTING BY MEMBERS

7.1 Books and Records. The Company's books and records shall be kept in accordance with the accounting methods followed for federal income tax purposes. The Company shall maintain at its principal office in California all records required to be maintained by the Company pursuant to the Act.

7.2 Reports. The Company shall cause to be filed, in accordance with the Act, all reports and documents required to be filed with any governmental agency. The Company shall cause to be prepared at least annually information concerning the Company's operations necessary for the completion of the Members' federal and state income tax returns. The Company shall send or cause to be sent to each Member within ninety (90) days after the end of each taxable year (i) such information as is necessary to complete the Members' federal and state income tax or information returns and (ii) a copy of the Company's federal, state, and local income tax or information returns for the year.

7.3 Bank Accounts. The Manager shall maintain the Company's funds in one or more separate bank accounts in the Company's name, and shall not permit the Company's funds to be commingled in any fashion with any other person's funds. Any Member, acting alone, is authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's

accounts.

## ARTICLE VIII DISSOLUTION AND WINDING UP

8.1 Company Dissolution. The Company shall dissolve, dispose of its assets, and wind up its affairs on the first to occur of the following (each, a "Dissolution Event"):

- A. Upon the entry of a decree of judicial dissolution pursuant to Section 17351 of the Corporations Code;
- B. Upon the vote of Members holding at least FIFTY ONE percent (51%) of the Membership Interests;
- C. The sale of all or substantially all of the Company's assets; or
- D. The happening of any event that makes it unlawful or impossible to carry on the Company's business.

8.2 Winding Up. On the occurrence of a Dissolution Event, the Company shall dispose of its assets and wind up its affairs. The Company shall give written notice of the commencement of the dissolution to all of its known creditors.

8.3 Payment of Liabilities upon Dissolution. After determining that all of the Company's known debts and liabilities have been paid or adequately provided for, the Company shall distribute the remaining assets to the Members in accordance with their positive capital account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs.

8.4 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall (a) be entitled to look only to the Company's assets for the return of his or her positive Capital Account balance, and (b) have no recourse for his or her Capital Contribution and/or share of Net Profits against any other Member, except as provided in Article X.

8.5 Certificates. The Company shall file a Certificate of Dissolution with the California Secretary of State on the Company's dissolution and a Certificate of Cancellation on the Company's completion of the winding up of its affairs.

## ARTICLE IX INDEMNIFICATION

9.1 Indemnification of Agents. The Company shall indemnify any Member and may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding because he or she is or was a Company Member, officer, employee or other agent or that, being or having been such a Member, officer, employee or agent, he or she is or was serving at the Company's request as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit.

## ARTICLE X INVESTMENT REPRESENTATIONS



Each Member represents and warrants to, and agrees with, the Members and the Company as follows:

10.1 Preexisting Relationship or Experience. The Member has a preexisting personal or business relationship with the Company or one or more of its officers or controlling persons, or because of the member's business or financial experience, or because of the business or financial experience of the Member's financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, the Member is capable of evaluating the risks and merits of an investment in the Company and of protecting the Member's own interests in connection with this investment.

10.2 No Advertising. The Member has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, article or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

10.3 Investment Intent. The Member is acquiring the Membership Interest for investment purposes for the Members' own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other person will have any direct or indirect beneficial interest in or right to the Membership Interest.

10.4 Residency. The Member is a resident of, or incorporated in, the State of California.

#### ARTICLE XI MISCELLANEOUS

11.1 Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements among the Members. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

11.2 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.3 Interpretation. All pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the interpretation of any provision of this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or his or her counsel.

11.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, excluding its conflicts of law principles.

11.5 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11.6 Notices. Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing (which may include facsimile) and will be deemed to have been

given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified in Exhibit A hereto. Any party may, at any time by giving five (5) days' prior written notice to the other Members, designate any other address in substitution of the foregoing address to which such notice will be given.

11.7 Amendments. All amendments to this Agreement will be in writing and signed by all of the Members.

11.8 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

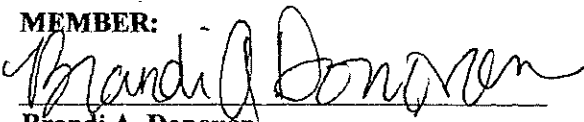
11.9 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

IN WITNESS WHEREOF, all of the Members have executed this Agreement, effective as of the date first written above.

MANAGING MEMBER:

  
James C. Donovan

MEMBER:

  
Brandi A. Donovan