

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

FIRST 100, LLC; 1ST ONE HUNDRED  
HOLDINGS, LLC.

Appellants.

vs.

TGC/FARKAS FUNDING, LLC

No. 83177

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Jul 30 2021 09:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 13

County Clark Judge Mark R. Denton

District Ct. Case No. A-20-822273-C

**2. Attorney filing this docketing statement:**

Attorney Joseph A. Gutierrez Telephone (702) 629-7900

Firm Maier Gutierrez & Associates

Address 8816 Spanish Ridge Avenue, Las Vegas, NV 89148

Client(s) First 100, LLC and 1st One Hundred Holdings, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Erika P. Turner; Dylan Ciciliano Telephone (725) 777-3000

Firm Garman Turner Gordon, LLP

Address 7251 Amigo Street, Suite 210, Las Vegas, Nevada 89119

Client(s) \_\_\_\_\_

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

First 100, LLC et al. v. TGC/Farkas Funding, LLC, Supreme Court Case No. 82794

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:  
Not applicable.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This dispute involved a company books and records request, with plaintiff TGC/Farkas Funding, LLC demanding access to defendant First 100's business records, arguing that its status as a purported member of First 100 substantiated the right to examine First 100's company records. The matter was initiated in arbitration through the American Arbitration Association, where the Arbitration Panel determined that First 100 is required to "make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying." The arbitration award was later confirmed by the district court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of \$23,975.00.

Thereafter, a dispute arose as to whether the parties had settled the matter, which resulted in various motions being filed, including a motion to enforce settlement, motion to compel, and motion for an order to show cause. The district court conducted an evidentiary hearing as to the three motions and issued its Findings of Fact, Conclusions of Law, and Order ("FFCL") on April 7, 2021. In the FFCL, the district court ordered that the motion to enforce settlement was denied, ordered immediate compliance of the books and records request which was the subject of the arbitration award confirmed by the district court, and ordered reimbursement of plaintiff TGC/Farkas Funding, LLC's fees and costs, with First 100 and non-party Jay Bloom being "jointly and severally responsible" for payment of fees and costs. On June 11, 2021, the district court entered its order awarding TGC/Farkas Funding, LLC fees and costs in the amount of \$151,535.81, holding that the amount must be made by Defendants and/or [non-party] Jay Bloom as a condition of purging the contempt." This appeal of that 6/11/2021 order follows.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in awarding \$151,535.81 in fees and costs to TGC/Farkas Funding, LLC for approximately four (4) months' worth of attorney work, and whether the district court erred in determining that the fees and costs "must be paid by Defendants and/or [non-party] Jay Bloom as a condition of purging the contempt."

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Not applicable.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals under NRAP 17(7), which covers "appeals from postjudgment orders in civil cases." Following the judgment order issued by the district court, further motions followed, which resulted in the evidentiary hearing, followed by the FFLC as to the postjudgment issues, and followed by the fees and costs order which is the subject of this appeal.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
Not applicable.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Jun 11, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Jun 11, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Jul 2, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
Not applicable.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
NRAP 3A(b)(1) applies because this appeal is from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. The district court's order awarding TGC/Farkas Funding, LLC fees and costs, entered on June 11, 2021, substantively resolved post-judgment motions.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

TGC/Farkas Funding, LLC, plaintiff

First 100, LLC, defendant

1st One Hundred Holdings, LLC, defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

TGC/Farkas Funding LLC's underlying claim before the Arbitration Panel was for an order compelling the production of First 100's company records, and an order for attorneys' fees and costs. The Arbitration Panel's award led to a judgment.

The FFCL on the following postjudgment motions is subject of the first appeal: TGC/Farkas Funding LLC's motion to compel and motion for an order to show cause, and First 100's motion to enforce settlement. The 6/11/21 fees and costs order is the subject of this appeal.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

First 100, LLC; 1st One Hundred Holdings LLC  
Name of appellant

Joseph A. Gutierrez  
Name of counsel of record

Jul 30, 2021  
Date

/s/ Joseph A. Gutierrez  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 30th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Erika P. Turner, Esq.  
Dylan T. Ciciliano, Esq.  
GARMAN TURNER GORDON, LLP  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Attorneys for TGC Farkas Funding LLC

Persi J. Mishel  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Settlement Judge

Dated this 30th day of July, 2021

/s/ Natalie Vazquez  
Signature



AMERICAN  
ARBITRATION  
ASSOCIATION

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION

01-20-0000-0613

COMMERCIAL ARBITRATION RULES  
DEMAND FOR ARBITRATION

For Consumer or Employment cases, please visit [www.adr.org](http://www.adr.org) for appropriate forms.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: First 100, LLC: First One Hundred Holdings, LLC (successor to First 100, LLC)

Address: 11920 Southern Highlands Parkway

City: Las Vegas

State: Nevada

Zip Code: 89141

Phone No.:

Fax No.:

Email Address:

Name of Representative (if known): Joseph A. Gutierrez, Esq.

Name of Firm (if applicable): Maier Gutierrez Ayon

Representative's Address: 8816 Spanish Ridge Ave.

City: Las Vegas

State: Nevada

Zip Code: 89148

Phone No.: 702-629-7900

Fax No.: 702-629-7925

Email Address: [jag@mglaw.com](mailto:jag@mglaw.com)

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rule of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

Demand for Inspection of Records by a member of an LLC

Dollar Amount of Claim: \$ 0, except for fees and costs incurred to obtain relief requested, which are awardable

the Relief Sought: ☒ Attorneys Fees ☐ Interest ☒ Arbitration Costs ☐ Punitive/Exemplary  
☐ Other

Amount enclosed: \$

In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☐ Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Business litigation experience or former judge

Hearing locale: Las Vegas

(check one) ☒ Requested by Claimant ☐ Locale provision included in the contract

Estimated time needed for hearings overall: 3

hours or

Days

Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online.  
AAA Case Filing Services can be reached at 877-495-4185.



AMERICAN  
ARBITRATION  
ASSOCIATION

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION

## COMMERCIAL ARBITRATION RULES DEMAND FOR ARBITRATION

Type of Business:

Claimant: TGC Farkas Funding LLC

Respondent: First 100, LLC

Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other?

Signature (may be signed by a representative):

Date:

1/7/2020

Name of Claimant: TGC Farkas Funding LLC

Address (to be used in connection with this case): 667 Madison Avenue

City: New York

State: New York

Zip Code: 10065

Phone No.: 212-499-9470

Fax No.:

Email Address: allatto@georgetownco.com

Name of Representative:

Name of Firm (if applicable): Erika Pike Turner NVBar No. 6454

Representative's Address: 650 White Drive, Suite 100

City: Las Vegas

State: Nevada

Zip Code: 89119

Phone No.: 725-777-3000

Fax No.: 725-777-3112

Email Address: eturner@giglegal

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.

September 13, 2019

Erika Pike Turner, Esq.  
Email: ETurner@GTG.legal  
Direct Line: (725)244-4573

VIA EMAIL AND U.S. MAIL

Joseph A. Gutierrez, Esq.

[jag@mgalaw.com](mailto:jag@mgalaw.com)

MAIER GUTIERREZ AYON

8816 Spanish Ridge Ave

Las Vegas, NV 89148

Dear Mr. Gutierrez:

Please recall this firm represents the interests of Adam Flatto, Marshall Rose and by extension, their investment vehicle, TGC/Farkas Funding, LLC (together, the "Investors"), with respect to their \$1 million investment and related 3% interest in First 100, LLC and 1st One Hundred Holdings, LLC (together, the "Company"). In the last communication we had on this matter, the Company represented that they were in the process of collecting a \$1 billion+ judgment and taking other action for the purpose of winding up the Company and returning the Investors their capital. There has been no update to the Investors, despite the significant passage of time.

The Investors therefore hereby make a demand in their capacity as Investors under NRS 86.241(2) and (3) as well as the Company's Operating Agreements, for the purpose of monitoring such investment for production of the books and records:

- 1) The Company's company books, inclusive of any and all agreements relating to the Company's governance (Company operating agreements, amendments, consents and resolutions)
- 2) Financial Statements, inclusive of balance sheets and profit & Loss statements
- 3) General ledger and back up, inclusive of invoices
- 4) Documents sufficient to show the Company's assets and their location
- 5) Documents relating to value of the Company and/or the Company's assets
- 6) Documents sufficient to show the Company's members and their status, inclusive of any redeemed members
- 7) Tax returns for the Company
- 8) Documents sufficient to show the accounts payable incurred by the Company, paid by the Company, and remaining due from the Company

- 9) Documents sufficient to show payments made to the Company managers, members and/or affiliates of any managers or members
- 10) Company insurance policies
- 11) Documents sufficient to show the status of any Company lawsuits
- 12) Documents sufficient to show the use of the Investors' funds (and any other members' investment) with the Company.

Please confirm that the documents will be available for inspection and copying (at the Investors' cost) at your office on September 26, 2019 at 3:00 pm. If that date/time is unavailable, please provide a reasonable alternative.

Sincerely,

GARMAN TURNER GORDON

*/s/ ERIKA PIKE TURNER*

ERIKA PIKE TURNER, ESQ.

cc: Michael Busch

# FIRST AMENDED OPERATING AGREEMENT

of

## FIRST 100, LLC

This operating agreement of FIRST 100, LLC, a Nevada limited liability company, Adopted April 11, 2012, and further Amended December 12, 2012, having an effective date of December 12, 2012, is: (i) adopted by the Manager (as defined below); and (ii) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

### ARTICLE I: DEFINITIONS

As used in this Operating Agreement, unless the context clearly indicates otherwise, the following terms have the following meanings:

1.1 "Act" means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

1.2 "Articles" means the Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company under and pursuant to the Act.

1.3 "Bankrupt Member" means any Member: (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in sub-clauses (i) through (iv) of this Clause (a) or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

1.4 "Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Nevada are closed.

1.5 "Capital Contribution" means any contribution by a Member to the capital of the Company.

1.6 "Class A Member" means a Member identified on SCHEDULE A hereto.

1.7 "Class A Membership Interest" means, with respect to any Class A Member, the percentage interest set forth opposite such Class A Member's name on SCHEDULE A, as may be amended from time to time.

1.8 "Class B Member" means a Member identified on SCHEDULE A hereto.

1.9 "Class B Membership Interest" means with respect to any Non Voting Class B Member, the percentage interest set forth opposite such Class B Member's name on SCHEDULE A, as may be amended from time to time.

1.10 "Class C Member" means a Member identified on SCHEDULE A hereto.



1.11 "Class C Membership Interest" means with respect to any Non Voting Class C Member, the percentage interest set forth opposite such Class C Member's name on SCHEDULE A, as may be amended from time to time.

1.12 "Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

1.13 "Company" means First 100, LLC, a Nevada limited liability company

1.14 "Default Interest Rate" means a rate per annum equal to the lesser of (a) one percent (1%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.15 "Delinquent Member" means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

1.16 "Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, the operation of law), or the acts thereof.

1.17 "General Interest Rate" means a rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.18 "Lending Member" means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

1.19 "Manager" means SJC Ventures Holding Company, LLC, a Delaware limited liability company. There is only one Manager of the Company.

1.20 "Member" means any Person executing this Operating Agreement as of the date of this Operating Agreement as a Member, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

1.21 "Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

1.22 "NRS" means Nevada Revised Statutes.

1.23 "NRS Chapter 86" means the Nevada statutes contained in Chapter 86 of the Nevada Revised Statutes concerning limited-liability companies, and any successor statute, as amended from time to time.

1.24 "Operating Agreement" means this Operating Agreement, as approved or amended by the Members, as herein provided.

1.25 "Permitted Transferee" means any member of such Member's immediate family, or a trust including a charitable remainder trust, corporation, limited liability company, or partnership controlled by such Member or members of such Member's immediate family, or another Person controlling, controlled by, or under common control with such Member.

1.26 "Person" includes an individual, partnership, limited partnership, limited liability company,

foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

1.27 "Priority Return" means a sum equal to that particular Class B Member's principal amount of Class B Capital Contribution.

1.28 "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

## ARTICLE II: ORGANIZATION

2.1 **FORMATION.** The Company has been organized as a Nevada limited liability company by filing of Articles under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of Nevada.

2.2 **NAME.** The name of the Company is **FIRST 100, LLC** and all Company business must be conducted in that name, or such other registered names that comply with applicable law as the Manager may select from time to time.

2.3 **REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.** The registered office of the Company required by the Act to be maintained in the State of Nevada shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Nevada shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Manager may designate from time to time, which need not be in the State of Nevada, and the Company shall maintain records there as required by NRS §86.241 and shall keep the street address of such principal office at the registered office of the Company in the State of Nevada. The Company may have such other offices as the Manager may designate from time to time.

2.4 **PURPOSES.** The purpose of the Company is everything allowable by law.

2.5 **FOREIGN QUALIFICATION.** Prior to the Company's conducting business in any jurisdiction other than Nevada, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

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

2.7 **MERGERS AND EXCHANGES.** The Company may be a party to: (a) a merger; or (b) an exchange or acquisition permitted by the Act, subject to the requirements of this Operating Agreement.

2.8 **NO STATE-LAW PARTNERSHIP.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

## ARTICLE III: MEMBERS

**3.1 THREE CLASSES OF MEMBERSHIP INTEREST.** The Company shall have three classes of Membership Interests: Class A Voting Membership Interests, Class B Non Voting Membership Interests and Class C Non Voting Membership Interests. Each of the Class A Membership Interests, Class B Membership Interests and Class C Membership Interests shall have certain rights, obligations and privileges, as provided in this Agreement.

**3.2 MEMBERSHIP INTERESTS.** The Member names and Class A Membership Interests of the Class A Members are set forth on SCHEDULE A. The Member names and Class B Membership Interests of the Class B Members are set forth on SCHEDULE A. The Member names and Class C Membership Interests of the Class C Members are set forth on SCHEDULE A.

**3.3 CLASSES AND VOTING.** The Company may issue voting Membership Interests and non-voting Membership Interests. The Membership certificates shall clearly designate so as to distinguish between voting and non-voting classes. Upon adoption of this Operating Agreement:

- i. Class A Members shall have voting rights. All references in this Operating Agreement to discretionary actions subject to a vote of Members shall solely refer to Class A Members.
- ii. Class B Members are non-voting Membership Interests.
- iii. Class C Members are non-voting Membership Interests.

**3.4 VOTING; PROXIES.** Each outstanding Class A Membership Interest shall be entitled to one vote per one full percent of Class A Membership Interest owned by the Member on each matter submitted to a vote at a meeting of Members. A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

**3.5 QUORUM.** Unless otherwise provided in the Articles, the holders of a simple majority of the Membership Interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Class A Members.

**3.6 MAJORITY VOTE.** With respect to any matter when a quorum is present at any meeting, the vote of the holders of a simple majority of the Membership Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by an express provision of the Act which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

**3.7 PLACE AND MANNER OF MEETING.** All meetings of the Members shall be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**3.8 CONDUCT OF MEETINGS.** All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Person designated by the Manager. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

**3.9 ANNUAL MEETING.** An annual meeting of the Members shall be held each year. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Company.

**3.10 SPECIAL MEETINGS.** Special meetings of the Members may be called at any time by (i)

Manager of the Company; (ii) the President of the Company if such office exists; or (iii) the holders of at least five percent (5%) of the Class A Membership Interests. Unless waived, notice of such special meeting must be made in writing at least ten days prior to the meeting date, and such notice shall state the purpose of such special meeting and the matters proposed to be acted on thereat. A quorum must be present for such meeting to be recognized and effective.

**3.11 NOTICE.** Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, to each Member, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid.

**3.12 CLOSING RECORD BOOKS AND FIXING 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 entitled to distribution or in order to make a determination of Members for any other proper purpose, the Manager may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, the Manager may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed or the date on which the resolution of the Manager, declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

**3.13 ACTION WITHOUT MEETING.** Any meeting, or any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members (including any action requiring less than unanimous vote of the members), may be taken without a formal meeting, and without prior notice, but only if consent in writing, setting forth the action so taken, shall have been signed by the holders of all the Membership Interest for each class entitled to vote and such consent shall have the same force and effect as vote by formal meeting of the Members. Written consents made pursuant to this Section shall be signed and dated.

**3.14 CONFIDENTIAL INFORMATION.** The Members acknowledge that from time to time, they may receive information from the Manager or other Persons regarding the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than to another Member or a Manager, except for disclosures: (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable); (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this Section; or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance. The Members acknowledge that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members to examine or copy that information.

**3.15 LIABILITIES TO THIRD PARTIES.** Except as otherwise expressly agreed in writing,

Member or the Manager shall be liable for the debts, obligations or liabilities of the Company.

**3.16 WITHDRAWAL / SURRENDER.** A Member may unilaterally withdraw from the Company as a Member, but only by ways of a written surrender of membership interest tendered to the Company and all Members then in existence.

**3.17 LACK OF AUTHORITY TO BIND OR OBLIGATE.** The Company is Manager-managed. No Member (other than a Manager or a duly appointed officer) has the authority or power to act for or on behalf of the Company, to do any act that would be obligating or binding on the Company, or to incur any expenditures on behalf of the Company.

**3.18 REPRESENTATIONS AND WARRANTIES.** Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in Clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof; (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Manager, Member(s), partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

**3.19 ADMISSION OF ADDITIONAL MEMBERS.** Following adoption of this Operating Agreement, the Company may admit one or more additional Members from time to time, but only upon the majority vote of all Class A Members then in existence. The terms of admission or issuance must specify the Capital Contributions applicable thereto, and may also provide for the creation of additional classes of Members and having different rights, powers, and duties, but is so then this Operating Agreement shall be amended to reflect such added classes. Upon the admission to the Company of any additional members, the Membership Interests of the other Members shall be reduced accordingly on a pro rata basis. SCHEDULE A shall be amended from time to time as of the effective date of the admission of an additional member to the Company. As a condition to being admitted to the Company, each additional member shall execute an agreement to be bound by the terms and conditions of this Agreement.

**3.20 RESTRICTIONS ON TRANSFERENCE OF MEMBERSHIP INTEREST.** Notwithstanding anything herein to the contrary, the Membership Interest and transferability of Membership Interest in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership Interest may be transferred or encumbered without the consent of all Members. This Company is formed by a closely-held group, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. Notwithstanding the foregoing restrictions upon transfer and ownership, the following transfers are permitted:

A. **Death of a Member Who Is A Natural Person.** The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all of the decedent's rights and powers as a Member.

and the decedent's Membership Interest in the Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that Person's Membership Interest, and his or her written designation will be binding upon the Company if delivered to the Company before or within at least sixty (60) days after the death of the Member.

**B. Estate Planning Transfers.** A Member will also have the right to make estate planning transfers of all or any part of his or her Membership Interest in the Company. The term "estate planning transfer" will mean any transfer made during the life of a Member without value, or for less than full consideration, by way of a marital partition agreement and/or a transfer of all or any part of a Membership Interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under § 170(c) of the Code. The Articles and this Operating Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Articles and this Operating Agreement.

**C. Transfers for Convenience.** A Member who is a company may freely transfer its Membership to another company whose ownership is identical to the ownership of the assignor Member, provided, however, that such Member may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the disposition, (a) the Company would be considered to have terminated within the meaning of §708 of the Code or (b) that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest all in accordance with Article XI as if the breaching Member were a Bankrupt Member.

**D. Approved Sale or Transfers.** A Member may transfer its Membership to another Person upon the unanimous vote of all Class A Members.

**3.21 DISPUTED TRANSFERS.** The Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

**3.22 RIGHT OF FIRST REFUSAL.** If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

- (a) The Company will have the unilateral option to re-acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Company is required to recognize the transfer.
- (b) The Company will have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.
- (c) Unless the Company and the transferee agree otherwise, the fair market value of a Member's Membership Interest is to be determined by the written appraisal of a Person or firm qualified to value this type of business. The appraiser selected by the Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, [P. O. Box 17265, Washington, DC 20041] to perform appraisals.
- (d) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the

first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the "closing date"). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Membership Interest is resolved. The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

- (e) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Company if less than 10 years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Manager. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal, which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If §§483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.
- (f) The Manager may assign the Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 50% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.
- (g) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

**3.23 TAX TREATMENT OF TRANSFERRED MEMBERSHIP INTERESTS.** With respect to any transferred Membership Interest that may occur, all items of income, gain, loss, deduction, and credit allocable to any transferred Membership Interest shall for tax purposes be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under §706 of the Code and the regulations thereunder.

#### ARTICLE IV: CAPITAL CONTRIBUTIONS

**4.1 INITIAL CONTRIBUTIONS.** Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the Capital Contributions described for that Member in SCHEDULES A and B. No interest shall be earned or paid on Capital Contributions or a member's capital account.

**4.2 SUBSEQUENT CONTRIBUTIONS.** If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital contributions shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital.

contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

**4.3 FAILURE TO CONTRIBUTE.** If a Member does not contribute all of its share of a Capital Call by the time required, then either:

- 1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution; however, such additional capital to be entitled to priority return superior to those set forth in Article V;

or:

- 2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:

- (a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;
- (b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;
- (c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;
- (d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);
- (e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and
- (f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

**4.4 RETURN OF CONTRIBUTIONS.** Class A Members are not entitled to the return of any part of their Capital Contributions. In accordance with Article V, Class B Members and Class C Members are entitled to priority return of all of their Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member.

**4.5 ADVANCES BY MEMBERS.** If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

**4.6 CAPITAL ACCOUNTS.** A capital account shall be established and maintained for each Member



by Class. The Members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1 (b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. § 1.704-1 (b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. § 1.704-1(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(i).

## **ARTICLE V: ALLOCATIONS AND DISTRIBUTIONS**

**5.1 DISTRIBUTIONS.** From time to time (but at least once each calendar quarter) the Manager shall determine in its reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members an amount in cash (or property other than cash) equal to that excess. Distributions by the Manager shall be mandatory upon the affirmative vote of 95% or more of the Class A Members, subject to Section 5.5.

**5.2 ALLOCATION OF PROFIT DISTRIBUTIONS OF THE COMPANY.** Profit distributions of the Company in each fiscal quarter shall be allocated to the Members as follows:

- i. first to the Class B Members, in proportion to their respective Class B Capital Contributions, in accordance with Section 5.3 ("Priority Return");
- ii. next to the Class C Members, in proportion to their respective Class C Capital Contributions, in accordance with Section 5.3 ("Priority Return");
- iii. next to the Class A Members in accordance with their respective Class A Membership Interests; provided, however, that Class A Members will only be allocated profit distributions after Class B Members and Class C Members have been paid their entire Priority Return.

**5.3 TREATMENT OF CLASS B DISTRIBUTIONS.** Class B profit distributions made pursuant to Section 5.2(i) shall be treated as a return of capital, and accordingly each Class B Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class B Member, until their Capital Contribution is returned in full. Once each Class B Member's Capital Contribution is reduced to \$0, the Class B class will cease to exist.

**5.4 TREATMENT OF CLASS C DISTRIBUTIONS.** Class C profit distributions made pursuant to Section 5.2(ii) shall be treated as a return of capital, and accordingly each Class C Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class C Member, until their Capital Contribution is returned in full. Once each Class C Member's Capital Contribution is reduced to \$0, the Class C class will cease to exist.

**5.5 RIGHT TO RECEIVE DISTRIBUTIONS.** Except as otherwise provided in NRS §86.391 and §86.321, at the time a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

**5.6 LIMITATION ON DISTRIBUTION.** Notwithstanding any other provision in this Article, the Manager may not make a distribution to the Company's Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Company, exceed the fair value of this Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Company's assets only to the extent that the fair value of that property exceeds that liability. However, a Member who receives such a distribution has no liability under the Act to return the distribution unless the Member knew that the distribution violated any provision of the Act.



## ARTICLE VI: MANAGER

### 6.1 MANAGEMENT BY MANAGER.

A. Except for situations in which the approval of the Members is required by this Operating Agreement or by non-waivable provisions of applicable law, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of the Manager. No member shall take part in the management of the Company's business, transact any business in the Company's name or have the power to sign documents or otherwise bind the Company. The Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including without limitation, the following:

- (1) hiring, managing, and terminating officers, employees, and independent contractors
- (2) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;
- (3) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (4) maintaining the assets of the Company in good order;
- (5) collecting sums due the Company;
- (6) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;
- (7) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;
- (8) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
- (9) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (10) obtaining insurance for the Company;
- (11) determining distributions of Company cash and other property as provided in Article X and
- (12) the institution, prosecution and defense of any proceeding in the Company's name.

B. Notwithstanding the provisions of Section 6.1 A., the Manager may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

- (1) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will, other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law));
- (2) be a party to (i) a merger, or (ii) an exchange or acquisition, without complying with the

applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(3) amend or restate the Articles, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members, unless such provision is rendered inapplicable by another provision of applicable law.

## **6.2 ACTIONS BY MANAGER; DELEGATION OF AUTHORITY AND DUTIES.**

A. In managing the business and affairs of the Company and exercising its powers, the Manager shall act: (i) collectively through meetings and written consents consistent as may be provided or limited in other provisions of this Operating Agreement; (ii) through officers to whom management authority and duties have been delegated, pursuant to subsection (C) below; and (iii) through committees comprised of Members and management, if any so may be appointed.

B. The Manager may, from time to time, designate one or more advisory boards to provide guidance and insight to the Company's strategic direction and operations, provided, however, that any such advisory board shall have no managerial authority or any other authority to act on behalf of or bind the Company.

C. The Manager may, from time to time, designate one or more natural persons to be officers of the Company. No officer need be a resident of the State of Nevada or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decide otherwise, if the title is one commonly used for officers of a business corporation formed under the NRS Chapter 78, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office but may also include other such specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been terminated by Manager or the President of the Company, if any. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager or the President of the Company (if such position has been appointed). Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

D. Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

**6.3 AGENCY.** The Manager and any appointed officers are agents of this Company for the purpose of any act carrying out the business of the Company, including the execution in the name of the Company of any instrument for apparently carrying on in the usual way the business of this Company.

**6.4 COMPENSATION.** The Manager shall be paid reasonable compensation and reimbursed for all expenses incurred on behalf of the Company.

**6.5 REMOVAL AND RESIGNATION.** The Manager may not be removed or terminated by the Members except by unanimous vote. The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein.

**6.6 VACANCIES.** Any vacancy occurring in the position of Manager may be filled by the Board of Directors.

vote of a majority of Class A Members by election at a special meeting of Members called for that purpose.

**6.7 APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS.** The Manager in its discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by 98% of the Class A Members shall be as valid as if as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

**6.8 INTERESTED MANAGER, OFFICERS AND MEMBERS.**

A. No contract or transaction shall be voidable between this Company and any other Person in which the Company's Manager, any Member, or any officer is (i) that Person or (ii) holds a financial interest in that Person, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all of the Members, and the Manager or committee in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved or ratified by the Manager or the Members.

B. A Member who is a Manager may be counted in determining the presence of a quorum at a meeting of the Members which authorizes the contract or transaction.

**ARTICLE VII: INDEMNIFICATION**

**7.1 DEFINITIONS.** For purposes of this Article VII:

A. "Limited Liability Company" includes any domestic or foreign predecessor entity of the Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Company by operation of law and in any other transaction in which the Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

B. "Manager" means any Person who is or was a Manager of the Company and any Person who, while a Manager of the Company, is or was serving at the request of the Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

C. "Expenses" include court costs and attorneys' fees.

D. "Official capacity" means: (1) when used with respect to a Manager, the office of Manager of the Company; and (2) when used with respect to a Person other than a Manager, the elective or appointive office of the Company held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the Company; provided, however, that "official capacity" does not include service for any other foreign or domestic limited liability company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

E. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and a

inquiry or investigation that could lead to such an action, or proceeding.

**7.2 STANDARD FOR INDEMNIFICATION.** The Company shall indemnify a Person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the Person is or was a Manager or Officer of the Company, or for any action, related to Company or non-Company matters, if it is determined either by the Manager for any reason, or in accordance with this Article, that the Person:

- A. conducted himself in good faith;
- B. was reasonably believed (i) in the case of conduct in his official capacity as a Manager of the Company, that his conduct was in the Company's best interests, and (ii) in all other cases, that his conduct was at least not opposed to the Company's best interests;
- C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; or
- D. for any other reason as may be determined solely in the discretion of the Manager.

**7.3 PROHIBITED INDEMNIFICATION.** Except to the extent permitted by this Article, a Manager or Member may not be indemnified under any Section of this Article in respect of a proceeding:

- A. in which the Person is found liable on the basis that personal benefit from company assets was improperly received by him; or
- B. in which the Person is found liable to the Company.

Either the Manager or majority of the membership may elect to provide for such indemnification of the Manager or any party under any circumstance.

**7.4 EFFECT OF TERMINATION OF PROCEEDING.** The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the Person did not meet the requirements set forth in any Section of this Article. A Person shall be deemed to have been found liable in respect of any claim, issue or matter only after the Person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Until such time as a final disposition, the Company shall provide the indemnification and defenses contemplated herein.

**7.5 EXTENT OF INDEMNIFICATION.** A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

**7.6 DETERMINATION OF INDEMNIFICATION.** A determination of indemnification under any Section of this Article may be made by (i) the Manager, (ii) legal counsel to the company, or (iii) by the Members in a vote.

**7.7 AUTHORIZATION OF INDEMNIFICATION.** Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination of indemnification is permissible, except that: (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by the foregoing Section for the selection of special legal counsel; and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

**7.8 SUCCESSFUL DEFENSE OF PROCEEDINGS.** Except as provided otherwise by law or by this Operating Agreement, the Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

**7.9 COURT ORDER IN SUIT FOR INDEMNIFICATION.** Indemnification required by the foregoing Section shall be subject to Order upon request by an indemnified party in a court of competent jurisdiction upon claim by the Manager as to entitlement to indemnification under that Section; the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

**7.10 COURT DETERMINATION OF INDEMNIFICATION.** Upon application of a Manager, a court of competent jurisdiction shall determine, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article. The court shall order the indemnification that the court determines is proper and equitable; but, if the Person is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Person, the indemnification shall be limited to reasonable expenses actually incurred by the Person in connection with the proceeding.

**7.11 ADVANCEMENT OF EXPENSES.** Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which may be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Articles, this Operating Agreement, a resolution of Members or Manager, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

**7.12 EXPENSES OF WITNESS.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Company.

**7.13 INDEMNIFICATION OF OFFICERS.** The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

**7.14 INDEMNIFICATION OF OTHER PERSONS.** The Company may, at the discretion of the Manager, indemnify and advance expenses to any Person who is not or was not an officer, employee, or agent of the Company but who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Manager under this Article.

**7.15 ADVANCEMENT OF EXPENSES TO OFFICERS AND OTHERS.** The Company shall indemnify and advance expenses to an officer, and may indemnify and advance expenses to an employee or agent of the Company, or other Person who is identified in the foregoing Section and who is not a Manager, to such further extent as such Person may be entitled by law, agreement, vote of Members or otherwise.

**7.16 CONTINUATION OF INDEMNIFICATION.** The indemnification and advance payments provided by this Article shall continue as to a Person who has ceased to hold his position as a Manager, officer, employee or agent, or other Person described in any Section of this Article, and shall inure to his heirs, executors and

administrators.

**7.17 LIABILITY INSURANCE.** The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was a Manager, officer, employee, or agent of the Company or who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a Person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Company would not have the power to indemnify the Person only if including coverage for the additional liability has been approved by the Members of the Company. Without limiting the power of the Company to procure or maintain any kind of insurance or other arrangement, the Company may, for the benefit of Persons indemnified by the Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Company or with any insurer or other Person deemed appropriate by the Manager regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Company. In the absence of fraud, the judgment of the Manager as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Manager approving the insurance or arrangement to liability, on any ground, regardless of whether Manager participating in the approval are beneficiaries of the insurance or arrangement.

#### ARTICLE VIII: CERTIFICATES

**8.1 CERTIFICATES.** Certificates in the form determined by the Manager shall be executed representing all Membership Interests then outstanding, as may change from time to time. Such certificates shall be consecutively numbered, and shall be entered in the books of the Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the Membership Interest, and such other matters as may be required by the laws of the State of Nevada. They shall be signed by a Manager or officer of the Company, and may be sealed with the seal of the Company if adopted. A Member has the right to possess the original certificate, provided, however, that the Manager may keep a copy of such certificate in the records of the Company.

**8.2 REPLACEMENT OF LOST OR DESTROYED CERTIFICATE.** The Manager may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Manager in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such manner as it shall require or to give the Company a bond with surety and in form satisfactory to the Company (which bond shall also name the Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Company or other obligors with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

**8.3 TRANSFER OF MEMBERSHIP INTEREST.** Upon surrender to the Company or its transfer agent of the Company of a certificate for Membership Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Company to issue a new certificate to the Person entitled thereto, cancel the old certificate, and record the transaction upon its books.

**8.4 REGISTERED MEMBERS.** The Company shall be entitled to treat the holder of record of any certificate or certificate of Membership interest of the Company as the owner thereof for all purposes and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership Interest or



any rights deriving from such Membership Interest on the part of any other Person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other Person becomes a Member, whether or not the Company shall have either actual or constructive notice of the interest of such Person, except as otherwise provided by law.

## ARTICLE IX: TAXES

**9.1 TAX RETURNS.** The tax matters partner, as defined in Section 9.3, shall cause to be prepared and filed any necessary federal and state income tax returns for the Company, including making the elections described in Section 9.2. Each Member shall furnish to the tax matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

**9.2 TAX ELECTIONS.** The Company may make the following elections on the appropriate tax returns:

- A. to adopt the calendar year as the Company's fiscal year;
- B. to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;
- C. if a distribution of Company property as described in §754 of the Code occurs or if a transfer of a Membership Interest as described in §743 of the Code occurs, on written request of any Member, to elect, pursuant to §754 of the Code, to adjust the basis of Company properties;
- D. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under §195 of the Code as permitted by §709(b) of the Code; and
- E. any other election the Manager may deem appropriate and in the best interests of the Members.

**9.3 TAX MATTERS PARTNER.** The Manager shall designate itself to be the "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The tax matters partner may not take any action contemplated by §§6222 through 6232 of the Code without the consent of a majority of Members but this sentence does not authorize any action left to the determination of an individual Member under §§6222 through 6232 of the Code.

## ARTICLE X: NOTICE

**10.1 METHOD.** Whenever by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or the Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is first deposited in the United States mail.

**10.2 WAIVER.** Whenever, by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of the Manager or a Member at a meeting shall constitute a waiver of notice of such meeting, except

where a Manager or Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

#### ARTICLE XI: BANKRUPTCY OF A MEMBER

**11.1 BANKRUPTCY.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Manager to the Bankrupt Member (or its representative) at any time prior to the 130th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member's bankruptcy estate (or the trustee thereof) shall sell, its Membership Interest to the Company. The purchase price shall be a dollar amount equal to the Class A Capital Contribution of the Bankrupt Member plus the remaining Class B capital account, if any, of that Bankrupt Member. The payment to be made to the Bankrupt Member or its estate pursuant to this Section is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its estate (and of all Persons claiming through the Bankrupt Member and its estate) in and in respect to the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and insofar as the affairs of the Company are concerned) against the Members.

#### ARTICLE XII: DISSOLUTION, LIQUIDATION, AND TERMINATION

**12.1 DISSOLUTION.** The Company shall dissolve and its affairs shall be wound up on the written consent of all Members.

**12.2 LIQUIDATION AND TERMINATION.** On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager then the Members by majority vote will appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distribution, as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

- A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;
- B. the liquidator shall provide written notice to be mailed to each known creditor of and claimant against the Company;
- C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and on such term as the liquidator may reasonably determine); and
- D. all remaining assets of the Company shall be distributed to the Members as follows:
  - (1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;
  - (2) with respect to all Company property that has not been sold, the fair market value of the property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction in respect of property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market

value of that property on the date of distribution; and

- (3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs (other than those made by reason of this Clause (3)), and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation). All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.2. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.2 constitutes a complete return to the Member of its Capital Contribution and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**12.3 DEFICIT CAPITAL ACCOUNTS.** Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective Capital Contributions, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

**12.4 ARTICLES OF DISSOLUTION.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Manager or a Member shall file Articles of Dissolution with the Secretary of State of Nevada and take such other actions as may be necessary to terminate the Company.

### ARTICLE XIII: GENERAL PROVISIONS

#### **13.1 BOOKS AND RECORDS.**

A. The Company shall maintain those books and records as provided by statute and as it may deem necessary or desirable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Act:

- (1) a current list that states:
  - (a) the name and mailing address of each Member;
  - (b) the percentage or other interest in the Company owned by each Member; and
  - (c) if one or more classes or groups are established in or under the Articles or in Operating Agreement, the names of the Members who are Members of each specified class or group;
- (2) copies of the federal, state, and local information or income tax returns for the Company's six most recent tax years;
- (3) a copy of the Articles and this Operating Agreement, all amendments thereto, and all executed copies of any powers of attorney, and copies of any documents that create, modify, or

manner provided by the Articles or this Operating Agreement, classes or groups of Members;

- (4) unless contained in the Articles or this Operating Agreement, a written statement of:
  - (a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an additional contribution;
  - (b) the times at which additional contributions are to be made or events requiring additional contributions to be made;
  - (c) events requiring the Company to be dissolved and its affairs wound up; and
  - (d) the date on which each Member in the Company became a Member; and
- (5) correct and complete books and records of accounts of the Company.

B. The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

C. The Company shall keep in its registered office in Nevada and make available to Members on reasonable request the street address of its principal United States office in which the records required by this Section are maintained or will be available.

D. A Member, on written request stating the purpose, may examine and copy, in person or by the Member's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Section and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the Person to examine and copy.

E. On the written request by any Member, the Manager shall provide to the requesting Member or assignee, without charge, true copies of:

- (1) the Articles and this Operating Agreement and all amendments or restatements; and
- (2) any of the tax returns described in the Act.

**13.2 AMENDMENT OR MODIFICATION.** This Operating Agreement may be amended or changed from time to time only by a written instrument adopted by the affirmative vote of 98% or more of the classes of Members.

**13.3 CHECKS, NOTES, DRAFTS, ETC.** All checks, drafts or other orders for payment to money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by one or more designated Persons appointed by the Manager or Chief Financial Officer of the Company, if such officer position exists.

**13.4 HEADINGS.** The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

**13.5 CONSTRUCTION.** Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits or Schedules, if any, are to Exhibits or Schedules attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

- A. The remainder of this Operating Agreement shall be considered valid and operative; and
- B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

**13.6 ENTIRE AGREEMENT; SUPERSEDEDURE.** This Operating Agreement constitutes the entire agreement of the Members of the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**13.7 EFFECT OF WAIVER OR CONSENT.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

**13.8 BINDING EFFECT.** Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

**13.9 DISPUTE RESOLUTION - BINDING ARBITRATION ELECTION.** Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall solely be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties specifically waive any rights to litigation as a dispute resolution methodology and further divest any Court of jurisdiction to determine disputes between the parties to this Agreement. Notwithstanding, judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, in the English language, and shall be conducted before three arbitrators, wherein the party calling for arbitration selects one arbiter, the party defending selects one arbiter and the arbiters select a third, agreeable to the parties or, if no agreement can be reached, then selected by the AAA. All costs related to the arbitration shall initially be borne by the aggrieved party. The arbitrators shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking post arbitration injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making findings of fact in connection with granting or denying such injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review, on any ground, of any decision of the arbitrator.

**13.10 LIQUIDATED DAMAGES PROVISION.** Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and agrees to provide to the named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars (\$10,000.00).

**13.11 GOVERNING LAW; SEVERABILITY.** THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT LIMIT THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be reformed to the greatest extent permitted by law.

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

**13.13 NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT.** By executing this

Operating Agreement, each Member acknowledges that it has actual notice of (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III; and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the Chapter 8b of the Nevada Revised Statutes and under the Nevada Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

**13.14 COUNTERPARTS.** This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

**13.15 CONFLICTING PROVISIONS.** To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members of the Manager.

# # # #

**IN WITNESS WHEREOF,** the undersigned hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members and Manager, effective as of the first date written in the preamble above, and we have hereunto affixed our signatures.

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MANAGER:

MANAGER: SJC VENTURES HOLDING COMPANY LLC, a Delaware limited liability company

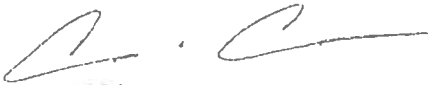
By: Jay Bloom, Manager

MEMBERS:

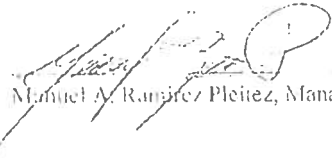
MEMBER: SJC VENTURES HOLDING COMPANY LLC, a Delaware limited liability company

By: Jay Bloom, Manager

MEMBER: CBWE, LLC, a Nevada limited liability company

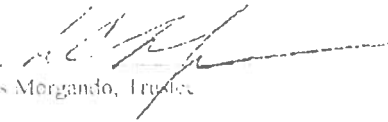
By:   
Carlos Cardenas, Manager

MEMBER: MAMBER VENTURES LLC, a Nevada limited liability company

By:   
Manuel A. Ramirez Pleitez, Manager

MEMBER: PALADIN VENTURES, LLC, a Nevada limited liability company

By: LS MARLO TRUST

By:   
J. Chris Morgando, Trustee

MEMBER

BART RENDEL, an individual

By: 

Bart Rendel, individually

MEMBER

DUSTIN LEWIS, an individual

By:

Dustin Lewis, individually

MEMBER

SCOTT OLIFANT, an individual

By: 

Scott Olifant, Esq., individually

MEMBER

ROBERT CURLEY, an individual

By: 

Robert Curley, individually

MEMBER

HANNAH HARVEY, an individual

By: 

Hannah Harvey, individually

MEMBER

JETHRO WAYNE GORDON, an individual

By: 

Jethro Wayne Gordon, individually

MEMBER

WENDELL BROWN, an individual

By:

Wendell Brown, individually



MEMBER:

JEFFREY ALBRECHTS, an individual

By:

Jeffrey Albrechts, individually

MEMBER

GLENN PLANTONE, an individual

By:

Glenn Plantone, individually

MEMBER:

ERIN QUATRALE, an individual

By:

Erin Quatrale, individually

MEMBER:

MARILYN WILEY, an individual

By:

Marilyn Wiley, individually

MEMBER:

DENNIS WILEY, an individual

By:

Dennis Wiley, individually

MEMBER:

MARK HOSTETLER, an individual

By:

Mark Hostetler, individually

MEMBER:

ALAN AND THERESA LAHRS, jointly and individually

By:

Alan Lahrs

Theresa Lahrs

MEMBER

~~IZZY ZALCHBERG, an individual~~

~~By:~~

~~Izzy Zalchberg, individually~~

*Kerry Hile, individually*

*By: Kerry S. Hile  
Kerry Hile, individually*

MEMBER

JEAN KEMPNER, an individual

By:

Jean Kempner, individually

MEMBER

AMY AND ARMAND FARR, jointly and individually

By:

Amy Farr

Armand Farr

MEMBER

KENT ADAMSON, an individual

By:

Kent Adamson, individually

MEMBER

BASIS INVESTMENTS, LLC, a Texas Limited Liability Company

By:

Philip Bourassa, Member

MEMBER

GREG AND LAURIE DARROCH, jointly an individual

By:

Greg Darroch

Laurie Darroch

MEMBER

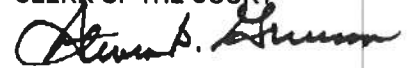
CATHERYN COPE, an individual

By:

Catheryn Cope, individually

**Schedule A:  
List of Members**

Paid in Capital	Series A	PIC	Series B	PR	Series C	PR
\$ 185.00 Paladin Ventures, LLC	7.500%	\$ 185.00				
\$ 185.00 Mamber Ventures, LLC	7.500%	\$ 185.00				
\$ 185.00 CBWE, LLC	6.000%	\$ 185.00				
\$ 185.00 SJC, LLC	45.625%	\$ 185.00				
\$ 65.00 Mark Hostetler	6.500%	\$ 65.00				
\$ 30.00 Bart Ron Ie', COO	3.000%	\$ 30.00				
\$ 20.00 Dustin Lewis, CFO	2.000%	\$ 20.00				
\$ 20.00 Rob Curley, CIO	2.000%	\$ 20.00				
\$ 20.00 Wendell Brown	2.000%	\$ 20.00				
\$ 17.50 Dennis Wiley	1.750%	\$ 17.50				
\$ 15.00 Scott Olifant, Esq	1.625%	\$ 16.25				
\$ 6.88 Marilyn Wiley	0.688%	\$ 6.88				
\$ 5.00 Jeffrey Albregts	0.500%	\$ 5.00				
\$ 1.88 Glenn Plantone	0.188%	\$ 1.88				
\$ 1.25 Hannah Harvey	0.125%	\$ 1.25				
\$ 1.25 Jethro Gordon	0.125%	\$ 1.25				
\$ 0.63 Erin Quatrala	0.063%	\$ 0.63				
\$ 500,000.00 Basis Investments, LLC	5.000%	\$ 50.00	50.00%	\$ 49,950.00		
\$ 100,000.00 Marilyn Wiley	1.000%	\$ 10.00	10.00%	\$ 9,930.00		
\$ 100,000.00 Kent Adamson	1.000%	\$ 10.00	10.00%	\$ 9,990.00		
\$ 50,000.00 Alan & Theresa Lahrs	0.500%	\$ 5.00	5.00%	\$ 4,995.00		
\$ 50,000.00 Alan & Theresa Lahrs	0.500%	\$ 5.00	5.00%	\$ 4,995.00		
\$ 50,000.00 Jean Kempner	0.500%	\$ 5.00	5.00%	\$ 4,995.00		
\$ 50,000.00 Jeffrey Albregts	0.500%	\$ 5.00	5.00%	\$ 4,995.00		
\$ 50,000.00 Amy and Armond Farr	0.500%	\$ 5.00	5.00%	\$ 4,995.00		
\$ 25,000.00 Scott Olifant, Esq	0.250%	\$ 2.50	2.50%	\$ 24,997.50		
\$ 25,000.00 Glenn Plantone	0.250%	\$ 2.50	2.50%	\$ 24,997.50		
\$ 1.88 Scott Olifant, Esq	0.188%	\$ 1.88				
\$ 3.75 Glenn Plantone	0.375%	\$ 3.75				
\$ 1.25 JWL Management	0.125%	\$ 1.25				
\$ 2.50 Greg and Laurie Darroch	0.250%	\$ 2.50				
\$ 100,000.00 Greg and Laurie Darroch	0.500%	\$ 5.00			2.00%	\$ 99,993.00
\$ 50,000.00 Laurie Darroch	0.250%	\$ 2.50			1.00%	\$ 49,997.50
\$ 50,000.00 Catheryn Cope	0.250%	\$ 2.50			1.00%	\$ 49,997.50
\$ 50,000.00 JWL Management	0.250%	\$ 2.50			1.00%	\$ 49,997.50
\$ 50,000.00 Glenn Plantone	0.250%	\$ 2.50			1.00%	\$ 49,997.50
\$ 75,000.00 Scott Olifant	0.375%	\$ 3.75			1.00%	\$ 74,996.25
\$ 1,375,953.75 Total	100.000%	\$ 1,073.76	100.00%	\$ 998,900.00	7.00%	\$ 374,561.25



CASE NO: A-20-822273-C  
Department 13

**MOT**

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: eturner@gtg.legal  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
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Fax: (725) 777-3112  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
  
Plaintiff,

CASE NO.  
DEPT.

vs.

**MOTION TO CONFIRM ARBITRATION  
AWARD**

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company,

**HEARING REQUESTED**

Defendants.

Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff"), by and through counsel, Garman Turner Gordon LLP, hereby moves this Honorable Court for an Order confirming the Arbitration Award, attached hereto as **Exhibit 1**, dated September 15, 2020, by Arbitrator and Panel Chair, Philip J. Dabney, Esq., Arbitrator, Nikki L. Baker, Esq., and Arbitrator, Anthony J. DiRaimondo, Esq., ("Arbitration Panel") in the matter entitled *TGS/Farkas Funding, LLC v. First 100, LLC*, AAA Arbitration Case No. 01-20-0000-0613.

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1 This motion is made pursuant to NRS 38.239 and 38.243(1) and is based on the following  
2 Memorandum of Points and Authorities; the Decision and Award of Arbitration Panel (1)  
3 Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's  
4 Attorneys' Fees and Costs, attached hereto as **Exhibit 1**; the First Amended Operating Agreement  
5 of First 100, LLC, attached hereto as **Exhibit 2**; all pleadings, papers, and documents on file with  
6 the Court in this action; and such further documentary evidence as the Court deems appropriate.

7 DATED this 1<sup>st</sup> day of October, 2020.

8 GARMAN TURNER GORDON LLP

9  
10 /s/ Erika Pike Turner  
11 ERIKA PIKE TURNER  
12 Nevada Bar No. 6454  
13 7251 Amigo Street, Suite 210  
14 Tel: (725) 777-3000  
15 Fax: (725) 777-3112  
16 *Attorneys for Plaintiff*

## 14 MEMORANDUM OF POINTS AND AUTHORITIES

### 15 I. INTRODUCTION

16 On January 7, 2020, Plaintiff initiated an arbitration with the American Arbitration  
17 Association against First 100, LLC and First One Hundred Holdings, LLC ("Defendants") relating  
18 to whether Plaintiff was entitled to production and examination of company records of Defendants  
19 and pursuant to section 13.9 of the parties' arbitration agreement. Exh. 2 § 13.9.

20 On September 15, 2020, after the Arbitration Panel deliberated, it issued its Decision and  
21 Award of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering  
22 Reimbursement of Claimant's Attorneys' Fees and Costs (the "Award"). See Exh. 1. The Award  
23 requires Defendants to "make all the requested documents and information available from both  
24 companies to Claimant [Plaintiff] for inspection and copying" and to pay within ten (10) days, or  
25 by September 25, 2020, the total sum of \$23,975.00 for arbitration filing fees paid by the Plaintiff,  
26 and all the fees for the Arbitration Panel, and \$17,011.50 in attorneys' fees (together, the  
27 "Expenses"). *Id.* Defendants have refused and/or failed to comply with the Award obligations.  
28 By this Motion, Plaintiff seeks to confirm the Award under applicable Nevada law so that it can

1 be enforced.

2 **II. THE PARTIES, JURISDICTION AND VENUE**

3 Defendants are and were at all times herein, Nevada limited-liability companies. Personal  
4 jurisdiction and venue are proper pursuant to NRS 13.010, NRS 38.244, and NRS.246. Defendants  
5 are Nevada entities doing business in Clark County, Nevada. Further, the operative First Amended  
6 Operating Agreement of First 100, LLC, which binds the parties and subjected the same to  
7 arbitration in Las Vegas, Nevada, “confers exclusive jurisdiction on the court to enter judgment  
8 on an award” and “a motion . . . must be made in the court of the county in which the agreement  
9 to arbitrate specifies . . .” NRS 38.244, 38.246; *see* also Exh. 2. § 13.9.

10 Plaintiff now seeks to have this Court confirm this Award and enter Judgment for Plaintiff  
11 under NRS 38.239 and NRS 38.243(1).

12 **III. RELEVANT FACTS**

13 Plaintiff was forced to seek the Award when Defendants repeatedly and steadfastly refused  
14 to produce the business records of Defendant for inspection, which records were requested for the  
15 purpose of informing Plaintiff regarding the status of its membership interest obtained in exchange  
16 for \$1 million and other valuable consideration. *See* Exh. 1.

17 On September 15, 2020, the Arbitration Panel issued its Award in favor of Plaintiff  
18 requiring that Defendants produce the requested company records to Plaintiff. Further, as the fees  
19 and costs incurred to enforce Plaintiff’s membership rights are awardable under the Operating  
20 Agreements for Defendants, the Arbitration Panel required Defendants to pay Plaintiff the  
21 Expenses. The Award was reasoned, and based on the fact that (1) Plaintiff holds a membership  
22 interest regardless of Defendants’ contrary contentions, (2) Defendants were obligated to produce  
23 the records to Plaintiff given the financial circumstances occurring relating to Defendants, and  
24 Plaintiff’s request for records were not overbroad pursuant to NRS 86.241(2). *Id.*

25 ///

26 ///

27 ///

28 ///

1 IV. LEGAL ANALYSIS

2 A. NEVADA LAW REQUIRES CONFIRMATION OF THE ARBITRATION  
3 AWARD ENTERED IN PLAINTIFF'S FAVOR.

4 NRS 38.239 authorizes this Court to enter a judgment confirming the Award so that it may  
5 be enforced.

6 NRS 38.239 provides in pertinent part:

7 After a party to an arbitral proceeding received notice of an award, he may make a  
8 motion to the court for an order confirming the award at which time the court *shall*  
9 *issue a confirming order* unless the award is modified or corrected pursuant to NRS  
10 38.237 or 38.242 or is vacated pursuant to NRS 38.241.

11 (Emphasis added). *See also Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 714, 290 P.3d 265,  
12 266 (2012). The Award in this case has not been modified or corrected pursuant to NRS 38.237 or  
13 38.242. Nor has it been vacated pursuant to NRS 38.241. The plain language of NRS 38.239  
14 therefore compels the confirmation of the Award at this time.

15 NRS 38.243(1) states, in relevant part:

16 Upon granting an order confirming . . . an award, the court *shall* enter a judgment  
17 in in conformity therewith. The judgment may be recorded, docketed and enforced  
18 as any other judgment in a civil action.

19 (Emphasis added). Upon this Court confirming the Award, judgment shall be entered in Plaintiff's  
20 favor.

21 V. CONCLUSION

22 For the foregoing, Plaintiff respectfully requests that the Court enter: (1) an Order  
23 confirming the Award dated September 15, 2020; and (2) enter judgment in Plaintiff's favor in  
24 conformity with the Court's order confirming the Award.

25 DATED this 1<sup>st</sup> day of October, 2020.

26 GARMAN TURNER GORDON LLP

27 /s/ Erika Pike Turner  
28 ERIKA PIKE TURNER  
Nevada Bar No. 6454  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Fax: (725) 777-3112  
*Attorneys for Plaintiff*

# Exhibit 1





AMERICAN  
ARBITRATION  
ASSOCIATION

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION

**AMERICAN ARBITRATION ASSOCIATION**  
**COMMERCIAL ARBITRATION TRIBUNAL**

---

In the Matter of the Arbitration between:

Claimant TGC/Farkas Funding, LLC, hereinafter referred to as "Claimant"

-and-

Respondents First 100, LLC, and First One Hundred Holdings, LLC, hereinafter  
collectively referred to as "Respondents"

AAA Case No: 01-20-0000-0613

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**Decision and AWARD of Arbitration Panel (1) Compelling Production of Company  
Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs**

The undersigned Arbitrators, having been designated in accordance with the arbitration agreement entered into between the above-named parties<sup>1</sup>, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, hereby AWARD as follows:

This matter came before the Panel for a hearing to determine whether Claimant is entitled to production and examination of company records of Respondents. The Parties requested that the Panel not hold an evidentiary hearing but instead render a reasoned decision based on the briefings and documents presented. The Parties presented their briefs; the Panel convened and considered the briefs and evidence; the Panel then requested further evidence regarding the alleged Redemption Agreement. Upon receipt of the additional evidence, the Panel declared the hearing closed and further deliberated. This decision is the product of that deliberation.

<sup>1</sup> During the Preliminary Hearing, the Parties confirmed that party-appointed arbitrators Baker and DiRaimondo were serving as neutral, non-partisan arbitrators for purposes of these proceedings.

Respondents appear to be in the business of purchasing unpaid receivables of HOAs on discounted terms and profiting from those purchases in various ways. Exhibit 1 to Claimant's Appendix to Claimant's Arbitration Brief ("Appendix" or "Appx"). Claimant is an entity owned by Matthew Farkas and Adam Flatto. Exhibit 1 to Claimant's Response to Order Regarding Additional Evidence Request. Matthew Farkas was an officer/employee of Respondents. Exhibits 1 and 5 to Claimant's Appx. Claimant invested \$1 million into the business of Respondents in exchange for a one percent (1%) membership interest. That was parlayed into a three percent (3%) total interest in First 100, LLC, after Respondents granted a two percent (2%) ownership interest to Mr. Farkas for his "services rendered in the VP of Finance position..." Exhibits 4 and 5 to Claimant's Appx. It is not clear exactly when Claimant became a member of Respondents, due to a lack of dates on many of the exhibits, but it appears from Exhibit 1 to Claimant's Appendix that Respondents were marketing membership interests in 2013. Claimant's interest is acknowledged by Exhibit 5 to Claimant's Appendix, an undated letter from Respondent 1<sup>st</sup> One Hundred, LLC. Exhibit 4 appears to conclusively establish that Claimant held 3% of Respondent First 100, LLC's membership interests.

Likely in 2017, possibly on or about April 13, 2017, Respondents sent a memo to members describing litigation against a funding source, financial issues facing the companies, and recommending that members execute a redemption agreement due to the financial condition of Respondents. The memo included a draft of the "Membership Interest Redemption Agreement" (the "Redemption Agreement"), which was to be entered into by and between Claimant and Respondent 1<sup>st</sup> One Hundred Holdings, LLC. Exhibit 6 to Appx. The Redemption Agreement states, among other things, that Respondent 1<sup>st</sup> One Hundred Holdings, LLC "desires to redeem all of [Claimant's] membership interests in [Respondent 1<sup>st</sup> One Hundred Holdings, LLC], as well as any interest claimed in any and all subsidiaries...." *Id.* The memo also apparently accompanied the IRS Schedule K-1 to Claimant TCG/Farkas Funding, LLC, as a member of "First 100 Holdings, LLC", dated April 13, 2017. Exhibit 6 to Appx. This Schedule K-1 appears to be conclusive evidence that Respondents considered Claimant to be a Member of "First 100 Holdings, LLC".

By letter dated May 2, 2017, to the law firm representing Respondents, Claimant's counsel set forth objections to the proposed Redemption Agreement, concerns about the financial condition of Respondents, and requests for production of the company records of Respondents. Exhibit 9 to Appx. This appears to be the initial request for company records that is the subject of the arbitration demand filed by Claimant.

Exhibit 11 to Claimant's Appendix is the first response from counsel for the Respondents to the request to inspect the company records of the Respondents. It is dated June 6, 2017. Significantly, Respondents' counsel concedes in this letter that Claimant "holds a membership interest in 1<sup>st</sup> One Hundred Holdings, LLC." Nevertheless, it is the first in a long and bad faith effort by Respondents to avoid their statutory and contractual duties to a member to produce requested records.

On September 13, 2019, counsel for Claimant made another request for company records to counsel for Respondents. Exhibit 13 to Appx.. On September 24, 2017, counsel for Respondents refused to honor the request to inspect based on a claim that counsel for Claimant might not represent Claimant, and based on the argument that the request was overbroad. Exhibit 14 to Appx. Nothing in this letter contends that the execution of the Redemption Agreement by Mr. Farkas for Claimant constituted a legitimate basis to refuse to make the records available for inspection. Thereafter, Claimant initiated this arbitration proceeding.

In the arbitration proceeding, Respondents make three arguments why they are not required to produce the records requested by Claimant. First, they argue that Claimant may not be a Member, and as such is only entitled to a refund of the investment money paid to the Respondents and no records. Second, they argue that the signing of a Redemption Agreement by Mathew Farkas releases the Respondents from any responsibility to make company records available to Claimant. Third, they argue that the request is overbroad and must be pared down. None of these arguments has merit, as discussed below.

The contention that Claimant is not a member of Respondents is belied by the records of the Respondents, as discussed above. The fact that Respondents believe that the Claimant signed a Redemption Agreement as a member of Respondents is an additional admission on the part of the Respondents that the Claimant is a Member of the Respondents with standing to inspect records of the Company.

It was not clear from the initial briefs and exhibits whether Mathew Farkas signed a Redemption Agreement for Claimant. However, the additional evidence clarified that he actually did sign such an Agreement. However, the evidence also shows two additional points that render the Redemption Agreement irrelevant for the purpose of this proceeding. First, the evidence shows that Mr. Farkas did not have authority to bind Claimant to the Redemption Agreement, as he did not seek and obtain the consent of Mr. Flatto. Exhibit 1 to Supplemental Declaration of Flatto attached to Claimant's Response to Order Regarding Additional Evidence Request; Supplemental Declarations of Flatto and Farkas attached to Claimant's Response to Order Regarding Additional Evidence Request. And, Claimant notified Respondents via email on April 18, 2017, that Mr. Farkas did not have the authority to bind Claimant under the Redemption Agreement "unless and until approved by Adam Flatto." Exhibit 12 to Claimant's Appx. at Ex. 3.

Secondly, the Respondents have yet to perform under the terms of the Redemption Agreement. Specifically, Section 2(a) requires payment by the Company to Redeemer. Exhibit A to Supplemental Declaration of Jay Bloom in support of Respondents' Arbitration Brief. Respondents concede that payment has not been made and that Respondents only "intend[]" to "fully perform" at a later point in time, when sufficient funds are available. Supplemental Declaration of Jay Bloom in support of Respondents' Arbitration Brief ¶ 16. The Redemption

Agreement, therefore, does not constitute a basis for Respondents to refuse to make company records available to Claimant as a Member of Respondents.

Finally, Respondents contend the records inspection request is overbroad. NRS 86.241(2) applies to the fact of this case:

2.\* \* Each member of a limited-liability company is entitled to obtain from the company, from time to time upon reasonable demand, for any purpose reasonably related to the interest of the member as a member of the company:

(a)\* The records required to be maintained pursuant to subsection 1;

(b)\* True and, in light of the member's stated purpose, complete records regarding the activities and the status of the business and financial condition of the company;

(c)\* Promptly after becoming available, a copy of the company's federal, state and local income tax returns for each year;

(d)\* True and complete records regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(e)\* Other records regarding the affairs of the company as is just and reasonable under the circumstances and in light of the member's stated purpose for demanding such records.

The right to obtain records under this subsection includes, if reasonable, the right to make copies or abstracts by photographic, xerographic, electronic or other means.

The language of subsection (e) applies here and justifies Claimant requesting the records requested, even if not specifically listed in the previous sections. These include litigation information and insurance policies. Given the circumstances of the request – pending litigation by Respondents, representations by Respondents suggesting the viability of the companies is in jeopardy, and the proposal that members sign a Redemption Agreement that substantially compromises their rights as members – all justify the categories of information requested by Claimant. The fact that Respondents have spent more than three years resisting the requested inspection further supports the justification to examine all these categories of documents.

Therefore, the Panel awards in favor of Claimant and against Respondents in all respects on the primary claim, and orders Respondents to forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to Claimant for inspection and copying.

Claimant has requested an award of attorneys' fees and costs. Section 13.9 of the Operating Agreement at Exhibit 3 to the Appendix sets forth the following pertinent language: "The arbitrators shall make findings of fact and law in writing in support of his (sic) decision, and shall award reimbursement of attorney fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate."


In this case, the Panel deems it appropriate to award all of the attorneys' fees requested by Claimant against Respondents, in the amount of \$17,011.50. The Panel also deems it appropriate to award to Claimant and against Respondent all of the arbitration filing fee(s) paid by the Claimant, and all of the fees for the arbitration Panel paid by Claimant. The total sum of \$23,975.00 shall be paid by Respondents to Claimant within ten (10) calendar days of the date of this AWARD.

The administrative fees of the American Arbitration Association totaling \$4,400.00 and the compensation of the arbitrators totaling \$19,575.00 shall be borne Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$23,975.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date:  
Arbitrator and Panel Chair

  
Philip J. Dabney, Esq.,

9-15-20

Date: 9-15-2020  
Arbitrator

*Nikki L. Baker*  
Nikki L. Baker, Esq.,

Date: 9-15-2020  
Arbitrator

*Anthony J. DiRaimondo*  
Anthony J. DiRaimondo, Esq.,

## Exhibit 2

# **FIRST AMENDED OPERATING AGREEMENT**

*of*

## **FIRST 100, LLC**

This operating agreement of **FIRST 100, LLC**, a Nevada limited liability company, Adopted April 11, 2012, and further Amended December 12, 2012, having an effective date of December 12, 2012, is: (i) adopted by the Manager (as defined below); and (ii) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

### **ARTICLE I: DEFINITIONS**

As used in this Operating Agreement, unless the context clearly indicates otherwise, the following terms have the following meanings:

**1.1 "Act"** means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

**1.2 "Articles"** means the Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company under and pursuant to the Act.

**1.3 "Bankrupt Member"** means any Member: (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in sub-clauses (i) through (iv) of this Clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**1.4 "Business Day"** means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Nevada are closed.

**1.5 "Capital Contribution"** means any contribution by a Member to the capital of the Company.

**1.6 "Class A Member"** means a Member identified on SCHEDULE A hereto.

**1.7 "Class A Membership Interest"** means, with respect to any Class A Member, the percentage interest set forth opposite such Class A Member's name on SCHEDULE A, as may be amended from time to time.

**1.8 "Class B Member"** means a Member identified on SCHEDULE A hereto.

**1.9 "Class B Membership Interest"** means with respect to any Non Voting Class B Member, the percentage interest set forth opposite such Class B Member's name on SCHEDULE A, as may be amended from time to time.

**1.10 "Class C Member"** means a Member identified on SCHEDULE A hereto.



**1.11 "Class C Membership Interest"** means with respect to any Non Voting Class C Member, the percentage interest set forth opposite such Class C Member's name on SCHEDULE A, as may be amended from time to time.

**1.12 "Code"** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

**1.13 "Company"** means First 100, LLC, a Nevada limited liability company

**1.14 "Default Interest Rate"** means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

**1.15 "Delinquent Member"** means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

**1.16 "Dispose," "Disposing," or "Disposition"** means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

**1.17 "General Interest Rate"** means a rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

**1.18 "Lending Member"** means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

**1.19 "Manager"** means SJC Ventures Holding Company, LLC, a Delaware limited liability company. There is only one Manager of the Company.

**1.20 "Member"** means any Person executing this Operating Agreement as of the date of this Operating Agreement as a Member, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

**1.21 "Membership Interest"** means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

**1.22 "NRS"** means Nevada Revised Statutes.

**1.23 "NRS Chapter 86"** means the Nevada statutes contained in Chapter 86 of the Nevada Revised Statutes concerning limited-liability companies, and any successor statute, as amended from time to time.

**1.24 "Operating Agreement"** means this Operating Agreement, as approved or amended by the Members, as herein provided.

**1.25 "Permitted Transferee"** means any member of such Member's immediate family, or a trust, including a charitable remainder trust, corporation, limited liability company, or partnership controlled by such Member or members of such Member's immediate family, or another Person controlling, controlled by, or under common control with such Member.

**1.26 "Person"** includes an individual, partnership, limited partnership, limited liability company,

foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

**1.27 "Priority Return"** means a sum equal to that particular Class B Member's principal amount of Class B Capital Contribution.

**1.28 "Proceeding"** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

## **ARTICLE II: ORGANIZATION**

**2.1 FORMATION.** The Company has been organized as a Nevada limited liability company by the filing of Articles under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of Nevada.

**2.2 NAME.** The name of the Company is **FIRST 100, LLC** and all Company business must be conducted in that name, or such other registered names that comply with applicable law as the Manager may select from time to time.

**2.3 REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.** The registered office of the Company required by the Act to be maintained in the State of Nevada shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Nevada shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Manager may designate from time to time, which need not be in the State of Nevada, and the Company shall maintain records there as required by NRS §86.241 and shall keep the street address of such principal office at the registered office of the Company in the State of Nevada. The Company may have such other offices as the Manager may designate from time to time.

**2.4 PURPOSES.** The purpose of the Company is everything allowable by law.

**2.5 FOREIGN QUALIFICATION.** Prior to the Company's conducting business in any jurisdiction other than Nevada, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

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

**2.7 MERGERS AND EXCHANGES.** The Company may be a party to: (a) a merger; or (b) an exchange or acquisition permitted by the Act, subject to the requirements of this Operating Agreement.

**2.8 NO STATE-LAW PARTNERSHIP.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

## **ARTICLE III: MEMBERS**

**3.1 THREE CLASSES OF MEMBERSHIP INTEREST.** The Company shall have three classes of Membership Interests: Class A Voting Membership Interests, Class B Non Voting Membership Interests and Class C Non Voting Membership Interests. Each of the Class A Membership Interests, Class B Membership Interests and Class C Membership Interests shall have certain rights, obligations and privileges, as provided in this Agreement.

**3.2 MEMBERSHIP INTERESTS.** The Member names and Class A Membership Interests of the Class A Members are set forth on SCHEDULE A. The Member names and Class B Membership Interests of the Class B Members are set forth on SCHEDULE A. The Member names and Class C Membership Interests of the Class C Members are set forth on SCHEDULE A.

**3.3 CLASSES AND VOTING.** The Company may issue voting Membership Interests and non-voting Membership Interests. The Membership certificates shall clearly designate so as to distinguish between voting and non-voting classes. Upon adoption of this Operating Agreement:

- i. Class A Members shall have voting rights. All references in this Operating Agreement to discretionary actions subject to a vote of Members shall solely refer to Class A Members.
- ii. Class B Members are non-voting Membership Interests.
- iii. Class C Members are non-voting Membership Interests.

**3.4 VOTING; PROXIES.** Each outstanding Class A Membership Interest shall be entitled to one vote per one full percent of Class A Membership Interest owned by the Member on each matter submitted to a vote at a meeting of Members. A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

**3.5 QUORUM.** Unless otherwise provided in the Articles, the holders of a simple majority of the Membership Interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Class A Members.

**3.6 MAJORITY VOTE.** With respect to any matter when a quorum is present at any meeting, the vote of the holders of a simple majority of the Membership Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by an express provision of the Act which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

**3.7 PLACE AND MANNER OF MEETING.** All meetings of the Members shall be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**3.8 CONDUCT OF MEETINGS.** All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Person designated by the Manager. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

**3.9 ANNUAL MEETING.** An annual meeting of the Members shall be held each year. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Company.

**3.10 SPECIAL MEETINGS.** Special meetings of the Members may be called at any time by: (i) the

Manager of the Company; (ii) the President of the Company if such office exists; or (iii) the holders of at least five percent (5%) of the Class A Membership interests. Unless waived, notice of such special meeting must be made in writing at least ten days prior to the meeting date, and such notice shall state the purpose of such special meeting and the matters proposed to be acted on thereat. A quorum must be present for such meeting to be recognized and effective.

**3.11 NOTICE.** Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, to each Member, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid.

**3.12 CLOSING RECORD BOOKS AND FIXING 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 entitled to distribution or in order to make a determination of Members for any other proper purpose, the Manager may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, the Manager may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed or the date on which the resolution of the Manager, declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

**3.13 ACTION WITHOUT MEETING.** Any meeting, or any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members (including any action requiring less than unanimous vote of the members), may be taken without a formal meeting, and without prior notice, but only if consent in writing, setting forth the action so taken, shall have been signed by the holders of all the Membership Interest for each class entitled to vote and such consent shall have the same force and effect as vote by formal meeting of the Members. Written consents made pursuant to this Section shall be signed and dated.

**3.14 CONFIDENTIAL INFORMATION.** The Members acknowledge that from time to time, they may receive information from the Manager or other Persons regarding the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than to another Member or a Manager, except for disclosures: (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable); (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this Section; or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance. The Members acknowledge that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members to examine or copy that information.

**3.15 LIABILITIES TO THIRD PARTIES.** Except as otherwise expressly agreed in writing, no

Member or the Manager shall be liable for the debts, obligations or liabilities of the Company.

**3.16 WITHDRAWAL / SURRENDER.** A Member may unilaterally withdraw from the Company as a Member, but only by ways of a written surrender of membership interest tendered to the Company and all Members then in existence.

**3.17 LACK OF AUTHORITY TO BIND OR OBLIGATE.** The Company is Manager-managed. No Member (other than a Manager or a duly appointed officer) has the authority or power to act for or on behalf of the Company, to do any act that would be obligating or binding on the Company, or to incur any expenditures on behalf of the Company.

**3.18 REPRESENTATIONS AND WARRANTIES.** Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in Clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Manager, Member(s), partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

**3.19 ADMISSION OF ADDITIONAL MEMBERS.** Following adoption of this Operating Agreement, the Company may admit one or more additional Members from time to time, but only upon the majority vote of all Class A Members then in existence. The terms of admission or issuance must specify the Capital Contributions applicable thereto, and may also provide for the creation of additional classes of Members and having different rights, powers, and duties, but is so then this Operating Agreement shall be amended to reflect such added classes. Upon the admission to the Company of any additional members, the Membership Interests of the other Members shall be reduced accordingly on a pro rata basis. SCHEDULE A shall be amended from time to time as of the effective date of the admission of an additional member to the Company. As a condition to being admitted to the Company, each additional member shall execute an agreement to be bound by the terms and conditions of this Agreement.

**3.20 RESTRICTIONS ON TRANSFERENCE OF MEMBERSHIP INTEREST.** Notwithstanding anything herein to the contrary, the Membership Interest and transferability of Membership Interest in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership Interest may be transferred or encumbered without the consent of all Members. This Company is formed by a closely-held group, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. Notwithstanding the foregoing restrictions upon transfer and ownership, the following transfers are permitted:

**A. Death of a Member Who Is A Natural Person.** The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all of the decedent's rights and powers as a Member,

and the decedent's Membership Interest in the Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that Person's Membership Interest, and his or her written designation will be binding upon the Company if delivered to the Company before or within at least sixty 60 days after the death of the Member.

**B. Estate Planning Transfers.** A Member will also have the right to make estate planning transfers of all or any part of his or her Membership Interest in the Company. The term "estate planning transfer" will mean any transfer made during the life of a Member without value, or for less than full consideration, by way of a marital partition agreement and/or a transfer of all or any part of a Membership Interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under § 170(c) of the Code. The Articles and this Operating Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Articles and this Operating Agreement.

**C. Transfers for Convenience.** A Member who is a company may freely transfer its Membership to another company whose ownership is identical to the ownership of the assignor Member, provided, however, that such Member may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the disposition, (a) the Company would be considered to have terminated within the meaning of §708 of the Code or (b) that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest all in accordance with Article XI as if the breaching Member were a Bankrupt Member.

**D. Approved Sale or Transfers.** A Member may transfer its Membership to another Person upon the unanimous vote of all Class A Members.

**3.21 DISPUTED TRANSFERS.** The Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

**3.22 RIGHT OF FIRST REFUSAL.** If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

- (a) The Company will have the unilateral option to re-acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Company is required to recognize the transfer.
- (b) The Company will have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership Interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.
- (c) Unless the Company and the transferee agree otherwise, the fair market value of a Member's Membership Interest is to be determined by the written appraisal of a Person or firm qualified to value this type of business. The appraiser selected by the Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, [P. O. Box 17265, Washington, DC 20041] to perform appraisals.
- (d) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the

first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the "closing date"). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Membership Interest is resolved. The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

- (e) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Company if less than 10 years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Manager. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal, which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If §§483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.
- (f) The Manager may assign the Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 50% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.
- (g) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

**3.23 TAX TREATMENT OF TRANSFERRED MEMBERSHIP INTERESTS.** With respect to any transferred Membership Interest that may occur, all items of income, gain, loss, deduction, and credit allocable to any transferred Membership Interest shall for tax purposes be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under §706 of the Code and the regulations thereunder.

#### **ARTICLE IV: CAPITAL CONTRIBUTIONS**

**4.1 INITIAL CONTRIBUTIONS.** Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the Capital Contributions described for that Member in SCHEDULES A and B. No interest shall be earned or paid on Capital Contributions or a member's capital account.

**4.2 SUBSEQUENT CONTRIBUTIONS.** If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital

contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

**4.3 FAILURE TO CONTRIBUTE.** If a Member does not contribute all of its share of a Capital Call by the time required, then either:

- 1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution, however, such additional capital to be entitled to priority return superior to those set forth in Article V.

or

- 2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:

- (a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;
- (b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;
- (c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;
- (d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);
- (e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and
- (f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

**4.4 RETURN OF CONTRIBUTIONS.** Class A Members are not entitled to the return of any part of their Capital Contributions. In accordance with Article V, Class B Members and Class C Members are entitled to priority return of all of their Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member.

**4.5 ADVANCES BY MEMBERS.** If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

**4.6 CAPITAL ACCOUNTS.** A capital account shall be established and maintained for each Member,



by Class. The Members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1 (b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. § 1.704-1 (b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. § 1.704-1(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(l).

## **ARTICLE V: ALLOCATIONS AND DISTRIBUTIONS**

**5.1 DISTRIBUTIONS.** From time to time (but at least once each calendar quarter) the Manager shall determine in its reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members an amount in cash (or property other than cash) equal to that excess. Distributions by the Manager shall be mandatory upon the affirmative vote of 95% or more of the Class A Members, subject to Section 5.5.

**5.2 ALLOCATION OF PROFIT DISTRIBUTIONS OF THE COMPANY.** Profit distributions of the Company in each fiscal quarter shall be allocated to the Members as follows:

- i. first to the Class B Members, in proportion to their respective Class B Capital Contributions, in accordance with Section 5.3 ("Priority Return");
- ii. next to the Class C Members, in proportion to their respective Class C Capital Contributions, in accordance with Section 5.3 ("Priority Return");
- iii. next to the Class A Members in accordance with their respective Class A Membership Interests; provided, however, that Class A Members will only be allocated profit distributions after Class B Members and Class C Members have been paid their entire Priority Return.

**5.3 TREATMENT OF CLASS B DISTRIBUTIONS.** Class B profit distributions made pursuant to Section 5.2(i) shall be treated as a return of capital, and accordingly each Class B Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class B Member, until their Capital Contribution is returned in full. Once each Class B Member's Capital Contribution is reduced to \$0, the Class B class will cease to exist.

**5.4 TREATMENT OF CLASS C DISTRIBUTIONS.** Class C profit distributions made pursuant to Section 5.2(ii) shall be treated as a return of capital, and accordingly each Class C Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class C Member, until their Capital Contribution is returned in full. Once each Class C Member's Capital Contribution is reduced to \$0, the Class C class will cease to exist.

**5.5 RIGHT TO RECEIVE DISTRIBUTIONS.** Except as otherwise provided in NRS §86.391 and §86.521, at the time a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

**5.6 LIMITATION ON DISTRIBUTION.** Notwithstanding any other provision in this Article, the Manager may not make a distribution to the Company's Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Company, exceed the fair value of this Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Company's assets only to the extent that the fair value of that property exceeds that liability. However, a Member who receives such a distribution has no liability under the Act to return the distribution unless the Member knew that the distribution violated any provision of the Act.



## **ARTICLE VI: MANAGER**

### **6.1 MANAGEMENT BY MANAGER.**

**A.** Except for situations in which the approval of the Members is required by this Operating Agreement or by non-waivable provisions of applicable law, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of the Manager. No member shall take part in the management of the Company's business, transact any business in the Company's name or have the power to sign documents or otherwise bind the Company. The Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

- (1) hiring, managing, and terminating officers, employees, and independent contractors
  - (2) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;
  - (3) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
  - (4) maintaining the assets of the Company in good order;
  - (5) collecting sums due the Company;
  - (6) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;
  - (7) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;
  - (8) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
  - (9) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
  - (10) obtaining insurance for the Company;
  - (11) determining distributions of Company cash and other property as provided in Article V;
- and
- (12) the institution, prosecution and defense of any proceeding in the Company's name.

**B.** Notwithstanding the provisions of Section 6.1 A., the Manager may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

- (1) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);
- (2) be a party to (i) a merger, or (ii) an exchange or acquisition, without complying with the

applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(3) amend or restate the Articles, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members, unless such provision is rendered inapplicable by another provision of applicable law.

## **6.2 ACTIONS BY MANAGER; DELEGATION OF AUTHORITY AND DUTIES.**

**A.** In managing the business and affairs of the Company and exercising its powers, the Manager shall act: (i) collectively through meetings and written consents consistent as may be provided or limited in other provisions of this Operating Agreement; (ii) through officers to whom management authority and duties have been delegated, pursuant to subsection (C) below; and (iii) through committees comprised of Members and management, if any so may be appointed.

**B.** The Manager may, from time to time, designate one or more advisory boards to provide guidance and insight to the Company's strategic direction and operations, provided, however, that any such advisory board shall have no managerial authority or any other authority to act on behalf of or bind the Company.

**C.** The Manager may, from time to time, designate one or more natural persons to be officers of the Company. No officer need be a resident of the State of Nevada or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decide otherwise, if the title is one commonly used for officers of a business corporation formed under the NRS Chapter 78, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office but may also include other such specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been terminated by Manager or the President of the Company, if any. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager or the President of the Company (if such position has been appointed). Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

**D.** Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

**6.3 AGENCY.** The Manager and any appointed officers are agents of this Company for the purpose of any act carrying out the business of the Company, including the execution in the name of the Company of any instrument for apparently carrying on in the usual way the business of this Company.

**6.4 COMPENSATION.** The Manager shall be paid reasonable compensation and reimbursed for all expenses incurred on behalf of the Company.

**6.5 REMOVAL AND RESIGNATION.** The Manager may not be removed or terminated by the Members except by unanimous vote. The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein.

**6.6 VACANCIES.** Any vacancy occurring in the position of Manager may be filled by the affirmative

vote of a majority of Class A Members by election at a special meeting of Members called for that purpose.

**6.7 APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS.** The Manager in its discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by 98% of the Class A Members shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

**6.8 INTERESTED MANAGER, OFFICERS AND MEMBERS.**

**A.** No contract or transaction shall be voidable between this Company and any other Person in which the Company's Manager, any Member, or any officer is (i) that Person or (ii) holds a financial interest in that Person, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all of the Members, and the Manager or committee in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Manager or the Members.

**B.** A Member who is a Manager may be counted in determining the presence of a quorum at a meeting of the Members which authorizes the contract or transaction.

**ARTICLE VII: INDEMNIFICATION**

**7.1 DEFINITIONS.** For purposes of this Article VII:

**A.** "Limited Liability Company" includes any domestic or foreign predecessor entity of the Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Company by operation of law and in any other transaction in which the Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

**B.** "Manager" means any Person who is or was a Manager of the Company and any Person who, while a Manager of the Company, is or was serving at the request of the Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

**C.** "Expenses" include court costs and attorneys' fees.

**D.** "Official capacity" means: (1) when used with respect to a Manager, the office of Manager in the Company; and (2) when used with respect to a Person other than a Manager, the elective or appointive office in the Company held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Company; provided, however, that "official capacity" does not include service for any other foreign or domestic limited liability company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

**E.** "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any

inquiry or investigation that could lead to such an action, or proceeding.

**7.2 STANDARD FOR INDEMNIFICATION.** The Company shall indemnify a Person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the Person is or was a Manager or Officer of the Company, or for any action, related to Company or non-Company matters, if it is determined either by the Manager for any reason, or in accordance with this Article, that the Person:

- A. conducted himself in good faith;
- B. reasonably believed (i) in the case of conduct in his official capacity as a Manager of the Company, that his conduct was in the Company's best interests, and (ii) in all other cases, that his conduct was at least not opposed to the Company's best interests;
- C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; or
- D. for any other reason as may be determined solely in the discretion of the Manager.

**7.3 PROHIBITED INDEMNIFICATION.** Except to the extent permitted by this Article, a Manager or Member may not be indemnified under any Section of this Article in respect of a proceeding:

- A. in which the Person is found liable on the basis that personal benefit from company assets was improperly received by him; or
- B. in which the Person is found liable to the Company.

Either the Manager or majority of the membership may elect to provide for such indemnification of the Manager or any party under any circumstance.

**7.4 EFFECT OF TERMINATION OF PROCEEDING.** The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the Person did not meet the requirements set forth in any Section of this Article. A Person shall be deemed to have been found liable in respect of any claim, issue or matter only after the Person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Until such time as to a final disposition, the Company shall provide the indemnification and defenses contemplated herein.

**7.5 EXTENT OF INDEMNIFICATION.** A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

**7.6 DETERMINATION OF INDEMNIFICATION.** A determination of indemnification under any Section of this Article may be made by (i) the Manager, (ii) legal counsel to the company, or (iii) by the Members in a vote.

**7.7 AUTHORIZATION OF INDEMNIFICATION.** Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that: (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by the foregoing Section for the selection of special legal counsel; and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

**7.8 SUCCESSFUL DEFENSE OF PROCEEDINGS.** Except as provided otherwise by law or by this Operating Agreement, the Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

**7.9 COURT ORDER IN SUIT FOR INDEMNIFICATION.** Indemnification required by the foregoing Section shall be subject to Order upon request by an indemnified party in a court of competent jurisdiction upon claim by the Manager as to entitlement to indemnification under that Section, the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

**7.10 COURT DETERMINATION OF INDEMNIFICATION.** Upon application of a Manager, a court of competent jurisdiction shall determine, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article. The court shall order the indemnification that the court determines is proper and equitable; but, if the Person is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Person, the indemnification shall be limited to reasonable expenses actually incurred by the Person in connection with the proceeding.

**7.11 ADVANCEMENT OF EXPENSES.** Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which must be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Articles, this Operating Agreement, a resolution of Members or Manager, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

**7.12 EXPENSES OF WITNESS.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Company.

**7.13 INDEMNIFICATION OF OFFICERS.** The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

**7.14 INDEMNIFICATION OF OTHER PERSONS.** The Company may, at the discretion of the Manager, indemnify and advance expenses to any Person who is not or was not an officer, employee, or agent of the Company but who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Manager under this Article.

**7.15 ADVANCEMENT OF EXPENSES TO OFFICERS AND OTHERS.** The Company shall indemnify and advance expenses to an officer, and may indemnify and advance expenses to an employee or agent of the Company, or other Person who is identified in the foregoing Section and who is not a Manager, to such further extent as such Person may be entitled by law, agreement, vote of Members or otherwise.

**7.16 CONTINUATION OF INDEMNIFICATION.** The indemnification and advance payments provided by this Article shall continue as to a Person who has ceased to hold his position as a Manager, officer, employee or agent, or other Person described in any Section of this Article, and shall inure to his heirs, executors and

administrators.

**7.17 LIABILITY INSURANCE.** The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was a Manager, officer, employee, or agent of the Company or who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a Person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Company would not have the power to indemnify the Person only if including coverage for the additional liability has been approved by the Members of the Company. Without limiting the power of the Company to procure or maintain any kind of insurance or other arrangement, the Company may, for the benefit of Persons indemnified by the Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Company or with any insurer or other Person deemed appropriate by the Manager regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Company. In the absence of fraud, the judgment of the Manager as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Manager approving the insurance or arrangement to liability, on any ground, regardless of whether Manager participating in the approval are beneficiaries of the insurance or arrangement.

#### **ARTICLE VIII: CERTIFICATES**

**8.1 CERTIFICATES.** Certificates in the form determined by the Manager shall be executed representing all Membership Interests then outstanding, as may change from time to time. Such certificates shall be consecutively numbered, and shall be entered in the books of the Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the Membership Interest, and such other matters as may be required by the laws of the State of Nevada. They shall be signed by a Manager or officer of the Company, and may be sealed with the seal of the Company if adopted. A Member has the right to possess the original certificate, provided, however, that the Manager may keep a copy of such certificate in the records of the Company.

**8.2 REPLACEMENT OF LOST OR DESTROYED CERTIFICATE.** The Manager may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof, or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Manager in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such manner as it shall require or to give the Company a bond with surety and in form satisfactory to the Company (which bond shall also name the Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Company or other obligees with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

**8.3 TRANSFER OF MEMBERSHIP INTEREST.** Upon surrender to the Company or the transfer agent of the Company of a certificate for Membership Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Company to issue a new certificate to the Person entitled thereto, cancel the old certificate, and record the transaction upon its books.

**8.4 REGISTERED MEMBERS.** The Company shall be entitled to treat the holder of record of any certificate or certificate of Membership interest of the Company as the owner thereof for all purposes and, accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership interest or



any rights deriving from such Membership Interest on the part of any other Person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other Person becomes a Member, whether or not the Company shall have either actual or constructive notice of the interest of such Person, except as otherwise provided by law.

#### **ARTICLE IX: TAXES**

**9.1 TAX RETURNS.** The tax matters partner, as defined in Section 9.3, shall cause to be prepared and filed any necessary federal and state income tax returns for the Company, including making the elections described in Section 9.2. Each Member shall furnish to the tax matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

**9.2 TAX ELECTIONS.** The Company may make the following elections on the appropriate tax returns:

- A. to adopt the calendar year as the Company's fiscal year;
- B. to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;
- C. if a distribution of Company property as described in §734 of the Code occurs or if a transfer of a Membership Interest as described in §743 of the Code occurs, on written request of any Member, to elect, pursuant to §754 of the Code, to adjust the basis of Company properties;
- D. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under §195 of the Code as permitted by §709(b) of the Code; and
- E. any other election the Manager may deem appropriate and in the best interests of the Members.

**9.3 TAX MATTERS PARTNER.** The Manager shall designate itself to be the "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The tax matters partner may not take any action contemplated by §§6222 through 6232 of the Code without the consent of a majority of Members but this sentence does not authorize any action left to the determination of an individual Member under §§6222 through 6232 of the Code.

#### **ARTICLE X: NOTICE**

**10.1 METHOD.** Whenever by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or the Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is thus deposited in the United States mail.

**10.2 WAIVER.** Whenever, by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of the Manager or a Member at a meeting shall constitute a waiver of notice of such meeting, except

where a Manager or Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

#### **ARTICLE XI: BANKRUPTCY OF A MEMBER**

**11.1 BANKRUPTCY.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Manager to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member's bankruptcy estate (or the trustee thereof) shall sell, its Membership Interest to the Company. The purchase price shall be a dollar amount equal to the Class A Capital Contribution of the Bankrupt Member plus the remaining Class B capital account, if any, of that Bankrupt Member. The payment to be made to the Bankrupt Member or its estate pursuant to this Section is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its estate (and of all Persons claiming through the Bankrupt Member and its estate) in and in respect to the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members.

#### **ARTICLE XII: DISSOLUTION, LIQUIDATION, AND TERMINATION**

**12.1 DISSOLUTION.** The Company shall dissolve and its affairs shall be wound up on the written consent of all Members.

**12.2 LIQUIDATION AND TERMINATION.** On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager then the Members by majority vote will appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

- A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;
- B. the liquidator shall provide written notice to be mailed to each known creditor of and claimant against the Company;
- C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and
- D. all remaining assets of the Company shall be distributed to the Members as follows:
  - (1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;
  - (2) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market

value of that property on the date of distribution; and

- (3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs (other than those made by reason of this Clause (3)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation). All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.2. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**12.3 DEFICIT CAPITAL ACCOUNTS.** Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective Capital Contributions, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

**12.4 ARTICLES OF DISSOLUTION.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Manager or a Member shall file Articles of Dissolution with the Secretary of State of Nevada and take such other actions as may be necessary to terminate the Company.

### **ARTICLE XIII: GENERAL PROVISIONS**

#### **13.1 BOOKS AND RECORDS.**

**A.** The Company shall maintain those books and records as provided by statute and as it may deem necessary or desirable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Act:

- (1) a current list that states:
  - (a) the name and mailing address of each Member;
  - (b) the percentage or other interest in the Company owned by each Member; and
  - (c) if one or more classes or groups are established in or under the Articles or this Operating Agreement, the names of the Members who are Members of each specified class or group;
- (2) copies of the federal, state, and local information or income tax returns for the Company's six most recent tax years.
- (3) a copy of the Articles and this Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the

manner provided by the Articles or this Operating Agreement, classes or groups of Members;

- (4) unless contained in the Articles or this Operating Agreement, a written statement of:
  - (a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an additional contribution;
  - (b) the times at which additional contributions are to be made or events requiring additional contributions to be made;
  - (c) events requiring the Company to be dissolved and its affairs wound up; and
  - (d) the date on which each Member in the Company became a Member; and
- (5) correct and complete books and records of accounts of the Company.

**B.** The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

**C.** The Company shall keep in its registered office in Nevada and make available to Members on reasonable request the street address of its principal United States office in which the records required by this Section are maintained or will be available.

**D.** A Member, on written request stating the purpose, may examine and copy, in person or by the Member's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Section and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the Person to examine and copy.

**E.** On the written request by any Member, the Manager shall provide to the requesting Member or assignee, without charge, true copies of:

- (1) the Articles and this Operating Agreement and all amendments or restatements; and
- (2) any of the tax returns described in the Act.

**13.2 AMENDMENT OR MODIFICATION.** This Operating Agreement may be amended or modified from time to time only by a written instrument adopted by the affirmative vote of 98% or more of the Class A Members.

**13.3 CHECKS, NOTES, DRAFTS, ETC.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by one or more designated Persons appointed by the Manager or Chief Financial Officer of the Company, if such officer position exists.

**13.4 HEADINGS.** The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

**13.5 CONSTRUCTION.** Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits or Schedules, if any, are to Exhibits or Schedules attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

- A.** The remainder of this Operating Agreement shall be considered valid and operative; and
- B.** Effect shall be given to the intent manifested by the portion held invalid or inoperative.

**13.6 ENTIRE AGREEMENT; SUPERSEDEDURE.** This Operating Agreement constitutes the entire agreement of the Members of the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**13.7 EFFECT OF WAIVER OR CONSENT.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

**13.8 BINDING EFFECT.** Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

**13.9 DISPUTE RESOLUTION - BINDING ARBITRATION ELECTION.** Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall solely be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties specifically waive any rights to litigation as a dispute resolution methodology and further divest any Court of jurisdiction to determine disputes between the parties to this Agreement. Notwithstanding, judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, in the English language, and shall be conducted before three arbitrators, wherein the party calling for arbitration selects one arbiter, the party defending selects one arbiter and the arbiters select a third, agreeable to the parties or, if no agreement can be reached, then selected by the AAA. All costs related to the arbitration shall initially be borne by the aggrieved party. The arbitrators shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking post arbitration injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making findings of fact in connection with granting or denying such injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review, on any ground, of any decision of the arbitrator.

**13.10 LIQUIDATED DAMAGES PROVISION.** Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and agrees to provide to the named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars (\$10,000.00).

**13.11 GOVERNING LAW; SEVERABILITY.** THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

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

**13.13 NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT.** By executing this

Operating Agreement, each Member acknowledges that it has actual notice of: (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III; and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the Chapter 86 of the Nevada Revised Statutes and under the Nevada Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

**13.14 COUNTERPARTS.** This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

**13.15 CONFLICTING PROVISIONS.** To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members or the Manager.

# # # # #

**IN WITNESS WHEREOF,** the undersigned hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members and Manager, effective as of the first date written in the preamble above, and we have hereunto affixed our signatures.

---

**MANAGER:**

**MANAGER:** SJC VENTURES HOLDING COMPANY LLC, a Delaware limited liability company

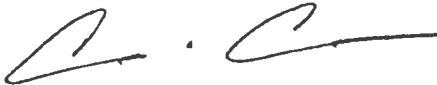
By: \_\_\_\_\_  
Jay Bloom, Manager

**MEMBERS:**

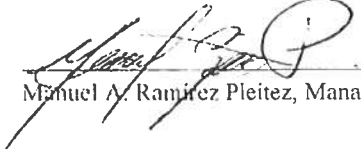
**MEMBER:** SJC VENTURES HOLDING COMPANY LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Jay Bloom, Manager

**MEMBER:** CBWE, LLC, a Nevada limited liability company


By: \_\_\_\_\_  
Carlos Cardenas, Manager

**MEMBER:** MAMBER VENTURES LLC, a Nevada limited liability company

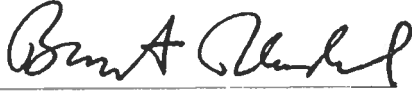
By: \_\_\_\_\_  
Manuel A. Ramirez Pleitez, Manager

**MEMBER:** PALADIN VENTURES, LLC, a Nevada limited liability company

By: LS MARLO TRUST

By: \_\_\_\_\_  
J. Chris Morgando, Trustee


**MEMBER:** BART RENDEL, an individual

By:   
Bart Rendel, individually

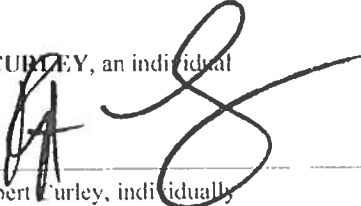
**MEMBER:** DUSTIN LEWIS, an individual


By: \_\_\_\_\_  
Dustin Lewis, individually

**MEMBER:** SCOTT OLIFANT, an individual


By:   
Scott Olifant, Esq., individually

**MEMBER:** ROBERT CURLEY, an individual


By:   
Robert Curley, individually

Chris Wood, an individual  
By:   
Chris Wood, individually

**MEMBER:** HANNAH HARVEY, an individual

By:   
Hannah Harvey, individually

**MEMBER:** JETHRO WAYNE GORDON, an individual

By:   
Jethro Wayne Gordon., individually

**MEMBER:** WENDELL BROWN, an individual

By: \_\_\_\_\_  
Wendell Brown, individually



**MEMBER:**

**JEFFREY ALBREGTS**, an individual

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

Jeffrey Albregts, individually

**MEMBER:**

**GLENN PLANTONE**, an individual

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

Glenn Plantone, individually

**MEMBER:**

**ERIN QUATRALE**, an individual

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

Erin Quatrale, individually

**MEMBER:**

**MARILYN WILEY**, an individual

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

Marilyn Wiley, individually

**MEMBER:**

**DENNIS WILEY**, an individual

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

Dennis Wiley, individually

**MEMBER:**

**MARK HOSTETLER**, an individual

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

Mark Hostetler, individually

**MEMBER:**

**ALAN AND THERESA LAHRS**, jointly and individually

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

Alan Lahrs

Theresa Lahrs

MEMBER: ~~IZZY ZALCBERG, an individual~~

By: ~~Izzy Zalcborg, individually~~

Kregg Hale, an individual

By: ~~Kregg Hale~~ S. Hale  
Kregg Hale, individually

MEMBER: JEAN KEMPNER, an individual

By: \_\_\_\_\_  
Jean Kempner, individually

MEMBER: AMY AND ARMAND FARR, jointly and individually

By: \_\_\_\_\_  
Amy Farr Armand Farr

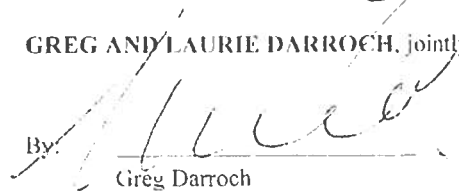
MEMBER: KENT ADAMSON, an individual

By: \_\_\_\_\_  
Kent Adamson, individually

MEMBER: BASIS INVESTMENTS, LLC a Texas Limited Liability Company

By:   
Phil Bourassa, Member

MEMBER: GREG AND LAURIE DARROCH, jointly and individually

By:  \_\_\_\_\_  
Greg Darroch Laurie Darroch

MEMBER: CATHERYN COPE, an individual

By: \_\_\_\_\_  
Catheryn Cope, individually

**Schedule A:  
List of Members**

<u>Paid in Capital</u>		<u>Series A</u>	<u>PIC</u>	<u>Series B</u>	<u>PIC</u>	<u>Series C</u>	<u>PIC</u>
\$	185.00	Paladin Ventures, LLC	7.500%	\$	185.00		
\$	185.00	Mamber Ventures, LLC	7.500%	\$	185.00		
\$	185.00	CBWE, LLC	6.000%	\$	185.00		
\$	185.00	SJC, LLC	45.625%	\$	185.00		
\$	65.00	Mark Hostetler	6.500%	\$	65.00		
\$	30.00	Bart Rendel, COO	3.000%	\$	30.00		
\$	20.00	Dustin Lewis, CFO	2.000%	\$	20.00		
\$	20.00	Rob Curley, CTO	2.000%	\$	20.00		
\$	20.00	Wendell Brown	2.000%	\$	20.00		
\$	17.50	Dennis Wiley	1.750%	\$	17.50		
\$	15.00	Scott Olifant, Esq	1.625%	\$	16.25		
\$	6.88	Marilyn Wiley	0.688%	\$	6.88		
\$	5.00	Jeffrey Albregts	0.500%	\$	5.00		
\$	1.88	Glenn Plantone	0.188%	\$	1.88		
\$	1.25	Hannah Harvey	0.125%	\$	1.25		
\$	1.25	Jethro Gordon	0.125%	\$	1.25		
\$	0.63	Erin Quatrala	0.063%	\$	0.63		
\$	500,000.00	Basis Investments, LLC	5.000%	\$	50.00	50.00%	\$ 499,950.00
\$	100,000.00	Marilyn Wiley	1.000%	\$	10.00	10.00%	\$ 99,990.00
\$	100,000.00	Kent Adamson	1.000%	\$	10.00	10.00%	\$ 99,990.00
\$	50,000.00	Alan & Theresa Lahrs	0.500%	\$	5.00	5.00%	\$ 49,995.00
\$	50,000.00	Alan & Theresa Lahrs	0.500%	\$	5.00	5.00%	\$ 49,995.00
\$	50,000.00	Jean Kempner	0.500%	\$	5.00	5.00%	\$ 49,995.00
\$	50,000.00	Jeffrey Albregts	0.500%	\$	5.00	5.00%	\$ 49,995.00
\$	50,000.00	Amy and Armond Farr	0.500%	\$	5.00	5.00%	\$ 49,995.00
\$	25,000.00	Scott Olifant, Esq	0.250%	\$	2.50	2.50%	\$ 24,997.50
\$	25,000.00	Glenn Plantone	0.250%	\$	2.50	2.50%	\$ 24,997.50
\$	1.88	Scott Olifant, Esq	0.188%	\$	1.88		
\$	3.75	Glenn Plantone	0.375%	\$	3.75		
\$	1.25	JWL Management	0.125%	\$	1.25		
\$	2.50	Greg and Laurie Darroch	0.250%	\$	2.50		
\$	100,000.00	Greg and Laurie Darroch	0.500%	\$	5.00		2.00% \$ 99,995.00
\$	50,000.00	Laurie Darroch	0.250%	\$	2.50		1.00% \$ 49,997.50
\$	50,000.00	Catheryn Cope	0.250%	\$	2.50		1.00% \$ 49,997.50
\$	50,000.00	JWL Management	0.250%	\$	2.50		1.00% \$ 49,997.50
\$	50,000.00	Glenn Plantone	0.250%	\$	2.50		1.00% \$ 49,997.50
\$	75,000.00	Scott Olifant	0.375%	\$	3.75		1.00% \$ 74,996.25
\$	1,375,953.76	Total	100.000%	\$	1,073.76	100.00%	\$ 999,900.00
						7.00%	\$ 374,981.25



**ORDR**

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: eturner@gtg.legal  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Fax: (725) 777-3112  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
Plaintiff,

CASE NO. A-20-822273-C  
DEPT. 13

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> ONE HUNDRED HOLDINGS  
LLC, a Nevada Limited Liability Company,  
Defendants.

**ORDER GRANTING PLAINTIFF'S  
MOTION TO CONFIRM ARBITRATION  
AWARD AND DENYING DEFENDANTS'  
COUNTERMOTION TO MODIFY  
AWARD; AND JUDGMENT**

**Date of Hearing: November 2, 2020  
Time of Hearing: 9:00 a.m.**

On October 1, 2020, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed the *Motion to Confirm Arbitration Award* (the "Motion"). Defendants First 100, LLC and First One Hundred Holdings, LLC ("Defendants") filed their *Limited Opposition to Confirm Arbitration Award* (the "Opposition") and *Countermotion to Modify Award Per NRS 38.242* (the "Countermotion") on October 15, 2020, and Plaintiff filed its *Reply to Defendants' Limited Opposition to Confirm Arbitration Award and Countermotion to Modify Award Per NRS 38.242* (the "Reply") on October 26, 2020. This Court held a hearing on November 2, 2020.

The Court, having considered the Motion, the Opposition and Countermotion, and the Reply, as well as the oral argument of counsel, finds and concludes as follows:

On January 7, 2020, Plaintiff initiated an arbitration with the American Arbitration Association against Defendants relating to whether Plaintiff was entitled to the production and examination of Defendants' records. The requested records were set forth in Exhibit 13 to

1 Claimant's Appendix to Claimant's Arbitration Brief.

2 On September 15, 2020, the Arbitration Panel issued its Decision and Award of Arbitration  
3 Panel (the "Final Award") (1) ordering that Defendants "forthwith, but no later than ten (10)  
4 calendar days from the date of [the Final Award], make all the requested documents and  
5 information available from both companies to [Plaintiff] for inspection and copying," and (2)  
6 awarding attorneys' fees and arbitration panel fees to Plaintiff in the total sum of \$23,975.00,  
7 which sum was also to be paid within ten (10) calendar days from the date of the Final Award.

8 Plaintiff served Defendants with this action and Motion on October 7 and October 8, 2020.

9 Defendants are both Nevada limited-liability companies and subject to the Court's  
10 jurisdiction.

11 NRS 38.239 authorizes an applicant to move for confirmation of a final arbitration  
12 decision. The plain language of the statute requires this Court to confirm the Final Award unless  
13 it is modified, corrected, or vacated. Furthermore, Defendants do not oppose the confirmation of  
14 the Final Award.

15 Instead, Defendants' Countermotion requests that the Court modify the Final Award to  
16 require Plaintiff to pay, in advance, fees and costs associated with Defendants' production of the  
17 requested company records. Defendants contend that the requested modification is permitted  
18 under NS 38.242(1)(c).

19 NRS 38.242 allows an award to be modified or corrected, but only if:

- 20 (a) There was an evident mathematical miscalculation or an evident mistake in  
21 the description of a person, thing or property referred to in the award;  
22 (b) The arbitrator has made an award on a claim not submitted to the arbitrator  
23 and the award may be corrected without affecting the merits of the decision upon  
the claims submitted; or  
(c) The award is imperfect in a matter of form not affecting the merits of the  
decision on the claims submitted.

24 NRS 38.242(1). The Court finds that none of these situations apply here.

25 The Court finds that the modification requested in the Countermotion is not a mere  
26 correction of an "imperfection in a matter of form," but instead seeks to alter the merits of the Final  
27 Award to award Defendants relief that was absent from the Final Award.

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Based upon the foregoing, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Confirm Arbitration Award is **GRANTED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff TGC/FARKAS FUNDING, LLC, shall have **JUDGMENT** jointly and severally against Defendants FIRST 100, LLC, and FIRST ONE HUNDRED HOLDINGS, LLC, aka 1<sup>st</sup> ONE HUNDRED HOLDINGS, LLC, in the amount of TWENTY-THREE THOUSAND, NINE HUNDRED AND SEVENTY-FIVE DOLLARS (\$23,975.00), plus statutory interest, to be adjusted as set forth in NRS 17.130, which as of the date of the entry of Judgment was \$3.45 per day, from October 8, 2020, until this Judgment is satisfied.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants shall make all the requested documents and information available from both companies to Plaintiff for inspection and copying, as set forth in the Final Award and Exhibit 13 to Claimant's Appendix to Claimant's Arbitration Brief.

**IT IS FURTHER ORDERED** that Defendants' Countermotion to Modify Award Per NRS 38.242 is **DENIED**.

IT IS SO ORDERED this 17 day of November, 2020.

  
\_\_\_\_\_  
DISTRICT JUDGE

Order Granting Plaintiff's Motion to Confirm Arbitration Award and Denying Defendants'  
Counter-motion to Modify Award; and Judgment

A-20-822273-C

Respectfully submitted:

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano

ERIKA PIKE TURNER

Nevada Bar No. 6454

DYLAN T. CICILIANO

Nevada Bar No. 12348

7251 Amigo Street, Suite 210

Tel: (725) 777-3000

Fax: (725) 777-3112

*Attorneys for Plaintiff*

Approved as to form and content:

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ

Nevada Bar No. 9046

DANIELLE J. BARRAZA

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

*Attorneys for Defendants*

---

**From:** Danielle Barraza <djb@mgalaw.com>  
**Sent:** Thursday, November 12, 2020 11:40 AM  
**To:** Dylan Ciciliano  
**Cc:** Erika Turner; Joseph Gutierrez; Max Erwin  
**Subject:** RE: Order Re: Motion to Confirm

Yes, you can affix my e-signature on this version.

Thanks,

Danielle J. Barraza | Associate  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[djb@mgalaw.com](mailto:djb@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

**From:** Dylan Ciciliano <dciciliano@Gtg.legal>  
**Sent:** Thursday, November 12, 2020 11:27 AM  
**To:** Danielle Barraza <djb@mgalaw.com>  
**Cc:** Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>; Max Erwin <MErwin@Gtg.legal>  
**Subject:** RE: Order Re: Motion to Confirm

Danielle,

I accepted your redline changes. Can I affix your signature?

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON  
7251 AMIGO STREET, SUITE 210  
LAS VEGAS, NV 89119

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**From:** Danielle Barraza <djb@mgalaw.com>  
**Sent:** Thursday, November 12, 2020 11:12 AM  
**To:** Dylan Ciciliano <dciciliano@Gtg.legal>  
**Cc:** Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>; Max Erwin <MErwin@Gtg.legal>  
**Subject:** RE: Order Re: Motion to Confirm



Dylan, I'm not seeing that the Court actually made the majority of the findings set forth in the drafted order. In any event, we have kept most of the findings in-tact and made only a few redlines in an effort to come to an agreement on this. See attached.

Thank you,

Danielle J. Barraza | Associate  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[djb@mgalaw.com](mailto:djb@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

**From:** Dylan Ciciliano <[dciciliano@Gtg.legal](mailto:dciciliano@Gtg.legal)>  
**Sent:** Thursday, November 12, 2020 10:15 AM  
**To:** Danielle Barraza <[djb@mgalaw.com](mailto:djb@mgalaw.com)>  
**Cc:** Erika Turner <[eturner@Gtg.legal](mailto:eturner@Gtg.legal)>; Joseph Gutierrez <[jag@mgalaw.com](mailto:jag@mgalaw.com)>; Max Erwin <[MErwin@Gtg.legal](mailto:MErwin@Gtg.legal)>  
**Subject:** FW: Order Re: Motion to Confirm

Danielle,

I wanted to follow up on the attached. We intend on submitting the order to the Court by noon tomorrow.

Thank you,

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON  
7251 AMIGO STREET, SUITE 210  
LAS VEGAS, NV 89119

Visit us online at [www.gtg.legal](http://www.gtg.legal)

**From:** Dylan Ciciliano  
**Sent:** Monday, November 9, 2020 9:24 PM  
**To:** Danielle Barraza <[djb@mgalaw.com](mailto:djb@mgalaw.com)>  
**Cc:** Erika Turner <[eturner@Gtg.legal](mailto:eturner@Gtg.legal)>; [jag@mgalaw.com](mailto:jag@mgalaw.com); Max Erwin <[MErwin@Gtg.legal](mailto:MErwin@Gtg.legal)>  
**Subject:** Order Re: Motion to Confirm

Danielle,

Attached is the draft order on Plaintiff TGC/FARKAS FUNDING, LLC's *Motion to Confirm Arbitration Award*. Please let me know if I may affix your signature.

Thank you,

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON  
7251 AMIGO STREET, SUITE 210  
LAS VEGAS, NV 89119

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The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

**ORDR**

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: eturner@gtg.legal  
DYLAN T. CICILIANO  
Nevada Bar. No. 12348  
Email: dciciliano@gtg.legal  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Fax: (725) 777-3112

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,

Plaintiff,

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> ONE HUNDRED HOLDINGS  
LLC, a Nevada Limited Liability Company,

Defendants.

CASE NO. A-20-822273-C  
DEPT. 13

**ORDER AWARDING ATTORNEYS'  
FEES AND COSTS**

**ORDER AWARDING ATTORNEYS' FEES AND COSTS**

On April 9, 2021, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed a *Declaration of Erika Pike Turner, Esq. in Support of Award of Fees and Costs* (the "Declaration"). On April 19, 2021, Defendants FIRST 100, LLC and FIRST ONE HUNDRED HOLDINGS, LLC aka 1<sup>st</sup> ONE HUNDRED HOLDINGS LLC ("Defendants") and non-party JAY BLOOM filed *Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Opposition"). On April 23, 2021, Plaintiff filed its *Reply to Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Reply"). The Court, having considered the Declaration, the Opposition, the Reply, as well as the exhibits thereto, FINDS and CONCLUDES as follows:

The Court has considered each of those factors outlined in *Brunzell v. Golden Gate*

1 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (the skill and experience of Plaintiff's counsel,  
2 the nature of the work to be performed, the actual work performed, as well as the result achieved),  
3 and thereon concludes that Plaintiff has shown in the civil contempt context adequate factual and  
4 legal bases for a remedial award of attorneys' fees in the sum of \$146,719.00 and costs in the sum  
5 of \$4,816.81. Plaintiff has shown in the civil contempt context adequate factual and legal bases  
6 for a remedial award for the conduct described at length in the *Court's Findings of Fact,*  
7 *Conclusions of Law and Decision* entered April 7, 2021.

8 The Court therefore hereby enters a total award of civil contempt sanctions in favor of  
9 Plaintiff in the total amount of \$151,535.81, which amount must be paid by Defendants and/or Jay  
10 Bloom as a condition of purging the contempt.

11  
12 ~~IT IS SO ORDERED~~ this \_\_\_\_ day of \_\_\_\_, 2021.

13 Dated this 11th day of June, 2021

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16 DISTRICT COURT JUDGE  
17 **FD8 409 3937 0C15**  
18 **Mark R. Denton**  
19 **District Court Judge**

20 Respectfully submitted:

21 GARMAN TURNER GORDON LLP

22 /s/ Erika Pike Turner

23 Erika Pike Turner, Esq., Bar No. 6454  
24 Dylan T. Ciciliano, Esq., Bar. No. 12348  
25 7251 Amigo Street, Suite 210  
26 Las Vegas, Nevada 89119  
27 *Attorneys for Plaintiff*

Reviewed and disapproved:

MAIER GUTIERREZ & ASSOCIATES

DISAPPROVED

Joseph A. Gutierrez, Esq., Bar No. 9046  
Danielle J. Barraza, Esq., Bar No. 13822  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Defendants First 100, LLC  
and 1st One Hundred Holdings, LLC and non-  
party Jay Bloom*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 TGC/Farkas Funding, LLC,  
7 Plaintiff(s)

CASE NO: A-20-822273-C

8 vs.

DEPT. NO. Department 13

9 First 100, LLC, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/11/2021

15 Dylan Ciciliano

dciciliano@gtg.legal

16 Erika Turner

cturner@gtg.legal

17 MGA Docketing

docket@mgalaw.com

18 Tonya Binns

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19 Bart Larsen

blarsen@shea.law

20 Max Erwin

merwin@gtg.legal

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ERIKA PIKE TURNER  
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7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Fax: (725) 777-3112  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
Plaintiff,

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> ONE HUNDRED HOLDINGS  
LLC, a Nevada Limited Liability Company,  
Defendants.

CASE NO. A-20-822273-C  
DEPT. 13

**NOTICE OF ENTRY OF ORDER  
AWARDING ATTORNEYS' FEES AND  
COSTS**

**NOTICE OF ENTRY OF ORDER AWARDING ATTORNEYS' FEES AND COSTS**

PLEASE TAKE NOTICE that an *Order Awarding Attorneys' Fees and Costs*, a copy of  
which is attached hereto, was entered in the above-captioned case on the 11<sup>th</sup> day of June, 2021.

DATED this 11<sup>th</sup> day of April, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
DYLAN T. CICILIANO  
Nevada Bar. No. 12348  
7251 Amigo Street, Suite 210  
Tel: (725) 777-3000  
Fax: (725) 777-3112  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned, hereby certifies that on the 11<sup>th</sup> day of April, 2021, he served a copy of the **NOTICE OF ENTRY OF ORDER AWARDING ATTORNEYS' FEES AND COSTS**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

Joseph A. Gutierrez, Esq.  
Danielle J. Barraza, Esq.  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Email: jag@mgalaw.com  
djb@mgalaw.com  
*Attorneys for Defendants*

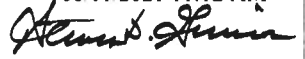
Bart K. Larsen, Esq.  
SHEA LARSEN  
1731 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
Email: blarsen@shca.law  
*Attorneys for Raffi Nahabedian*

I further certify that I served a copy of this document by emailing it and mailing a true and correct copy thereof via U.S Regular Mail, postage prepaid, addressed to:

Kenneth E. Hogan, Esq.  
HOGAN HULET PLLC  
1140 N. Town Center Dr., Suite 300  
Las Vegas, NV 89144  
Email: ken@h2legal.com  
*Attorneys for Matthew Farkas*

/s/ Max Erwin

An Employee of  
GARMAN TURNER GORDON LLP

  
CLERK OF THE COURT

**ORDER**

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: eturner@gtg.legal  
DYLAN T. CICILIANO  
Nevada Bar. No. 12348  
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Fax: (725) 777-3112

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
Plaintiff,

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> ONE HUNDRED HOLDINGS  
LLC, a Nevada Limited Liability Company,  
Defendants.

CASE NO. A-20-822273-C  
DEPT. 13

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FEES AND COSTS**

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13 **Dated this 11th day of June, 2021**

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16 DISTRICT COURT JUDGE  
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19 **District Court Judge**

20 Respectfully submitted:

21 GARMAN TURNER GORDON LLP

22 /s/ Erika Pike Turner

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27 *Attorneys for Plaintiff*

Reviewed and disapproved:

MAIER GUTIERREZ & ASSOCIATES

DISAPPROVED

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Danielle J. Barraza, Esq., Bar No. 13822  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Defendants First 100, LLC*  
*and 1st One Hundred Holdings, LLC and non-*  
*party Jay Bloom*

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3 DISTRICT COURT  
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6 TGC/Farkas Funding, LLC,  
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